

An Ergon Company

Lake Pointe Center
11612 FM 2244 (Bee Caves Road)
Building 1, Suite 250
Austin, TX
78738-5509 USA
512-469-9292
<http://www.ergon.com>

Ergon Asphalt & Emulsions, Inc.

a company that works™

January 25, 2017

County Clerk's Office
Upshur County
P. O. Box 730
Gilmer, Texas 75644

RE: Conflict of Interest Filing

Please find enclosed our Conflict of Interest Questionnaire which should be filed in connection with Upshur County's Bid No. RB04-17 for Refined Road Oil & Emulsified Asphalt.


If you have any questions or need further information, please don't hesitate to contact me at (512) 469-9292.

Thank you!

Karen Sellers

Karen Sellers
Administrative Assistant

/ks
Enclosure

FILED
TERRI ROSS
COUNTY CLERK
2017 JAN 31 AM 10:39
UPSHUR COUNTY, TX.
BY 
DEPUTY

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

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

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 vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

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

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

R. M. McKEMIE / ERGON ASPHALT & EMULSIONS, INC.

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 on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

N/A

3 Name of local government officer about whom the information is being disclosed.

N/A

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

N/A

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes

No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

N/A

6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

N/A

7 

Signature of vendor doing business with the governmental entity
R. M. McKEMIE

01/25/2017

Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

ERGDW

The County of Upshur
State of Texas

Bid # RB04-17
For: Refined Road Oil & Emulsified Asphalt
Bid opens date/time: January 31, 2017 @ 9:00 a.m.

The enclosed *Invitation to Bid* (ITB) and accompanying *Specifications/Bidder's Response Form* are for your convenience in bidding the referenced products or services for Upshur County.

Sealed bids shall be delivered no later than:

Date/Time: January 30, 2017 @ 5:00 p.m.
Location: Upshur County Judge, 100 W. Tyler St, 3rd Floor County Courthouse,
PO Box 790, Gilmer, TX 75644
Mark Envelope: Bid-RB04-16 Refined Road Oil & Emulsified Asphalt

Bids must be signed by a person having the authority to bind the vendor in a contract. Bids that are not signed will be rejected. . Upshur County reserves the right to waive simple informalities in this Invitation to Bid.

Please note that all bids must be received at the designated location by the deadline shown. Bids received after the deadline will not be considered for award of the contract. Bids will be opened in the Upshur County Courthouse, 100 West Tyler St., 3rd Floor, Gilmer, Texas. You are invited to attend.

Bids may be withdrawn by the bidder at any time prior to the official opening, but must be withdrawn in person. Alterations may not be made to a bid once submitted, but a new bid may be submitted if the substitution occurs before the opening time. After the official opening, bids may not be amended or altered and may not be withdrawn without the approval of the Commissioners Court.

Upshur County is aware of the time and effort expended in preparing and submitting bids to the County. Please let us know of any bid requirements which are causing you difficulty in responding to our bids. We want to make the process as easy and efficient as possible so that all responsible vendors can compete for the County's business.

Awards ordinarily will be made approximately two weeks after the bid opening date. To obtain results, or if you have any questions, **please contact Andy Jordan, Upshur County Road Administrator, at 903-843-7623.**

Important Notice! The State of Texas has enacted a new law that concerns Vendors doing business with local governments effective January 1, 2006. All Vendors must now register with Upshur County before they submit a bid or proposal. Please take the time to read the information on Conflict of Interest Disclosure provided below.

Conflict of Interest Disclosure

Beginning January 1, 2006, a new state law (Chapter 176 of the Local Government Code) requires all persons contracting, or negotiating to contract, or making a bid to sell goods or services, with or to Upshur County, to file a completed Conflict of Interest Questionnaire with the County Clerk. Failure to comply with this law is a criminal offense.

The form can be found at <http://www.ethics.state.tx.us/forms/CIQ.pdf>.

This law does not apply to certain court appointed persons such as attorneys, physicians, interpreters and the like. It is your responsibility to determine whether it applies to you.

GENERAL REQUIREMENTS FOR SEALED BIDS

READ THIS ENTIRE DOCUMENT CAREFULLY. FOLLOW ALL INSTRUCTIONS. YOU ARE RESPONSIBLE FOR FULFILLING ALL REQUIREMENTS AND SPECIFICATIONS. BE SURE YOU UNDERSTAND THEM.

General Requirements apply to all advertised requests for Sealed Bids; however, these may be superseded, whole or in part, by the INSTRUCTIONS/TERMS OF CONTRACT. Be sure your bid package is complete.

ADDENDA

When specifications are revised, the Upshur County Engineer will issue an addendum addressing the nature of the change. Bidders must sign it and include it in the returned bid package.

ASSIGNMENT

The successful bidder may not assign, sell or otherwise transfer this contract without written permission of Upshur County Commissioners Court.

AWARD

Upshur County reserves the right to award this contract on the basis of LOWEST AND BEST BID in accordance with the laws of the State of Texas, to waive any formality or irregularity, to make awards to more than one bidder, to reject any or all Sealed Bids. In the event the lowest dollar bidder meeting specifications is not awarded a contract, the bidder may appear before the Commissioners Court and present evidence concerning his responsibility after officially notifying the Office of the County Judge of his intent to appear.

BONDS

If this bid requires submission of bid guarantee and performance bond, there will be a separate page explaining those requirements. Bids submitted without the required bid bond or Cashier's Checks are not acceptable.

CONTRACT OBLIGATION

Upshur County Commissioners Court must award the contract before it becomes binding on Upshur County or the bidder. Department heads are NOT authorized to sign agreements for Upshur County. This contract is bound when accepted by Commissioners Court. Binding agreements shall remain in effect until all products and/or services covered by this purchase have been satisfactorily delivered and accepted.

CONTRACT RENEWALS

Renewals may be made ONLY by written agreement between Upshur County and the bidder. Any price escalations are limited to those stated by the bidder in the original bid.

DISQUALIFICATION OF BIDDER

Upon signing this bid document, any bidder offering to sell supplies, materials, services, or equipment to Upshur County certifies that the bidder has not violated the antitrust laws of this state codified in §15.01, *et seq.*, Business & Commerce Code, or the federal antitrust laws, and has not communicated directly or indirectly the offer made to any competitor or any other person engaged in such line of business. Any or all Sealed Bids may be rejected if the County believes that collusion exists among the Bidders. Sealed Bids in which the prices are obviously unbalanced may be rejected. If multiple Sealed Bids are submitted by a bidder and after the Sealed Bids are opened, one of the Sealed Bids is withdrawn, the result will be that all of the Sealed Bids submitted by that bidder will be withdrawn; however, nothing herein prohibits a vendor from submitting multiple Bids for different products or services.

FISCAL FUNDING

A multi-year lease or lease/purchase arrangement (if requested by the specifications), or any contract continuing as a result of an extension option, must include fiscal funding out. If, for any reason, funds are not appropriated to continue the lease or contract, said lease or contract shall become null and void on the last day of the current appropriation of funds. After expiration of the lease, leased equipment shall be removed by the contractor from the using department without penalty of any kind or form to Upshur County. All charges and physical activity related to delivery, installation, removal and redelivery shall be the responsibility of the bidder.

GOVERNING FORMS

In the event of any conflict between the terms and provisions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall document, Upshur County's interpretation shall govern.

GOVERNING LAW

This request for bid is governed by the competitive bidding requirements of the County Purchasing Act, Texas Local Government Code, §262.021 *et seq.*, as amended. Bidders shall comply with all applicable federal, state and local laws and regulations. Bidder is further advised that these requirements shall be fully governed by the laws of the State of Texas and that Upshur County may request and rely on advice, decisions and opinions of the Attorney General of Texas and the County Attorney concerning any portion of these requirements.

HOLD HARMLESS AGREEMENT

The successful bidder shall indemnify and hold Upshur County harmless from all claims for personal injury, death and/or property damage resulting directly or indirectly from contractor's performance. Bidder shall procure and maintain, with respect to the subject matter of this bid, appropriate insurance coverage. Certification of such coverage must be provided to the County upon request.

INSPECTIONS & TESTING

Upshur County reserves the right to inspect any item(s) or service location for compliance with specifications and requirements and needs of the using department. If a bidder cannot furnish a sample of a bid item, where applicable, for review, or fails to satisfactorily show an ability to perform, the County can reject the bid as inadequate.

INVOICES AND PAYMENTS

Bidders shall submit an original invoice on each purchase order after each delivery, indicating the purchase order number. Invoices must be itemized. Any invoice, which cannot be verified by the contract price and/or is otherwise incorrect, will be returned to the bidder for correction. Under term contracts, when multiple deliveries and/or services are required, the bidder may invoice following each delivery and the County will pay on invoice. Contracts providing for a monthly charge will be billed and paid on a monthly basis only. Prior to any and all payments made for goods and/or services provided under this contract, the bidder should provide his Taxpayer Identification Number or social security number as applicable. This information must be on file with the Upshur County Treasurer's office. Failure to provide this information may result in a delay in payment and/or back up withholding as required by the Internal Revenue Service.

MAINTENANCE

Maintenance required for equipment proposed should be available in Upshur County by a manufacturer-authorized maintenance facility. Costs for this service shall be shown on the Pricing/Delivery Information. If Upshur County opts to include maintenance, it shall be so stated in the purchase order and said cost will be included. Service will commence only upon expiration of applicable warranties and should be priced accordingly.

MATERIAL SAFETY DATA SHEETS

Under the "Hazardous Communication Act", commonly known as the "Texas Right To Know Act", a bidder must provide to the County with each delivery, material safety data sheets, which are applicable to hazardous substances, defined in the Act. Failure of the bidder to furnish this documentation will be cause to reject any bid applying thereto.

PRICING

Prices for all goods and/or services shall be negotiated to a firm amount for the duration of this contract or as agreed to in terms of time frame. All prices must be written in ink or typewritten. Where unit pricing and extended pricing differ, unit pricing prevails.

BID COMPLETION

Fill out and return ONE (1) complete bid form in an appropriately sized envelope or box. **PACKAGE MUST SHOW THE BID NUMBER, DESCRIPTION AND BE MARKED "SEALED BID."** An authorized company representative should sign the Bid Sheet. Completion of these forms is intended to verify that the bidder has submitted the bid, is familiar with its contents and has submitted the material in accordance with all requirements.

BID RETURNS

Bidders must return all completed Sealed Bids to the office of the Upshur County Judge at the time and on the date specified. Late Sealed Bids will not be accepted.

PURCHASE ORDER AND DELIVERY

The successful bidder shall not deliver products or provide services without a Upshur County Purchase Order. The fastest, most reasonable delivery time shall be indicated by the bidder in the proper place on the bid document. Any special information concerning delivery should also be included, on a separate sheet, if necessary. All items shall be shipped **F.O.B. INSIDE DELIVERY** unless otherwise stated in the specifications. Every tender or delivery of goods must fully comply with all provisions of these requirements and the specifications including time, delivery and quality. Nonconformance shall constitute a breach, which must be rectified prior to expiration of the time for performance. Failure to rectify within the performance period will be considered cause to reject future deliveries and cancellation of the contract by Upshur County without prejudice to other remedies provided by law. Where delivery times are critical, Upshur County reserves the right to award accordingly.

SCANNED OR RE-TYPED RESPONSE

If in its response, bidder either electronically scans, re-types, or in some way reproduces the County's published bid package, then in the event of any conflict between the terms and provisions of the County's published bid package, or any portion thereof, and the terms and provisions of the response made by bidder, the County's bid package *as published* shall control. Furthermore, if an alteration of any kind to the County's published bid package is only discovered after the contract is executed and is or is not being performed; the contract is subject to immediate cancellation.

SEVERABILITY

If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

SILENCE OF SPECIFICATIONS

The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item proposed.

SUPPLEMENTAL MATERIALS

Bidders are responsible for including all pertinent product data in the returned bid package. Literature, brochures, data sheets, specification information, completed forms requested as part of the bid package and any other facts which may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements, which the bidder wishes to include as a condition of the bid, must also be in the returned bid package. Failure to include all necessary and proper supplemental materials may be cause to reject the entire bid.

TAXES

Upshur County is exempt from all federal excise, state and local taxes unless otherwise stated in this document. Upshur County claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates will be furnished upon written request to the Upshur County Road & Bridge Department.

TERM CONTRACTS

If the contract is intended to cover a specific time period, the term will be given in the specifications under SCOPE.

TERMINATION

Upshur County reserves the right to terminate the contract for default if Seller breaches any of the terms therein, including warranties of bidder or if the bidder becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies, which Upshur County may have in law or equity. Default may be construed as, but not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to Upshur County's satisfaction and/or to meet all other obligations and requirements. Upshur County may terminate the contract without cause upon thirty- (30) days written notice. Upshur County reserves the right to award any canceled contract to the next lowest and best bidder as it deems to be in the best interest of the County.

TESTING

Upshur County reserves the right to test equipment, supplies, material and goods proposed for quality, compliance with specifications and ability to meet the needs of the user. Demonstration units must be available for review. Should the goods or services fail to meet requirements and/or be unavailable for evaluation, the offer is subject to rejection.

WAIVER OF SUBROGATION

Bidder and bidder's insurance carrier waive any and all rights whatsoever with regard to subrogation against Upshur County as an indirect party to any suit arising out of personal or property damages resulting from bidder's performance under this agreement.

WARRANTIES

Bidders shall furnish all data pertinent to warranties or guarantees, which may apply to items in the bid. Bidders may not limit or exclude any implied warranties. Bidder warrants that product sold to the County shall conform to the standards established by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event product does not conform to OSHA Standards, where applicable, Upshur County may return the product for correction or replacement at the bidder's expense. If bidder fails to make the appropriate correction within a reasonable time, Upshur County may correct at the bidder's expense.

Upshur County **Bid RB04-17 Refined Road Oil & Emulsified Asphalt** **Instructions/Terms of Contract**

Upshur County is requesting bids on Refined Road Oil & Emulsified Asphalt. Bids must be submitted on the attached forms. By returning this bid with a price quote, vendors certify and agree that:

Delivery For Refined Road Oil: Bid price must include all costs, freight, FOB destination and delivery based on delivery by tank trucks ready for applications on road or pit to any location in Upshur County in quantities ordered by the Upshur County Road & Bridge Department.

Delivery For Emulsified Asphalt: Bid price must include all costs, freight, FOB destination and delivery based on delivery by tank trucks equipped with pump, ready for applications to Upshur County Road & Bridge Department in quantities ordered by the Upshur County Road and Bridge Department. Delivery must be made on a weekday, Monday through Friday between 7 am and 2 pm.

Exceptions/Substitutions: All bids meeting the intent of this invitation to bid will be considered for award. Bidders taking exception to the specifications, or offering substitutions, shall state these exceptions in the section provided or by attachment as part of the bid. The absence of such a list shall indicate that the bidder has not taken exceptions and Upshur County shall hold the bidder responsible to perform in strict accordance with the specifications of the invitation. The Upshur County Commissioners Court reserves the right within its sole discretion to accept any and all or none of the exception(s)/substitution(s) deemed to be in the best interest of the County.

Minimum Standards for Responsible Prospective Bidders: A prospective bidder must affirmatively demonstrate their responsibility and meet the following requirements:

1. Have adequate financial resources, or the ability to obtain such resources as required;
2. Be able to comply with the required or proposed delivery schedule;
3. Have a satisfactory record of performance;
4. Have a satisfactory record of integrity and ethics, and;
5. Be otherwise qualified and eligible to receive and award.

Upshur County may request representation and other information sufficient to determine the bidder's ability to meet these minimum requirements listed on the previous page.

Upshur County
Bid RB04-17 Refined Road Oil & Emulsified Asphalt
Instructions/Terms of Contract

NOTICE OF INSURANCE SECTION

Please Read Carefully

Insurance Requirements: Bidder is required to submit with bid, an original of all insurance certificate(s) showing coverage for all requirements as stated below to be in force throughout the term of the contract. All required insurance carriers must have a B+ rating or better.

- Commercial General Liability Insurance at minimum combined single limits of \$500,000 per occurrence and \$1,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations, (\$1,000,000 products/completed operations aggregate). Coverage for products/completed operations must be maintained for at least two (2) years after the products/services work is completed. Coverage must be written on occurrence form. Contractual liability must be maintained with respect to the contractor's obligations contained in the contract. The general aggregate limit must be at least two (2) times the per-occurrence limit.
- Workers Compensation Insurance at statutory limits, including employer's liability coverage at minimum limits of \$500,000 per occurrence each accident/ \$500,000 by disease per occurrence/ \$500,000 by disease aggregate.
- Commercial Automobile Liability Insurance at minimum combined single limits of \$1,000,000 per occurrence for bodily injury and property damage, including owned, non-owned, and hired vehicle coverage.

Upshur County requires it to be named in the required certificates evidencing insurance coverage as an additional insured by endorsement. This coverage shall include a Waiver of Subrogation in favor of Upshur County, Texas.

Upshur County also requires that should any of the insurance policies required by this contract be canceled or materially changed before the expiration date thereof, the issuing company shall give Upshur County, Texas through its County Road Administrator, Andy Jordan, PO Box 730, Gilmer, Texas 75644, thirty (30) days written notice of same.

Upshur County
Bid RB04-17 Refined Road Oil & Emulsified Asphalt
Instructions/Terms of Contract

Termination for Default: Upshur County reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the County in the event of breach or default. Upshur County reserves the right to terminate the contract immediately and without prior notice in the event the successful bidder fails to:

1. Meet schedules;
2. Defaults in the payment of any fees; or
3. Otherwise fails to perform in accordance with these specifications.

Notice: Any notice provided by this bid (or required by law) to be given to the successful bidder by Upshur County shall be conclusively deemed to have been given and received on the next day after such written notice has been deposited in the U.S. mail in Gilmer, Texas, with sufficient 1st class postage affixed thereto, provided this shall not prevent the giving of actual notice in any other manner.

Purchase Order: Successful bidder shall be required by this agreement to clearly and plainly reference a valid Upshur County Purchase Order number on the face of each and every invoice tendered for payment. Failure to reference a valid Upshur County Purchase Order, as herein required, shall be considered sufficient cause for Upshur County to deny payment of said claim. Upshur County shall not be obligated for products or services delivered without prior authorization via purchase order.

Invoices: Payment will be made from original vendor invoices only. Invoices shall show all information as stated above and mailed directly to the Upshur County Auditor's Office, PO Box 730, Gilmer, Texas 75644.

Payment will be made upon receipt and acceptance, by the County, of the items ordered in accordance with the Texas Government Code, Section 2251.021. Each Successful bidder is required to pay all its subcontractors within ten (10) days.

Items supplied under this contract will be subject to the County's approval. Items found defective or not meeting specifications shall be picked up and replaced by the successful bidder at no expense to the County. If an item is not picked up within one (1) week after notification, the item will become a donation to the County for disposition without cost or liability.

Warranty: Successful bidder shall warrant that all items/services shall conform to the proposed specifications and all written warranties as well as all implied warranties as shown in the Uniform Commercial Code, and shall be free from all latent and patent defects in material, workmanship and title.

Venue: This agreement and any dispute related hereto will be governed and construed according to the laws of the State of Texas and venue shall be fixed in Upshur County, Texas.

Any questions concerning this Invitation to Bid and Specifications should be directed to Andy Jordan, Upshur County Road Administrator, at 903-843-7623.

Upshur County
Bid # RB04-17 Refined Road Oil & Emulsified Asphalt
Specifications

Scope:

It is the intent of Upshur County, Texas to purchase, through the competitive bidding process, Refined Road Oil and Emulsified Asphalt, for use in Road and Bridge applications. The bid will be effective starting March 1, 2017 and expiring February 28, 2018 with the option to renew for two (2) additional years contingent upon both parties, but can be canceled by either party upon giving thirty (30) days written notice to the other party.

Award Of Contract:

The "TOTAL BASE BID" shall be used to determine the low bidder. Upshur County reserves the right to reject any or all bids. Upshur County reserves the right to award this bid to multiple vendors.

Whenever an article or material is defined by describing a proprietary product or by using the name of the manufacturer the term "OR EQUAL" if not inserted shall be implied unless otherwise indicated by "NO SUBSTITUTIONS". The specified article or material shall be understood as descriptive, not restrictive.

Specifications/Minimum Requirements for Refined Road Oil:
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Asphalt content of 100 penetration @ 77 F.

- Minimum 65% Maximum 80%

Paraffin content

- 0.0 %

Flash Point, C.O.C

- Minimum 250 F.

Kinematic Viscosity

- Maximum 550 sct. @ 140 F.

Loss at 212 F.; 20 g., 5 hours

- Maximum 3.0%

Water and sediments

- Maximum 2.0%

Recommended Application & Mix. Delivery Temperature

- Minimum 180° Maximum 220°

Unrefined road oil, partially refined oil, tank bottom oils or residues, sludge pit oils, emulsions or any unrefined road oil by-products not in compliance with the above specifications are unacceptable.

Refined Road Oil is subject to testing the County in a competent testing laboratory. Three (3) random tests will be performed on the road oil and invoice will be forwarded on to the successful bidder. Should tests indicate road oil is not meeting specifications, Upshur County reserves the right to cancel the contract in the event the successful bidder fails to correct the noncompliance.

The successful bidder will furnish Upshur County with a certified copy of the strapping papers on each transport used to transport road oil to Upshur County job sites.

Delivery tickets must accompany all shipments and material.

Failure of successful bidder to comply with these specifications and conditions, either in services performed or quality of materials furnished will be just cause for Upshur County to cancel any contract of Purchase Order based on these specifications.

Specifications/Minimum Requirements for Emulsified Asphalt:
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All Emulsified Asphalt shall be in compliance with the 2004 TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges, Item 300.

Delivery tickets must accompany all shipments and material.

Failure of successful bidder to comply with these specifications and conditions, either in services performed or quality of materials furnished will be just cause for Upshur County to cancel any contract of Purchase Order based on these specifications.

Emulsified Asphalt is subject to testing by the County in a competent testing laboratory. Three (3) random tests may be performed on the Emulsified Asphalt and the invoice will be forwarded on to the successful bidder. Should tests indicate the Emulsion is not meeting specifications, Upshur County reserves the right to cancel the contract in the event the successful bidder fails to correct the noncompliance.

Bidding and Award of Contract

Quantities shown are approximate. Upshur County reserves the right to increase or decrease the quantities, to reject material not meeting specifications, to award separate contracts on each of the base bids, and to award contracts to more than one bidder. Upshur County will procure the road material(s) covered by this bid package on any particular instance from the vendor whose price is most economical to Upshur County.

Escalation and De-escalation Policy

It is agreed the unit price bid is based, in part, on prices charged or quoted at the time of this bid by a product supplier to the vendor. The unit price bid may be increased or decreased when a product supplier increases or decreases their price to the vendor; however, the increase or decrease in the unit price shall be limited to the amount of the increase or decrease in price a product supplier charges the vendor. Any change in the unit price bid shall be accompanied by supporting documents from the vendor's product supplier. **The vendor shall provide notice to the County at least two (2) days in advance of any increase in the unit price bid. The two-(2) day period shall begin upon receipt of the notice by the County Engineer.** Upshur County reserves the right to cease purchase of the product, purchase from the secondary bidder, re-bid or continue purchasing from the primary vendor if the unit price bid increases.

Bid for Refined Road Oil & Emulsified Asphalt

Upshur County is requesting bids for Refined Road Oil & Emulsified Asphalt as described in the foregoing specifications. Without change in the unit price, it is expressly understood that the total quantity indicated on this bid form is only an estimate.

Having read and understood the attached instructions, specifications, terms and conditions, we submit the following bid:

**Refined Road Oil
Base Bid RB04-17A**

<u>Quantity</u>	<u>Description of Item</u>	<u>Unit of Measure</u>	<u>Price Per Unit</u>	<u>Total of Items</u>
720	Refined Road Oil	TON	\$ <u>NO BID</u>	\$ <u>NO BID</u>
<u>TOTAL BASE</u>				\$ <u>NO BID</u>
<u>BID :</u>				

Guaranteed delivery to the Upshur County Job-Site as requested by the Road & Bridge Department, no later than _____ days after receiving order.

**Emulsified Asphalt
Base Bid RB04-17B**

<u>Quantity</u>	<u>Description of Item</u>	<u>Unit of Measure</u>	<u>Price Per Unit</u>	<u>Total of Items</u>
			\$2.1942	\$63,631.80 (CRS-2)
29,000	CRS-2 or CRS-2P	GAL	\$ <u>2.4742</u>	\$ <u>71,751.80</u> (CRS-2P)
4,500	MC-30 or AEP	GAL	\$ <u>2.6425</u>	\$ <u>11,891.25</u>
5,000	CSS-1	GAL	\$ <u>2.2056</u>	\$ <u>11,028.00</u>
<u>TOTAL BASE</u>				\$86,551.05 IF USING CRS-2
<u>BID :</u>				\$94,671.05 IF USING CRS-2P

Guaranteed delivery to the Upshur County Road & Bridge Department as requested by the Road & Bridge Department, no later than 1 days after receiving order.

Signature acknowledging addendum: _____ N/A

A FEDERAL ENVIRONMENTAL FEE WILL BE ADDED TO ABOVE PRICES AT RATE OF \$.49770/TON FOR ASPHALT & POLYMER LOADS OR \$.00150/GAL FOR EMULSION LOADS.


Additional Minimal Specifications

- 1. Demurrage fee \$80.00/HOUR AFTER FIRST 2 HOURS
- 2. Restocking fee N/A
- 3. Pumping & Hose fee \$80.00 PER LOAD
- 4. Unloading and Spreading fee N/A
- 5. Charge for rainouts and mechanical breakdowns RETURN FREIGHT IS ONE-HALF OF OUTGOING TARIFF.
- 6. Delivery time minimum 24 hrs maximum N/A hrs
- 1. Demurrage fee FOLLOWING ORDER PLACEMENT
- 7. Delivery amount minimum ** gals maximum N/A gals
- 2. Restocking fee
- 8. Tank furnished for storage of Emulsion N/A per day
- 3. Pumping & Hose fee
- 9. Tank furnished for the storage of Refined Road Oil N/A per day
- 4. Unloading fee
- 10. Road oil will be refined and supplied by N/A
- 5. Charge

11. Delivery temperature minimum 150° maximum 180°

YOU MAY ORDER ANY NUMBER OF GALLONS YOU WISH, HOWEVER FREIGHT IS BASED ON A FULL TRANSPORT LOAD OF 5,500 GALLONS, EVEN IF A FULL LOAD OF MATERIAL IS NOT ORDERED.

NAME AND ADDRESS OF BIDDER
ERGON ASPHALT & EMULSIONS, INC.
911612 RM 2244
BUILDING 1, SUITE 250
AUSTIN, TEXAS 78738

SIGNATURE

R. M. MCKEMIE
 VICE PRESIDENT

11. Delivery temperature
 1. Demurrage fee
 2. Restocking fee
 3. Pumping & Hose fee
 NAME AND ADDRESS OF BIDDER
 BUILDING 1, SUITE 250
 AUSTIN, TEXAS 78738

11. Delivery

<u>ERGON ASPHALT & EMULSIONS, INC.</u>		<u>64-0666411</u>
Firm Submitting Bid	Federal ID Number	
<u>11612 RM 2244, BUILDING 1, SUITE 250</u>		
Address		
<u>AUSTIN, TEXAS 78738</u>		
City, State, Zip		
<u>R. M. McKEMIE, VICE PRESIDENT</u>	<u>karen.sellers@ergon.com</u>	
Name and Title of Individual Submitting Bid	E-Mail Address	
<u>(512) 469-9292</u>	<u>(512) 469-0391</u>	
Telephone Number	Fax Number	
<u><i>R. M. McKemie</i></u>		
Signature of Authorized Representative		

References:

List three (3) companies or governmental agencies where these commodities have been provided:

1. Name: HUNTER INDUSTRIES, LTD.
P. O. BOX 2109
Address: SAN MARCOS, TX 78667 Phone No. (512)353-7757
Contact person: JOHN WEISMAN Title PRESIDENT

2. Name: VIKING CONSTRUCTION
2592 SHELL ROAD
Address: GEORGETOWN, TX 78628 Phone No. (512)930-5777
Contact person: BARRY DUNN Title PRESIDENT

3. Name: BEXAR COUNTY
233 N. PECOS, SUITE 420
Address: SAN ANTONIO, TX 78207 Phone No. (210)335-6710
Contact person: TONY VASQUEZ Title OPERATIONS MANAGER

ERGON ASPHALT & EMULSIONS, INC.		64-0666411
Firm Submitting Bid	Federal ID Number	
11612 RM 2244, BUILDING 1, SUITE 250		
Address		
AUSTIN, TEXAS 78738		
City, State, Zip		
R. M. McKEMIE, VICE PRESIDENT	karen.sellers@ergon.com	
Name and Title of Individual Submitting Bid	E-Mail Address	
(512) 469-9292	(512) 469-0391	
Telephone Number	Fax Number	
<i>R. M. McKemie</i>		
Signature of Authorized Representative		

References:

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3. Name: BEXAR COUNTY
233 N. PECOS, SUITE 420
Address: SAN ANTONIO, TX 78207 Phone No. (210)335-6710
Contact person: TONY VASQUEZ Title OPERATIONS MANAGER



CERTIFICATE OF LIABILITY INSURANCE

4/30/2017

DATE (MM/DD/YYYY)

4/29/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER LOCKTON COMPANIES 5847 SAN FELIPE, SUITE 320 HOUSTON TX 77057 866-260-3538	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: ACE American Insurance Company		22667
INSURER B: National Fire and Marine Insurance Co		20079
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

INSURED
1407257 Ergon Asphalt & Emulsions, Inc.
2829 Lakeland Drive
Flowood MS 39232

COVERAGES CERTIFICATE NUMBER: 13870868 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y	Y	XSLG27852099	4/30/2016	4/30/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 OTHER: \$
GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC							
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	ISAH09042684 ISAH09042696	4/30/2016 4/30/2016	4/30/2017 4/30/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED RETENTIONS	Y	Y	42-UMO-302493-01	4/30/2016	4/30/2017	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 OTHER: \$ XXXXXXXX
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WLRC48605916	4/30/2016	4/30/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 104, Additional Remarks Schedule, may be attached if more space is required)
THIS CERTIFICATE SUPERSEDES ALL PREVIOUSLY ISSUED CERTIFICATES FOR THIS HOLDER, APPLICABLE TO THE CARRIERS LISTED AND THE POLICY TERM(S) REFERENCED.
All policies include a blanket notice of cancellation to certificate holders endorsement, providing for 30 days' advance notice if the policy is cancelled by the company other than for nonpayment of premium, 10 days' notice if the policy is cancelled for nonpayment of premium. Notice is sent to certificate holders with mailing addresses on file with the agent or the company. The endorsement does not provide for notice of cancellation if the named insured requests cancellation.

CERTIFICATE HOLDER

CANCELLATION See Attachments

13870868
Upshur County
PO Box 790
Gilmer TX 75644

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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All policies (except Workers' Compensation/EL) include a blanket automatic Additional Insured endorsement [provision] that confers Additional Insured status to the certificate holder only if there is a written contract between the named insured and the certificate holder that requires the named insured to name the certificate holder as an Additional Insured. In the absence of such a contractual obligation on the part of the named insured, the certificate holder is not an Additional Insured under the policy.


All policies include a blanket automatic Waiver of Subrogation endorsement [provision] that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it. In the absence of such a contractual obligation on the part of the named insured, the Waiver of Subrogation feature does not apply.

Named Insured Schedule

Ergon, Inc.
Ergon - West Virginia, Inc.
Ergon Refining, Inc.
Ergon BioFuels, LLC
Ergon BioSciences, Inc.
Ergon Asphalt & Emulsions, Inc.
Crafco, Inc.
Paragon Technical Services, Inc.
Paving Maintenance Supply, Inc.
Telfer Pavement Technologies, LLC
Ergon Terminaling, Inc.
Ergon Oil Purchasing, Inc.
Ergon - Baton Rouge, Inc.
Ergon - Ironton, LLC
Ergon - Knoxville, Inc.
Ergon - St. James, Inc.
Ergon - Texas Pipeline, Inc.
Ergon Acquisition Corp.
Ergon Foundation, Inc.
Ergon Securities, Inc.
Big Valley, LLC
Ergon Properties, Inc.
ISO Panels, Inc.
Magnolia Marine Transport Company
Ergon Marine & Industrial Supply, Inc.
Ergon Trucking, Inc.
Diversified Technology, Inc.
LLWR, LLC
M & L Properties, LLC
Mirror Lake Building, LLC
Mirror Lake Land Company
Pearl Street Parking LLC
PruGON Properties LLC
Crafco (Wuxi) Pavement Preservation Equipment Co., Ltd.
Ergon - Latin America, LLC

Ergon - Asia, Inc.
Ergon Asia (Hong Kong) Limited
Ergon Mexico S de R.L. de C.V.
Ergon International, Inc. (Formerly Ergon Europe, MEA, Inc.)
Bay Harbour Development, LLC
Grand Harbour Development, LLC
Specialty Process Fabricators, Inc.
Ergon Energy Associates, LLC
Ergon Energy Partners, LP
Flowood Oil, LLC
Ergon Exploration, Inc.
Ergon Production, Inc.
MSLATX Pipeline Company
Kearney Park Farms, Inc.
Lampton-Love, Inc.
Lacox Propane Gas Company
Blossman L. P. Gas Service, Inc.
Harrell Gas, Inc.
Lacox, Inc.
Lampton-Love Gas Company
Lampton-Love of Magee, Inc.
Lampton-Love of Pelahatchie, Inc.
Liquefied Petroleum Gas Management, Inc.
Allgas, Inc.
Allgas, Inc., of Montgomery
Allgas, Inc., of TN
Magnolia Gas, Inc.
Natchez Butane, Inc.
Petroleum Distributor of Jackson, Inc.
Progas Inc.
Southern Propane, Inc.
Starkville L.P. Gas, Inc.
Process Oils, Inc.
Chemical Marketing Associates DBA Process Oils, Inc.
Telfer Geosynthetics
Telfer Highway Technologies, LLC
Telfer Oil Company
Continental Western Transportation Co., Inc.

Ergon-Frazier Development I, LLC
Bunge-Ergon Renewable Energy, LLC
Ergon Asphalt Products - Coolidge, Inc. (Dissolved 10/8/2010)
Ergon Asphalt Products, Inc.
Lampton-Love Trucking, Inc.
Mainstreet Builders, Inc. (Corporation dissolved 6/30/10)
Pearl Street Properties, Inc. (Dissolved 08/11/2010)
Solquim, C.A. (Sold March 2007)
Flowood Properties LLC (Dissolved 01/23/2007)
Georgia Emulsions, LLC (dissolved 10/21/2010)
Bunge-Ergon Vicksburg, LLC
Ergon Ethanol, Inc.
Ergon Asphalt & Emulsions, Inc. dba Ergon Armor
Ergon Maintenance Services, A Division of Ergon Terminaling, Inc.

FILED
TERRY ROSS
COUNTY CLERK
2017 JAN 31 AM 10:39
UPSHUR COUNTY, TX.
BY  DEPUTY