



CITY OF WACO

Purchasing Services
Post Office Box 2570
Waco, Texas 76702-2570
254 / 750-8060
Fax: 254 / 750-8063
www.waco-texas.com

TO:

REQUEST FOR BIDS
RFB No: 2010-036

Commodity/Service: RUBBER-ASPHALT CRACK SEALING COMPOUND

DEADLINE FOR SUBMITTING BID: February 23, 2010, 1:30 pm CT
BIDS TO BE OPENED: February 23, 2010, 1:30 pm CT

BID OPENING LOCATION: Purchasing Services Office, 1415 North Fourth Street
Waco, Texas 76707

NOTICE

Upon receipt of this document you agree to complete the form below and fax this page to 254-750-8063. Failure to do so will transfer the sole responsibility of obtaining all addenda to you, the bidder, and releases the City of any liability regarding this matter.

Your Name:
Company Name:
Address, City, State:
Phone Number:
Fax Number:
E-mail Address

D. Russell

WHOM TO CONTACT WITH QUESTIONS

Questions concerning the RFB should be submitted to the following:

RFB Administrator
Dennis Russell
City of Waco – Purchasing Services
1415 North Fourth Street
P. O. Box 2570
Waco, Texas 76702
Phone: (254) 750-8060
FAX: (254) 750-8063
dennizr@ci.waco.tx.us

Questions must be submitted in writing. Emails will be considered written requests if addressed to the RFB Administrator.

HOW TO PACKAGE YOUR BID

One original and two copies of the bid must be submitted: (1) inside a sealed envelope (2) clearly marked on the outside with the bid title, bid number and bid opening date.

Please do not use 3-ring binders. Large clips are acceptable.

Bids may be mailed to:

Via US Mail:	Via Delivery Services:
City of Waco Purchasing Services P.O. Box 2570 Waco, Texas 76702-2570 ATTN: DENNIS RUSSELL	City of Waco Purchasing Services 1415 North Fourth Street Waco, Texas 76707 ATTN: DENNIS RUSSELL
Note: Bids must arrive in Purchasing, to be date and time stamped, before the closing date and time. Mail early to allow for delays in delivery.	Note: US Mail does NOT deliver to this street address. Use a delivery service.

Any explanation desired by a bidder regarding the meaning or interpretation of this RFB, or any documentation or attachments as part and parcel of the RFB, must be requested in writing to the **Purchasing Services Division, P.O. Box 2570, Waco, TX, 76702-2570** or may be emailed or faxed to the contact person designated above. Such correspondence shall be submitted with sufficient time allowed for the City to evaluate and reply to all prospective bidders before the deadline for submitting a bid as stated in this RFB. The RFB number must appear on all correspondence and inquiries. Any non-written representations, explanations, or instructions given by City staff are not binding and do not form a part of, or alter in any way, the RFB, a written agreement pertinent to the RFB, or the awarding of the bid.

WHAT IS NOT ACCEPTED

A BID OR PROPOSAL SUBMITTED BY FACSIMILE TRANSMISSION (FAX) OR BY ELECTRONIC MAIL (EMAIL) WILL **NOT** BE ACCEPTED. A BID OR PROPOSAL SUBMITTED OR POSTMARKED AFTER THE DEADLINE FOR SUBMITTING A BID (AS STATED ABOVE) WILL **NOT** BE CONSIDERED UNDER ANY CIRCUMSTANCES AND WILL BE RETURNED UNOPENED TO THE SUBMITTER.

NOTICE

DEFINITION: Within the RFB/RFP, the terms “vendor,” “bidder,” “Proposer,” “contractor,” “supplier,” and “contracted supplier” may be used at different points. The terms essentially mean, or refer to, the party responding to a request and/or the party awarded a contract based upon the requirements of this RFB/RFP.

PROPOSED SCHEDULE OF EVENTS

<u>TASK/EVENT</u>	<u>TIME/DATE</u>
Issuing the RFB	February 8, 2010
Advertising	February 8, 2010 and February 15, 2010
Deadline for Submitting Bid	February 23, 2010, 1:30 pm CT
Opening of bids	February 23, 2010, 1:30 pm CT
Evaluation of bids	February 23, 2010
Notify proposers of award recommendation	February 24, 2010
Recommendation to City Council/Award	March 16, 2010

NOTE: The schedule of events is tentative and may be modified throughout the RFB process as events unfold.



City of Waco Texas
Purchasing Services Division

TERMS AND CONDITIONS

1. RFB ADMINISTRATOR

1.1 Bidders/vendors must limit their contact to the **RFB Administrator**. All questions, requests for information, and other vendor contact will be to the RFB Administrator only. Technical contact will be coordinated with the appropriate department by the RFB Administrator.

RFB Administrator:

Dennis Russell

Purchasing Services

Phone 254-750-8060

Fax - 254-750-8063

DennisR@ci.waco.tx.us

2. BID INTERPRETATION:

2.1 Compliance with all bid requirements, delivery and needs of the City are considerations in evaluating bids. The City of Waco, Purchasing Services department reserves the right to contact any offeror, at any time, to clarify, verify or request information with regard to any bid.

2.2 The City of Waco reserves the right to accept the bid from the most qualified contractor(s) that best meets the City's needs.

2.3 Each bid will be evaluated for acceptability with emphasis on the various factors within this document. (See Section 13 for additional information on evaluation)

2.4 A staff committee will evaluate bids to ensure compliance with RFB requirements, quality of products and services offered, and pricing. The staff committee recommendations are subject to approval by the Waco City Council.

2.5 Acceptance of any bidder's response will not place the City of Waco under any obligation to accept the lowest priced response.

3. CONTRACT:

3.1 This Request For Bid (RFB), combined with the Vendor's response ("bid") submitted to and accepted by the City, constitutes a contract between the City of Waco and the selected vendor at the time the Waco City Council awards the contract to such vendor.

3.2 No further documentation is required, although the contracting parties may supplement the contract with further documentation. By submitting a bid, the vendor agrees to comply with the Terms and Conditions and other requirements set forth in this RFB and to be further bound to the representations and information the vendor provides in his response to this RFB.

3.3 Acceptance of bidder's offer may be in the form of a "notice of award", a P.O. (purchase order) or a "contract". Notice for annual contract agreements will be a "notice of award", a P.O. (purchase order) or a "contract".

4. BID RESPONSES:

4.1 Bids are to be submitted with a response on each item and the total extended.

4.2 More than one (1) bid may be submitted on items that meet the specifications.

5. MODIFICATIONS AND/OR ALTERNATE BID

5.1 Definitions:

5.1.1 Modifications. A Modification shall mean a limited change to the Specifications or part(s) of the Terms and Conditions. Example: an item is specified in the color blue; however, blue is not available but gray or white can be supplied. The basic function of the item is unchanged by accepting a different color and as such will be considered as a Modification.

5.1.2 Alternate Bid. An Alternate Bid shall mean a major or complete change to a Specification or the Terms and Conditions that substitute for the item or terms as specified. Example: A 3\4 ton 2 wheel drive vehicle is specified. A bid is submitted suggesting that a one-ton 4X4 vehicle will be an equal. Such a large variance from the original specification will be considered an Alternate Bid.

5.2 The purpose of this RFB for the City of Waco is to purchase equipment and/or services as specified and controlled by the Terms and Conditions. All or any Modifications and/or Alternate bids to the Terms and Conditions and/or the Specifications shall be in writing, attached to, and submitted with, the bid documents. Absence of noted Modifications and/or Alternate bids will be interpreted to mean that the item/service quoted is in exact accordance with the Terms and Conditions as well as the Specifications.

5.3 Any Modifications and/or Alternate bids to the Terms and Conditions and/or the Specifications submitted by the bidder shall reference the associated line item number(s) and/or page number(s).

5.4 A bidder which is NOT bidding on the exact specified equipment, or services, is required to furnish with his bid a complete detailed description, and specifications, of each item upon which he is bidding, supported by the manufacturer's catalog, photographs, guarantee, complete name, and/or any other pertinent information.

5.5 An Alternate bid item must reflect the general appearance, design, dimensions, or color of the item specified, and must be of equivalent materials, function, quality, construction, performance and suitability of the item(s) specified within the bid documents.

5.6 Approval of an Alternate bid item and/or service as defined in the Terms and Conditions and/or Specifications remains with the City and in all cases is final.

5.7 A bid that has been opened may not be changed for the purpose of correcting an error in the bid price nor to submit Modifications and/or Alternate bid to the Terms and Conditions and/or the Specifications.

5.8 In the event an item is not accepted as an alternate bid item upon receipt of delivery, bidder may be allowed to supply equipment/services meeting the original specifications at the bid price, if this does not cause unacceptable delays and or harm, and is in the best interest of the City.

5.9 Samples of specified items or alternate bid items, if required, shall be furnished free of expense to the City, and if not used or destroyed in examination and testing, will be returned to the bidder, if requested, at the bidder's expense. High value or high cost items will not be required for submittal and/or testing. However, information will be required that will allow the City to perform an adequate evaluation of a proposed product. This may include supplying references (names, phone numbers, etc.) of current owners of the items bid. Each sample submitted must be marked with Bidder's name and address and Bid Number reference.

6. CHANGES TO RFB:

6.1 Any changes by the City to the RFB, or to any portion, prior to the deadline for submitting bids will be in the form of a written amendment or addendum, which will be advertised as required by law.

7. MODIFICATION OR WITHDRAWAL OF BIDS:

7.1 Bid pricing CANNOT BE ALTERED OR AMENDED AFTER THE DEADLINE PASSES TO SUBMIT A BID. Bids may be modified prior to the deadline only by providing a written notice (including by fax or email) to the Contact Person or the RFB Administrator at the addresses shown herein. A bid may also be withdrawn by providing the same notice or in person by a bidder or his authorized agent, provided the agent's identity is made known and he signs a receipt reflecting that the bid is being withdrawn. This provision does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

8. BID REVIEW:

8.1 Bidders are responsible for examining and being familiar with all specifications, drawings, standard provisions, instructions, and terms and conditions of the RFB and their responses. Failure to do so will be at the bidder's risk.

9. AUTHORIZED SIGNATURE:

9.1 A bid must show Vendor's name and address and be manually signed. The person signing the bid must have authority to contractually bind the bidder. The person signing the bid or others who are able to show evidence of authority to execute or sign on behalf of the bidder must initial any erasures or other changes.

10. LAWS AND REGULATIONS

10.1 The bidder's attention is directed to the fact that all applicable State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

11. CONFIDENTIALITY:

11.1 ALL BIDS/PROPOSALS SUBMITTED WILL BE SUBJECT TO THE TEXAS PUBLIC INFORMATION ACT. On each page where proprietary information appears, information considered confidential must be labeled. Failure to so label the proprietary or confidential information shall be considered as a waiver of any confidentiality rights or interests. Disclosure of requested information will be determined in accordance with the Texas Public Information Act. You are not encouraged to submit such data and information unless it is absolutely required to understand and evaluate your response. If such data and information is submitted, you agree that the City shall not be liable for disclosure of such data and information and hereby release the City from any liability.

11.2 In the event a request for public information is filed with the City which involves information labeled as confidential, you will be notified by the City of the request so that you will have an opportunity to contact the Attorney General as to why such information should not be released.

12. SPECIFICATIONS:

12.1 Specifications are written to encourage competition. The specifications herein shall be the basis of comparison between bidders. There is no intent to discriminate against any supplier or Vendor but rather, to set a definite standard of performance. Bidders are required to quote services and/or equipment that will meet or exceed the minimum or maximum specifications herein.

13. METHOD OF AWARD and EVALUATION FACTORS

13.1 For this RFB, the City may award the contract to the:

- Lowest responsible bidder
- Bidder who provides goods or services at the best value for the City.

13.2 Lowest and Best Responsible Bidder:

13.2.1 The contract will be awarded to the lowest responsible bidder based on the base bid plus any selected alternatives provided the amount does not exceed the funds then estimated by the City/Owner as available to finance the contract.

13.2.2 If the contract is bid with alternatives, the City/Owner reserves the right to select any combination of alternatives and will compare all bids using the selected alternatives. If the amount of the bids exceeds the funds available to finance the contract, the City/Owner may (a) reject all bids or (b) may award the contract based on the base bid with such deductions as produces a net total which is available within the available funds.

13.2.3 Completing projects in a timely manner is important to the City. Therefore, determining the lowest and best responsible bidder for this bid may be evaluated on a combination of history, bid price and delivery terms and conditions, or other pertinent information as set forth herein.

13.3 Best Value:

13.3.1 In determining best value for the City, the City may consider: (1) the reputation of the bidder and of the bidder's goods or services; (2) the quality of the bidder's goods or services; (3) the extent to which the goods or services meet the City's needs, including whether the bidder meets the City's specifications; (4) the bidder's past relationship with the City; (5) the impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities; (6) the total long-term cost to the City to acquire the bidder's goods or services; (7) a COMBINATION OF BID PRICE AND BID WORKING DAYS; and (8) any relevant criteria specifically listed in the RFB.

14. PARTIAL AWARD:

14.1 BIDDERS MAY FURNISH PRICING FOR ALL OR ANY PORTION OF THE RFB. UNLESS BIDDER SPECIFIES OTHERWISE IN ITS BID, THE CITY MAY AWARD BIDS FOR ANY PORTION OF ITEMS BEING BID.

15. RESERVATIONS:

15.1 THE CITY EXPRESSLY RESERVES THE RIGHT TO ACCEPT, REJECT OR CANCEL ANY AND ALL BIDS and:

15.1.1 Waive any defect, irregularity, or informality in any bid or bidding procedure;

15.1.2 Extend the bid closing time and date. Notification will be made by addendum;

15.1.3 Reissue a bid invitation or proposal;

15.1.4 Procure any item by other allowable means;

15.1.5 Increase or decrease the quantity specified, unless the bidder specifies otherwise;

15.1.6 Waive minor deviations from the specifications when a bid meets the intent of the specifications and consider such bid if it is determined the bid's total cost is lower, the purpose for the bid is improved or not impaired, the bid amounts to the best value for the city, and/or the waiver otherwise results in a measurable benefit on behalf of the city.

15.1.7 Consider and accept an alternate bid as provided herein when most advantageous to the City;

15.1.8 Extend any contract when most advantageous to the City;

15.1.9 Award any bid to multiple parties if it is in the best interest of the City.

15.1.10 Purchase off of existing contracts available to the City through "Cooperative Purchasing Agreements" if available.

16. CANCELLATION/TERMINATION:

16.1 The City shall have the right to cancel for default all or any part of the undelivered portion of the order if Vendor breaches any of the terms hereof, including warranties of Vendor, or if the Vendor becomes insolvent, or commits acts of bankruptcy.

16.2 The City shall have the right to terminate at the expiration of each fiscal year during the term of this agreement, conditioned on a best efforts attempt by the City to obtain and appropriate funds for payment of the agreement. The Contractor acknowledges that this agreement is a commitment of the City's current revenues only.

17. TAXES:

17.1 All quotations are to be submitted less federal excise taxes and State of Texas sales taxes. Tax exemption certificates will be executed upon request. The City's federal tax identification number is 1-74-6002468-4.

18. ARREARS OF TAXES OFFSET TO DEBT AGAINST CITY:

18.1 In accordance with the City of Waco Charter, Article VIII, Section 8, the City shall be entitled to counterclaim and offset against any debt, claim, demand or account owed by the City to any person, firm or corporation who is in arrears to the City of Waco for taxes, in the amount of taxes so in arrears, and no assignment or transfer of such debt, claim, demand or account after the said taxes are due, shall affect the right of the City to so offset the said taxes against the same.

19. INVOICE SUBMITTAL PROCEDURES:

19.1 If invoices are submitted or otherwise used pursuant to the bid awarded under this RFB, the Vendor shall present invoices to the City in the following form and content:

19.1.1 Each invoice must reference the City of Waco contract, agreement or P.O. number;

19.1.2 Only one contract, agreement, or project shall be billed on a particular invoice;

19.1.3 Only one invoice per every thirty (30) days per contract, agreement, or project may be submitted;

19.1.4 Each invoice must have a billing or "Invoice" number and an Invoice Total.

19.2 The invoice requirements stated herein shall not be read to disallow or exclude other information that may be otherwise required or requested by the City. Such information required herein must be submitted only on an invoice and not in any other non-invoice form or document.

19.3 Payment will be at the contract unit price per ton, yard, or other acceptable unit of measure F.O.B. Destination (stockpile or job site), or Plant/Ship location.

20. FORCE MAJEURE:

20.1 In the event performance by Vendor of its obligations under this Agreement shall be interrupted or delayed by or as a consequence of a fire, flood, severe weather, or other act of God, war, insurrection, civil disturbance, or act of state, the Vendor shall be excused from such performance for the period of time such occurrence shall have lasted or such period as is reasonably necessary to rebuild or take other action necessary to resume performance. The period of time reasonably necessary to rebuild or take other action necessary to resume performance shall be as determined by the agreement of the parties, which agreement shall be negotiated and arrived at in good faith.

20.2 Vendor shall notify the Contact Person or RFB Administrator of any matter covered above, the occurrence of which interferes or threatens to interfere with the performance of any of its obligations under the bid. Upon such notice, the Vendor and the City shall consult and cooperate as to measures which may be taken to overcome the interference or as to alternative measures which may be undertaken by the parties with a view to the continued performance of the bid agreement.

21. GRATUITIES:

21.1 The City may, by written notice to the Vendor, cancel this contract without liability to the City if it is determined by the City that gratuities have been offered to any officer or employee of the City with a view toward securing a contract, securing favorable treatment with respect to the awarding, amending, or the making of any determinations in respect to the performance of such a contract. In the event City, as set forth in this paragraph, cancels this contract the City shall be entitled to recover from the Vendor all additional costs incurred by City as a result of the cancellation.

22. WARRANTY FOR PRICE:

22.1 The price or charge to be paid by the City shall be that contained in the Vendor's bid which Vendor warrants to be no higher than Vendor's current prices or charges on orders by others for products or services of the kind and specification covered by this bid contract for similar quantities under similar or like conditions and methods of purchase. In the event Vendor breaches this warranty, the prices or charges shall be reduced to Vendor's current prices or charges on orders by others, or in the alternative, City may cancel this contract without liability to Vendor for breach or Vendor's actual expense.

23. WARRANTY FOR PRODUCT:

23.1 The Vendor shall not limit or exclude any implied warranties, and any attempt to do so shall render this contract voidable at the option of the City.

24. ASSIGNMENT-DELEGATION:

24.1 No right or interest in the contract shall be assigned, nor delegation of any obligation be made by Vendor without the written permission of the City. Any attempted assignment or delegation by Vendor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

25. WAIVER:

25.1 No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

26. INTERPRETATION-PAROL EVIDENCE:

26.1 This writing is intended by the parties as a final expression of their contract and is intended also as a complete contract for dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in the contract, the definition contained in the Uniform Commercial Code shall control.

27. ADVERTISING:

27.1 Successful bidder shall not advertise or publish, without City's prior consent, the fact that City has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

28. RIGHT TO ASSURANCE:

28.1 Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the questioning party may demand the other party give written assurance of its intent to perform. In the event that a demand is made, and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

29. CONFLICT OF INTEREST:

29.1 Vendor agrees to comply with the conflict of interest provisions of state law and of the Waco City Charter and Code of Ordinances. Any potential conflict of interest must be brought to the attention of Purchasing Services.

30. VENUE:

30.1 Waco, McLennan County, Texas.

31. SHIPMENT & DELIVERY:

31.1 Price Quotes: Bidder is to quote its lowest and best price F.O.B. Destination on each item to shipping locations in Waco, Texas, unless otherwise specified in the RFB. Pricing shall include packaging, transportation, unloading, and any trade and cash discounts, which may be taken if earned. Bids must be firm, unless a bidder believes it necessary to base its price on price adjustment, then such a bid may be considered but only as an alternate bid. Pricing is to be submitted on units of quantity specified with extended totals; however, in the event of a discrepancy in any extension total, the unit prices shall govern and be binding for purposes of this RFB.

31.2 Materials: The bidder certifies all materials, parts, and equipment supplied or represented in response to this RFB shall be new and unused unless noted elsewhere in this RFB.

31.3 The title and risk of loss of the goods shall not pass to City until City actually receives and takes possession of the goods, if any, at the point or points of delivery.

31.4 Vendor is not authorized to ship the parts or complete components under reservation, and no tender of a bill of lading will operate as a tender of goods.

31.5 Bids must show the number of calendar days required to place the materials at the place of destination under normal conditions. Failure to specify delivery date or state unrealistically short or long delivery dates may cause the bid to be disregarded. "TIME OF THE ESSENCE FOR DELIVERY" section of the specifications shall govern the delivery date(s), if such section is included within the specifications.

31.6 The Vendor must keep the Contract Administrator advised as to the status of the delivery, including when a status is requested by the City. When delivery delay can be foreseen, the Vendor shall give prior notice to the Contract Administrator.

31.7 Default in promised delivery, without acceptable reasons, or failure to meet specifications without remedy shall cause the City to purchase the goods elsewhere, and charge any increase in cost and handling to the defaulting vendor.

31.8 This does not limit any other remedies to the City for damage entitled under the Uniform Commercial Code.

31.9 F.O.B. destination Waco, Texas, unless delivery terms, and costs, are specified in the Vendor's bid. City shall have the right to designate what method of transportation shall be used to ship the goods.

32. INSURANCE, AND INDEMNIFICATION REQUIREMENTS

32.1 Prior to the commencement of any work under this Contract, Contractor shall furnish to the **RFB Administrator/ City Risk Manager** original completed certificate(s) of insurance, policy endorsements, exclusions, and/or relevant extracts from the insurance policy, or copies of the policies, plainly and clearly evidencing such insurance. Thereafter new certificates, policy endorsements, exclusions, and/or relevant extracts from insurance policies, or policies shall be provided prior to the expiration date of any prior certificate, endorsement, or policy. The same shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) of insurance, policy endorsements, and exclusions, must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Contract until such certificate shall have been delivered to **RFB Administrator** and the **City Risk Management Department**, and no officer or employee, other than the City's Risk Manager, (Gary Urban 254-750-5732) shall have authority to waive this requirement.

32.2 The City reserves the right to review the insurance requirements of this section during the effective period of this contract and any extension or renewal hereof and to modify insurance coverage's and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this contract, but in no instance will City allow modification whereupon City may incur increased risk.

32.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City.

32.4 Insurance types and amounts applicable to this RFB/RFP are marked below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employer's Liability	\$500,000/\$500,000/\$500,000
3. Comprehensive General Liability Including:	
• Premises/Operations	
• Independent Contractors *	
• Products/Completed Operations	\$1,000,000 per occurrence; \$2,000,000 General
• Personal & Advertising Injury	Aggregate, or its equivalent in Umbrella or
• Explosion, Collapse, Underground *	Excess Liability Coverage
• Broad form property damage, to include fire legal liability	
* If applicable	
4. Business Automobile Liability	
a. Owned/leased vehicles	\$1,000,000 per occurrence or its equivalent on a
b. Non-owned vehicles	combined single limit (CSL) basis.
c. Hired Vehicles	

32.5 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided herein within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

32.6 Contractor agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- **With the exception of the Workers' Compensation and Employer's Liability Policies**, name the City and its officers, employees, volunteers, and elected

representatives as additional insured as respects operations and activities of, or on behalf of, the named insured performed under contract with the City. No officer or employee, other than the Risk Manager shall have authority to waive this requirement.

- Provide for an endorsement that the “other insurance” clause shall not apply to the City of Waco where the City is an additional insured shown on the policy;
- Workers’ compensation and employers’ liability policy will provide a waiver of subrogation in favor of the City.

32.7 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, Contractor shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Contractor knows of said change in advance, or ten (10) days notice after the change, if the Contractor did not know of the change in advance. Such notice must be accompanied by a replacement certificate of insurance, policy endorsements, exclusions, and/or relevant extracts from the insurance policy. All notices shall be given to the City at the following address:

City of Waco
Risk Manager
P.O. Box 2570
Waco, Texas 76702-2570

32.8 If Contractor fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Contractor to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon Contractor’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

32.9 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor’s or its subcontractors’ performance of the work covered under this agreement.

32.10 It is agreed that Contractor’s insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of Waco for liability arising out of operations under this contract.

32.11 Indemnification:

If Contractor fails to provide such insurance naming City as additional insured, then Contractor agrees to assume full responsibility and liability for the services rendered under this agreement, and hereby agrees to indemnify, protect and hold harmless the City, its elected officials, employees, agents and servants, of and from all claims, demands, and causes of actions of every kind and character, including the cost of defense thereof, for any injury to, including death of, persons and any

losses for damages to property caused by or alleged to be caused, arising out of, or alleged to arise out of, either directly or indirectly in connection with the services to be rendered hereunder, whether or not said claims, demands, causes of actions are caused by the sole negligence of the City, its employees, agents, or servants, or whether it was caused by concurrent negligence of the City and a party to this agreement, or whether it was caused by concurrent negligence of the City and some other third party. If Contractor provides the appropriate insurance naming City as an additional insured, then this section shall not apply.

33. SINGLE BIDS:

33.1 If only one bid is received for consideration, such bid may be opened in accordance with City Policy No. GFP&P-6 at the advertised time and place recited in this RFB.

34. BID AND PROPOSAL PROTEST PROCEDURE:

34.1 Any actual or prospective bidder or proposer who believes they are injured as a result of a bid or proposal posted by the City of Waco may file a protest. Only written protests may be considered. A written protest includes a protest sent by email or facsimile to the purchasing services department of the city.

34.2 The protest must be in writing and delivered to the purchasing services department of the City of Waco. The protest may be delivered in person to the department offices located at **1415 North Fourth Street, Waco, Texas**, or by certified mail, return receipt requested, to the following address:

**Purchasing Services
c/o City of Waco
Post Office Box 2570
Waco, Texas 76702-2570**

34.3 The department must receive the written protest within five (5) business days from the date of receipt of notification of city staff's bid award recommendation being submitted to the Waco City Council for award.

34.4 The written protest must include the following information before it may be considered by the City:

34.4.1 name, mailing address, and business phone number of the protesting party;

34.4.2 identification of the bid or proposal being protested;

34.4.3 a precise and concise statement of the reason or reasons for the protest which should provide enough factual information to enable the city to determine the basis of the protest; and

34.4.4 any documentation or other evidence supporting the protest.

34.5 The purchasing services department, in necessary conjunction with the department responsible for the bid or proposal solicitation, will attempt to resolve the protest, including, at the purchasing services director's option, meeting with the protesting party. If the protest is successfully resolved by mutual agreement, written verification of the resolution of each ground addressed in the protest will be provided to the city manager or designee assistant city manager.

34.6 If the purchasing services department is unable to resolve the protest, the protesting party may request the protest be reviewed and resolved by the city manager or designee assistant city manager.

34.7 A request for the city manager's review must be in writing and received by the purchasing services department within three (3) business days from the date the purchasing services department informs the protesting party the protest cannot be resolved. The request for review must be delivered in person to the purchasing services department at the address stated above or by certified mail, return receipt requested, to the mailing address stated above.

34.8 If a protesting party fails or refuses to request a review by the city manager within the three (3) days, the protest is deemed finalized and no further review by the city is required.

34.9 Applicable documentation and other information applying to the protest may be submitted by the protesting party to the purchasing services department before review by the city manager. If the protesting party requests a review by the city manager, such documentation will be forwarded to the city manager or designee assistant city manager for consideration. The city manager or designee assistant city manager may likewise notify the protesting party or any city department to provide additional information.

34.10 The decision reached by the city manager or designee assistant city manager will be final, but the protesting party may still appear before the city council during the hearing of visitors session.



City of Waco Texas
Purchasing Services Division

SPECIFICATIONS

RFB No: 2010-036

RUBBER-ASPHALT CRACK SEALING COMPOUND

The bidder is required to examine all specifications and be thoroughly informed regarding any and all conditions and requirements that may in any manner affect the work to be performed under this bid contract. No additional allowances will be made because of lack of knowledge of, or inattention to, the specifications, conditions, or requirements.

1.0 CONTRACT ADMINISTRATION

1.1 The **Contract Administrator** will be that individual (or designee) that will monitor the commodity deliveries, quality and billings during the life of the contract after the award of a contract by the City Council.

Contract Administrator:
Steve Voiles
City of Waco Streets Department
P.O. Box 2570
Waco, Texas 76702-2570
Phone 254-750-8690
Fax 254-750-8694
stevev@ci.waco.tx.us

2.0 SCOPE & TERM OF CONTRACT:

2.1 **Scope:** This specification includes the furnishing of all plant, labor, materials and equipment, and the performance of all operations required to furnish Rubber-Asphalt Crack Sealing Compound "PolyFlex - Type III" (part number 34521) as manufactured by Crafcoc, inc., or an approved equal.

2.2 **Warranty:** Material shall have a **written** one-year performance warranty.

2.3 Purchases made during the contract period will be on an "as needed" basis. The bidder shall assume no guarantees as to the locations, number or frequency of purchases, or the amount of payments under the terms of this contract.

2.4 **Usage:** An average of 196,000 pounds to a maximum of 276,000 pounds per year over the last 5 years. Bidder agrees to furnish all requirements of the City of Waco and Waco Street Services during the contract period. Quantity(s) listed are estimates only; actual quantity(s) ordered will be determined by actual requirements and the availability of funds. Depending on unit prices and requirements, quantities stated may be reduced or increased during the contract period.

2.5 **Delivery:** 15 days after initial Purchase Order.

2.6 **Minimum Order:** 10,000 Pounds. F.O.B. destination.

2.7 **Term of Contract:** Contract will be from the date of acceptance of offer for a period of

TWELVE (12) months. Contract may be extended for an additional twelve months at the City's option.

2.8 The contract will commence upon award by the City Council and contingent upon the completion and submittal of all required bid documents or as otherwise stipulated by the Contract Administrator.

3.0 RATE ADJUSTMENTS:

3.1 **NOTE:** *State law prohibits increasing the original contract price in any agreement by more than 25%. Increases requested beyond 25% will be rejected and the supplier may be considered to be in breach of contract.*

3.2 Bidder agrees to furnish all required quantities at the bid price during the first full twelve months of the contract.

3.3 Pricing and performance reviews will be made every six (6) months thereafter.

3.4 The pricing method and/or percentage markup proposed by the bidder shall remain fixed and firm during the first full twelve months of the contract; however, the bidder may offer incentive discounts from this fixed price to the City of Waco anytime during the contractual term.

3.5 The City will review requests for rate adjustment after services have been provided for a one (1) year (12 month) period.

3.6 Documentation must be provided to justify price adjustments, which may be allowed for pass through price decreases or increases posted by the manufacturer.

3.7 The City will determine whether any requested rate adjustment is in the best interest of the City and the City reserves the right to accept or reject all price adjustments.

3.8 The City Purchasing Office must acknowledge and agree to price increase requests in writing, before becoming effective. If not acknowledged within 30 days, it is the contractor's responsibility to contact the Purchasing Office to assure the price increase request was received.

3.9 Any rate adjustment will be a factor in the extension/renewal review process and must be fully justified in writing.

3.10 The City, at its option, may terminate this contract by giving thirty (30) days written notice to the successful bidder. All purchases will cease upon the date specified in such notice.

3.11 The successful bidder will **not** be entitled to lost or anticipated profits should the City choose to terminate the contract.

4. DELIVERY TIMES; PLACE:

4.1 Failure to deliver in a timely manner, excluding dangerous weather conditions, will be documented and continued failure to deliver in a timely manner without just cause will be considered as reason for termination of contract.

- 4.2 All shipments shall be shipped F.O.B. City of Waco.
- 4.3 Shipments shall be subject to delivery site quantity/weight verification by the City or its agent.
- 4.4 All transport vehicles must be inspected by the supplier and must be in safe operating condition.
- 4.5 Delivery vehicles shall meet TxDot standards.
- 4.6 All loads must be properly loaded to prevent spillage from pit to site and must comply with all state and local laws, rules and regulations pertaining to the transportation of material on public roadways. Cleanup of any public roadway, of contractor spillage, is the sole responsibility of the contracted vendor.

5.0 GENERAL REQUIREMENTS

5.1 Bidders Qualifications

5.1.1 The City may make such inquiries as he deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish the City with all such information and data for this purpose as the City may request. The City reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the City that such bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional bids will not be accepted.

5.2 References and List of Similar Projects

5.2.1 Each bid must be accompanied by a list of 3 references, including contact names and information.

6.0 PRODUCT TO BE SUPPLIED

6.1 Hot pour, rubber-asphalt crack sealing compound shall meet or exceed ASTM, AASHTO, Federal and State specifications and the Texas Department of Transportation Specification Number TXDOT 745-80-01, Revised January 1996, Sections 1 thru 6 inclusive.

6.2 This specification is for the purchase of rubber asphalt crack sealing compound suitable for sealing 1/8 inch or larger width cracks in asphaltic or concrete pavements. This material may be made of an enhanced or modified asphalt component consisting of a blend of asphalt and granulated vulcanized rubber, or a blend of asphalt, granulated vulcanized rubber, virgin rubber, fillers and plasticizer's. It shall be capable of being melted and applied by a suitable oil jacketed kettle equipped with pressure pumps, hose and nozzle, at a temperature of 400 degrees Fahrenheit or less. It shall contain no water or highly volatile matter and shall not "track" by traffic once cooled to the roadway temperature.

6.3 Tracking:

- Material must not track at any time; ie., during hot summer weather.
- Material must set up rapidly [no longer than 15 minutes @ 90 degrees Fahrenheit] to allow traffic passage immediately after application.

- Material must not require a cover material or sanding after application.
- Supplier shall be held liable for any claims due to tracking into, or on, public or private property.

6.4 Handling:

- Material must liquefy for application via heated crack seal machine at no more than 380 degrees Fahrenheit.
- Material must not harden in melting pot after being heated and while pot is in operation.
- Material must be able to be reheated for later use.
- Material is to be self-leveling when applied.

6.5 Application:

- Material must be capable of being resealed over existing cracks that were previously sealed.
- Material must be capable of being applied to surface when ambient temperatures are between 40 degrees and 120 degrees Fahrenheit.

6.6 Environmental Impact:

- Material must be environmentally safe, non-toxic and non-carcinogenic.
- Material must not emit harmful fumes or vapors.

6.7 Packaging:

- Material must be in blocks weighing no more than 40 lbs. Material is to be palletized for shipment and the weight of the pallet is not to exceed 2400 pounds.

6.8 Literature Requirements: The following items **are required** for vendor/manufacturer's bid to be considered:

- Technical Information.
- MSDS, Material Safety Data Sheet.
- Warranty Statement.
- Equipment Cleaning Instructions.
- Application Instructions.

6.9 Product Evaluation and Approval

6.9.1 City of Waco is interested in evaluating products that may be applicable to this bid request. New products must be evaluated before a contract may be issued to any bidder. The product must be applied to a designated test area for a two-year evaluation period, **or** the product may be in service in another area under governmental control. Records as to the actual date and method of installation must be available as well as reasonable access to the area being proposed as the display/test case. All products will be evaluated for performance/durability under normal traffic and weather conditions consistent with the central Texas area.

6.9.2 The City of Waco will purchase an amount of product, not to exceed one pallet, for evaluation purposes. All other costs including the cost of the application (manpower), and the equipment necessary to apply any product for evaluation is the responsibility of the vendor/manufacturer. City of Waco application equipment will NOT be used to apply new products under evaluation.

7.0 REJECTION:

7.1 The Successful Bidder shall promptly correct all deficiencies to the satisfaction of the City of Waco's representative.

7.2 The Program Administrator reserves the option to require the material supplier to replace, or to reimburse the City of Waco for material/equipment/services found to be unsatisfactory.

7.3 In the event that the replacement option is exercised, the material supplier shall be required to remove the unacceptable material/items at no expense to the City of Waco and to deliver an equal quantity of acceptable material/equipment/services.

7.4 The material/items shall be delivered to the location(s) designated by the Program Administrator within seven (7) days from the date of written notification from the City.

7.5 In the event that the reimbursement option is exercised, the material supplier shall be required to remove the unacceptable material/items at no cost to the City of Waco. The Program Administrator shall determine the quantity of the unacceptable material/items and the reimbursement shall be determined based upon the unit bid price. The supplier shall reimburse the City of Waco for all expenses incurred by the City of Waco including labor, equipment, materials and/or other incidentals to required correct the problem.

7.6 The reimbursement shall be submitted to the City of Waco in the form of a cashier's check within twenty-eight (28) days from the date of written notification from the City of Waco.

8.0 AVAILABILITY:

8.1 Bidders are required to quote materials that will meet or exceed the minimum specifications herein. Default in promised availability or delivery without acceptable reasons, or failure to meet the specifications without remedy, shall cause the City at its option to purchase the service elsewhere, including the next lowest and best responsible bidder, in order, or alternate bidder, and if such next bidder or alternate bidder meets the specifications required. The purpose of this provision is to provide the most advantageous bid to the City, based upon the contractual terms that the City will also consider factors other than the price when awarding contracts and may, under the terms of this contract, consider and accept an alternate bid as provided herein when most advantageous to the City. In any event, the City shall have the right to cancel for default all or any part hereof, including warranties of vendor, or if the vendor becomes insolvent, or commits acts of bankruptcy. In addition, the City in accordance with the provisions of this contract may terminate the performance of work under this order in whole, or in part.

9.0 QUALITY CONTROL:

9.1 A representative from the City Waco shall perform an inspection on the product/services provided to verify specification compliance meets with City's approval. All/any deficiencies will be corrected before the City will make any payment for product/services.

9.2 Deficiencies that are not repaired/replaced or not corrected will be released back to the vendor for correction. The Successful Bidder shall promptly correct all deficiencies in the product/service to the satisfaction of the City of Waco's representative by a manner and means to

be determined by the City's Contract or Program Administrator.

10.0 QUANTITIES:

10.1 Bidder agrees to furnish all requirements of the City of Waco during the contract period. Quantity(s) listed are estimates only; actual quantity(s) ordered will be determined by actual requirements and the availability of funds. Depending on unit prices and requirements, quantities stated may be reduced or increased during the contract period.

**PLEASE FILL OUT AND RETURN
THE FOLLOWING PAGES AS PART OF
YOUR BID.**

BIDS OR PROPOSALS RETURNED WITHOUT ALL OF THE REQUIRED [FOLLOWING] PAGES (AND ANY OTHER REQUESTED INFORMATION OR REQUIREMENTS) MAY BE CONSIDERED INCOMPLETE, MAY NOT BE CONSIDERED FOR AWARD UNTIL ALL REQUIRED PAGES ARE RETURNED OR MAY BE REJECTED AS NONRESPONSIVE.

BIOGRAPHICAL INFORMATION

Date: _____

Name of Firm: _____

Mailing Address: _____

Street Address: _____

Signature of Person Authorized
to Sign Bid: _____

Signor's Name and Title
(print or type): _____

Business Telephone: _____

Mobile Telephone: _____

Business Fax: _____

Federal Tax ID number: _____

Company Website: _____

E-mail Address: _____

DECLARATION OF INTENT

As per the "MODIFICATIONS AND/OR ALTERNATE BID" section of the "TERMS AND CONDITIONS" contained within these bid documents, I attest that the bid submitted is: (check one box below)

1. to the exact Specifications and the Terms and Conditions of the bid documents.
2. to the exact specifications with modifications to the Specifications and/or the Terms and Conditions as noted in the attached documentation.
- or
3. NOT to the exact Specifications and/or the Terms and Conditions and is therefore a alternate bid, submitted for the City's consideration, with attached justification(s) and documentation defending the alternate bid as meeting the intent of the specifications or scope of work.

MUST BE SUBMITTED WITH YOUR BID/PROPOSAL

**CITY OF WACO
OFFICIAL BID SHEET
BID INVITATION NO: 2010-036**

RUBBER-ASPHALT CRACK SEALING COMPOUND

DATE: _____

BIDDER: _____

AUTHORIZED
SIGNATURE: _____

- I Refer to "instructions To Bidders" before completing Bid Sheet.
- II
 - a. Price: quote your best price, F.O.B. Destination, on each item.
 - b. Delivery Date: promised delivery time in days after receipt of order is to be column (4) or date if indicated.
- III In submitting this bid, I certify:
 - a. Items bid are in exact accordance with specifications, unless noted in bid.
 - b. That prices in this bid have been arrived at independently, without consultation or agreement with any competitor for the purpose of restricting competition.

PRICING MUST BE ENTERED ON THE BID SHEET IN INK OR TYPEWRITTEN.

PRICING INFORMATION		
Item No.	Description	Unit Price
OBS 1.0	CRACK/JOINT SEALING COMPOUND	\$ _____ / Pound
OBS 2.0	CRACK/JOINT SEALING COMPOUND – TON (2000 pounds)	\$ _____ / Ton

Payment Terms: Thirty (30) DAYS after acceptance of order and receipt of an original invoice unless a [_____] percent early payment discount is offered in fifteen (15) days.

IMPORTANT NOTE

Any and all exceptions to the specifications should be duly noted and attached to your proposal. The City reserves the right to reject any and all alternative bids.

By signing below, bidder attests that he has read and understands all terms and conditions as stated in the attached specification and is operating in an authorized capacity to execute this bid.

Date _____

Company _____

Federal ID Number _____

Signature _____

Printed Name _____

Address _____

City/St/Zip _____

Phone/Fax _____ / _____

Email/Web Address _____ / _____

MUST BE SUBMITTED WITH YOUR BID/PROPOSAL

RESIDENT CERTIFICATION

Chapter 2252 of the Texas Government Code “CONTRACTS WITH GOVERNMENTAL ENTITY, SUBCHAPTER A. NONRESIDENT BIDDERS”:

In accordance with Chapter 2252 of the Texas Government Code, a governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident’s principle place of business is located.

- (1) "Government contract" means a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment.
- (2) "Governmental entity" means:
 - (A) a municipality, county, public school district, or special-purpose district or authority;
- (3) "Nonresident bidder" refers to a person who is not a resident.
- (4) "Resident bidder" refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

I certify that as defined in Texas Government Code, Chapter 2252 that:

COMPANY NAME: _____

Yes, I am a Texas Resident bidder, _____. No, I am not a _____ Resident bidder.

PRINTED NAME: _____

SIGNATURE: _____

E-MAIL ADDRESS: _____

MUST BE SUBMITTED WITH YOUR BID/PROPOSAL

MINORITY/WOMEN OWNED BUSINESS CERTIFICATION

The City of Waco is committed to assuring that all businesses are given prompt, courteous, and equal opportunity to provide goods and services to the City. To achieve this goal, the City Council requests the minority women owned status of each vendor on the City vendor list.

Definition: A Disadvantaged Minority and Woman owned Business Enterprise means a business concern owned and controlled by socially and economically disadvantaged individuals. This means any business concern that a) is at least 51% owned by one or more socially and economically disadvantaged individuals; or in the case of publicly owned businesses, at least 51% of the stock which is owned by one or more socially or economically disadvantaged individuals; and b) whose management and daily operations are controlled by one or more other socially and economically disadvantaged individuals who own it. The groups included in this program are Black Americans, Hispanic Americans, Women, Asian Pacific Americans, and Native Americans.

Certification: Bidder declares a minority and/or women owned business status:

___ YES; ___ NO.

If yes, check one, or more, of the following blocks:

Woman ___; Asian ___; Black ___;
Hispanic ___; Native American ___

MUST BE SUBMITTED WITH YOUR BID/PROPOSAL

Application For Local Preference Consideration

For expenditures of less than \$100,000.00

Section 271.9051 of the Texas Local Government Code

“CONSIDERATION OF LOCATION OF BIDDERS PRINCIPAL PLACE OF BUSINESS IN CERTAIN MUNICIPALITIES”:

If you DO NOT have your principal place of business located within the City of Waco city limits – STOP – do not fill out this form.

In accordance with Section 271.9051 of the Texas Local Government Code, if a municipality receives one or more competitive sealed bids from a bidder whose principal place of business is in the municipality and whose bid is within five percent of the lowest bid price received by the municipality from a bidder whose principal who is not a resident of the municipality, the municipality may enter into a contract with (a) the lowest bidder or (b) the bidder whose principal place of business is in the municipality if the governing body of the municipality determines, in writing, that the local bidder offers the municipality the best combination of contract price and additional economic development opportunities for the municipality created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality.

THIS “APPLICATION FOR LOCAL PREFERENCE CONSIDERATION” DOES NOT MEAN THAT THE CITY OF WACO IS LIMITING RESPONSES TO THIS REQUEST FOR BIDS/PROPOSALS TO ONLY THOSE BUSINESSES LOCATED WITHIN THE CITY LIMITS. ALL BIDS/PROPOSALS ARE WELCOME.

BIDDERS WHO WISH TO QUALIFY UNDER THE LOCAL PREFERENCES LAW MUST HAVE THEIR PRINCIPAL PLACE OF BUSINESS LOCATED WITHIN THE WACO CITY LIMITS.

If your principal place of business is within the Waco city limits AND you want to apply for local preference consideration, then you MUST:

1. Complete this form; and
2. ***Describe in writing, and attach supporting documentation***, the additional economic development opportunities for the City of Waco that will be created if you are awarded this contract. Include the number of City of Waco residents that you will employ to complete this contract and the increased tax revenues that will be generated for the City of Waco if you are awarded this contract.

I certify that I am a local bidder.

COMPANY NAME: _____

ADDRESS OF PRINCIPAL PLACE OF BUSINESS (DO NOT PUT P.O. MAILING ADDRESS):

PRINTED NAME: _____

SIGNATURE: _____

*** This form is NOT required. Read item #2 above BEFORE deciding to fill out this form. ***

DRUG-FREE WORK PLACE ACT CERTIFICATION

1. Contractor certifies that it will provide a drug-free workplace by:
 - (a) Publishing a statement notifying employees that unlawfully manufacturing, distributing, dispensing, possessing or using a controlled substance at the project worksite is prohibited and specifying the actions that will be taken against employees for violation of such prohibition.
 - (b) Establishing a drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace or at the project worksite;
 - (2) The Contractor's policy of maintaining a drug-free workplace, including work performed at the project worksite;
 - (3) Any drug counseling, rehabilitation, and employee assistance programs that are available; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring at the project worksite.
 - (c) Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (a).
 - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the contract the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring at the project worksite no later than five (5) days after such a conviction.
 - (e) Notifying the City of Waco within ten (10) days after receiving notice under subparagraph (d)(2), from an employee or otherwise receiving actual notice of such conviction.
 - (f) Taking one of the following actions within thirty (30) days of receiving notice under subparagraph (d)(2) with respect to any employee so convicted:
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such an employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
 - (g) Making a good faith effort to continue to maintain a drug-free project worksite through implementation of paragraphs (a), (b), (c), (d), (e), and (f).
2. The Contractor's headquarters is located at the following address. The addresses of all other workplaces maintained by the Contractor are provided on an accompanying list.

Name of Contractor: _____

Street Address: _____

City: _____ County: _____

State: _____ Zip Code: _____

SIGNED BY: _____

Print Name & Title: _____

Date Signed: _____

THIS COMPLETED FORM MUST BE RETURNED WITH PROPOSAL

INSTRUCTIONS FOR CONFLICTS OF INTEREST QUESTIONNAIRE

H.B. 914, passed during the 2005 Texas legislative session, as amended by H.B. 1491 passed in 2007, requires certain persons who wish to conduct business or be considered for business with a city to file a “conflict of interest questionnaire.” The Texas Ethics Commission (TEC) created the conflict of interest questionnaire (FORM CIQ). These laws are codified in Chap. 176 of the Texas Local Government Code.

What vendors/persons are subject to Chapter 176?

- The word “person” includes a partnership, corporation or other corporate body, including those performing professional services. Such partnerships or corporations act through individuals, but it is the partnership or corporation that would be seeking to do business with the city.
- Any “person” who contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity
- An agent of a person who contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity
- A vendor shall file a completed conflict of interest questionnaire if the person has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with an officer of that local governmental entity, or a family member of the officer that results in taxable income exceeding \$2,500 during the 12 month period preceding the date a contract is executed or a contract is being considered; or
 - (2) has given an officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value of more than \$250 in the 12 month period preceding the date a contract is executed or a contract is being considered

What triggers the requirement to file a “conflict of interest questionnaire”?

When a person begins (1) contract discussions or negotiations with the city or (2) submits an application, response to request for proposals or bids, correspondence, or another writing related to a potential agreement, Form CIQ must be completed. Whether the person initiates the discussion or the city initiates the discussions, Form CIQ must be completed. Even if the vendor has no affiliation or business relationship with an officer or employee of the city, Form CIQ must be completed and submitted

To what type of contracts does the bill apply?

Any written contract and any implied contract, such as purchase orders, procurement card purchases, utility purchases, or any exchange of money or other consideration for some service or property. The monetary amount or value of the contract/purchase does not matter.

When must a vendor file the conflict of interest questionnaire?

No later than seven days after the date the person: (a) begins contract discussions or negotiations with the city, or (b) submits an application or response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with a city, or (c) becomes aware of an employment relationship with a local government officer or family member of the officer, or (d) becomes aware of a qualifying gift.

What has to be revealed?

Section 176.006 requires disclosure of a person’s employment or business relationships. This includes each employment or business relationship with a corporation or other business entity with respect to which a local government officer services as an officer or director or holds an ownership interest of 10% or more.

How do I go about filling out the Conflict of Interest Questionnaire form?

[Each number below corresponds with the number on FORM CIQ]:

1. Fill in the full name of the person who is trying to do business with the City. If the person is a corporation, partnership, etc., then it is the name of that corporation, partnership, etc., that is required on Form CIQ.
2. Check box if the form is an update to a form previously completed. Updates are required by the 7th business day after an event that makes a statement in a previously filed questionnaire incomplete or inaccurate. Updates are also required by September 1 of each year in which the person submits a proposal, bid or response to the City of Waco or begins contract discussions or negotiations with the City.
3. Complete this Section by listing the name of the local government officer (member of City Council or City Manager) with whom there is an affiliation to or business relationship and you checked the “Yes” box in Section 3 A, B, or C.
If there is more than one local government officer (City Council or City Manager) with whom there is an affiliation or business relationship, more than one page two may be needed to provide information on each local government officer.
4. State whether the local government officer named on the form receives or is likely to receive taxable income, other than investment income, from the vendor filing the questionnaire.
5. State whether the filer receives or is likely to receive taxable income, other than investment income, from or at the direction of the local government officer named on the form AND the taxable income is not received from the local governmental entity.
6. State whether the filer is employed by a corporation or other business entity with which the local government officer serves as an officer or director or holds an ownership interest of 10% or more.
7. Describe each employment or business relationship with the local government officer named on the form.
8. Signature box. Person completing form must date and sign the form. If the form is being completed for a corporation, partnerships, etc., the person signing should be someone who is authorized to act on behalf of the corporation, partnership, etc.

A signature is required in box #4 regardless of any other entry on the form.

**The complete text of Chapter 176 of the Texas Local Government Code
may be found at:**

<http://www.statutes.legis.state.tx.us/SOTWDocs/LG/htm/LG.176.htm>

CONFLICT OF INTEREST QUESTIONNAIRE

FORM **CIQ**

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

OFFICE USE ONLY

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

Date Received

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

1. Name of person doing business with local governmental entity.

RFB / RFP / Contract #

2. Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3. Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes

No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes

No

D. Describe each employment or business relationship with the local government officer named in this section.

4.

Signature of person doing business with governmental entity

Date Signed