

COMAL COUNTY INVITATION TO BID COVER SHEET

The enclosed INVITATION TO BID (ITB) and accompanying documents are for your convenience in submitting a bid for the enclosed referenced products and/or services for COMAL COUNTY.

IMPORTANT BID DATES:

DUE DATE:	JUNE 11, 2009 AT 11:00 A.M., LOCAL TIME
OPENING DATE:	JUNE 11, 2009 AT 1:00 P.M., LOCAL TIME
AWARD DATE:	JUNE 18, 2009

Bidder shall sign and date the offer as requested on each page. Offers, which are not signed and dated in this manner, may be rejected.

RETURN OFFER TO:

ADDRESS:
RAMONA WOMACK, CPPB
COUNTY PURCHASING DIRECTOR
LANDA BUILDING
178 EAST MILL ST.
NEW BRAUNFELS, TEXAS 78130

Please note that all offers **must be received at the designated location by the deadline shown**. Offers received after the deadline **will not be considered** for the award of the Contract and shall be considered void and unacceptable.

COMAL COUNTY is very conscious and extremely appreciative of the time and effort you have expended to submit an offer. We would appreciate it if you would indicate on any "No Offer" response, any requirement of this ITB which may have influenced your decision to "No Offer". If your response to this ITB is a "No Bid" response, please complete the Statement of No Bid in this ITB and submit.

Any prospective bidder/offeror desiring any explanation or interpretation of the solicitation must make a written request at least five (5) days prior to the scheduled time for the bid/offer opening. The request must be addressed to Ramona Womack, County Purchasing Director, at the address stated above or faxed to (830) 608-2031. Any information given to a prospective bidder/offeror concerning this solicitation will be furnished promptly to all other known prospective bidders/offerors as a written amendment/addendum to the solicitation. Comal County reserves the right to accept or reject any or all bids/offers as it deems in its best interest and to waive any formalities.

It is the Bidder/Offeror's responsibility to verify the issuance of Addenda in regard to this Bid/Offer. All Addenda shall be submitted to all known bidders/offerors and shall be posted on the Comal County Purchasing Website http://www.co.comal.tx.us/PUR_BIDS.htm. Comal County shall not be responsible for failed internet connections or power interruptions.

Ramona Womack, CPPB
County Purchasing Director
Comal County
178 East Mill St.
New Braunfels, Texas 78130

COMAL COUNTY BID PAGE/BIDDER CERTIFICATION

TOTAL COST PER TON, F.O.B. Plant	\$
TOTAL COST PER TON, F.O.B. ANYWHERE WITHIN THE 25 MILE RADIUS OF COMAL COUNTY	\$

 LEGAL NAME OF CONTRACTING COMPANY

 FEDERAL I.D. # (Company or Corporation) SOCIAL SECURITY # (Individual)

 TELEPHONE NUMBER FACSIMILE NUMBER

 CONTACT PERSON TITLE

 COMPLETE MAILING ADDRESS CITY & STATE ZIP CODE

 COMPLETE STREET ADDRESS CITY & STATE ZIP CODE

CERTIFICATION

By my signature hereon, I certify that the Goods and/or Services that I propose to furnish will meet or exceed every specification contained herein, and that I have read each and every page of the Specifications/Statement of Work, other requirements, as well as, the Standard Terms & Conditions and Bid/Offer Sheet, and that I am duly authorized to execute these bid documents and contacts on behalf of Contracting Company listed above. Further, I agree that if my offer is accepted, I shall perform as required in these Contract documents. I am aware that, once accepted by Comal County, my offer becomes a binding Contract in accordance with the provisions herein of the aforementioned Contract documents, and that I will not be permitted to attempt enforcement of any other Contract or Contract provisions.

 SIGNATURE DATE

 Typewritten or Printed Name Title

This page must be page 1 of the bid, or the bid may be rejected.

TERMS & CONDITIONS

The parties, Comal County, Texas, a political subdivision of the State of Texas, (hereinafter referred to as "County") and _____ (hereinafter referred to as "Vendor," "Offeror," or "Bidder"), hereby agree upon the following terms and conditions.

1.1. Bids are solicited for furnishing HOT MIX COLD LAID / FINE SURFACE, TYPE B (Item 334) for the Comal County Road Department as per specifications in this invitation to bid.

1.2. Complete bids shall be received in the Comal County Purchasing Department, 178 E. Mill, New Braunfels, Texas 78130 no later than 11:00 A.M. on Thursday, June 11, 2009. Bids will be opened at 1:00 P.M. on Thursday, June 11, 2009 in the Comal County Purchasing Office, 178 East Mill Street, New Braunfels, Texas. Bids will be awarded June 18, 2009 in Commissioners Court (hereinafter referred to as "Commissioners Court"), 199 Main Plaza, New Braunfels, Texas.

Bids which are received after the specified time and date will not be considered and will be returned to the bidder unopened. Bids must be in the possession of the Purchasing Agent by the time and date indicated above. The County will not be responsible for mail or delivery charges, or for charges associated with preparation of bid or bid materials.

When sent by mail, Federal Express, Express Mail, or other delivery service, sealed bid shall be enclosed in an additional envelope clearly identified on outside as a bid to County with bidder's name and address, bid name, and bid date and time. It is the sole responsibility of the bidder to ensure timely delivery of bid. The bid is timely delivered when it is actually received by the Purchasing Office on or before the "DUE DATE". County will not be responsible for failure of service on the part of the U.S. Post Office, courier services, or any other form of delivery service chosen by the Bidder. You may call the Comal County Purchasing Office at 830-643-5850 to see if your response has been received. If there is any doubt, you are encouraged to deliver your package in person.

NOTE: The Time-Date Stamp Clock located in the Comal County Purchasing Office, will serve as the OFFICIAL CLOCK for the purpose of verifying the date and time of receipt of bids.

1.3. Items listed on Bidder's checklist must be returned in a sealed envelope, marked with bid title, bid number and opening date. General conditions and specifications may be kept by the bidder.

1.4. Bids may be withdrawn at any time prior to the official opening. Alterations made before opening time must be initialed by bidder guaranteeing authenticity. After the official opening, bids may not be amended, altered, or withdrawn without the recommendation of the Purchasing Department and the approval of the Commissioners Court.

1.5. The County is exempt from federal excise and state sales tax; therefore, tax must not be included in this bid.

1.6. Bidder will furnish the required materials at the price quoted and will not raise the prices for the ninety (90) day contract period of July 1, 2009 to September 30, 2009.

1.7. OPTION TO RENEW: The County may extend this Contract provided all terms and conditions, except for the contract period being extended or any price redetermination as authorized elsewhere in this Contract, remain unchanged and in full force and effect. The County's Option to

Renew shall be in writing signed by both parties prior to the expiration of this Contract. The normal extension period shall be in ninety (90) day increments. The total period of this Contract, including all extensions as a result of exercising this Option to Renew may not exceed a maximum combined period of 360 days.

1.8. ECONOMIC ADJUSTMENTS: Due to the volatility of the market, the County will review the costs of materials at the sixty (60) day interval for the ninety (90) day Option to Renew period as defined in this Contract under Section 1.7. The Vendor will be required to submit an affidavit at the sixty (60) day interval substantiating that the increase represents the cost for services or materials and in no way represents an increase of profits, labor or other overhead. The Vendor must justify its request for an increase by submitting evidence from the suppliers detailing the price changes, the effective date for change and any other information requested by the County to verify the price change. Conversely, if costs in services or materials decrease, the same amount of decrease shall be immediately passed on to the County. The County may request information to verify pricing throughout the term of the contract. Any product delivered to or picked up by the County at the proposed new price without a properly executed statement is made at the Vendor's risk. Consequently, in the event that such statement or affidavit is not received and approved by the County, the Vendor hereby releases the County from any and all liability whatsoever to pay for delivered materials at the new price prior to the Vendor's notification to the County. All increases will be subject to approval by Commissioners Court.

1.9. The County reserves the right to accept or reject in part or in whole any bids submitted, and to waive any technicalities for the best interest of the county.

1.10. Invoices shall be sent directly to the Comal County Auditor, 150 North Seguin, Suite 201, New Braunfels, Texas 78130. Payments will be processed after notification that all materials have been delivered satisfactorily and no unauthorized materials have been delivered. The County may elect to pay invoices with a procurement card.

1.11. Continuing non-performance of the bidder in terms of specifications shall be a basis for the termination of the contract by the County. The County shall not pay for supplies which are unsatisfactory. The County may give vendor a reasonable opportunity before termination to correct the deficiencies. This, however, shall in no way be construed as negating the basis for termination for non-performance.

1.12. Quantities indicated in the bid are estimated based upon the best available information. The County reserves the right to increase or decrease the quantities by any amount deemed necessary to meet its needs without any adjustment in the price.

1.13. The extension of this contract as provided above is contingent on the appropriation of necessary funds by Commissioners Court for the fiscal year in question. Upon the failure of Commissioners Court to so appropriate in any year, vendor may elect to terminate this agreement, with no additional liability to the County. County and vendor agree that termination shall be vendor's sole remedy under this circumstance.

1.14. The bid award shall be based on, but not necessarily limited to the following factors:

- A. Unit price
- B. Total price
- C. Special needs and requirements of Comal County
- D. Comal County's evaluation of vendor's ability

E. Vendor's past performance record with any Texas county

1.15. All bids inclusive of pricing shall remain firm for acceptance for a period of ninety (90) days from opening date unless otherwise specified by Comal County.

1.16. Prices bid shall reflect the full Specifications/Statement of Work as defined per the ITB documents, inclusive of all associated costs for insurance, taxes, overhead, profit and bonding, if required and so identified.

Bidder must include all incidental costs in his pricing. Comal County will not provide or allow for parking or travel reimbursements for the bidder's employees. Bidder's offices, administration and/or place of business will not be on Comal County premises and will be the bidder's responsibility. Only those costs shown on the Pricing/Delivery Sheet and confirmed by a purchase order will be paid.

It is also understood that any and all persons who provide services under Contract to Comal County, resulting from this Invitation to Bid, shall be and remain employees of the Contractor, not Comal County. It is understood and agreed that the bidder is solely responsible for all services being provided and shall provide adequate insurance to cover against any and all losses incurred by the bidder's employees and or equipment during the course of the Contract.

This Invitation to Bid in no manner obligates Comal County or any of its agencies to the eventual purchase of any goods and/or service described, implied or which may be bid, until confirmed by a written Contract and purchase order. Progress toward this end is solely at the discretion of Comal County and may be terminated at any time prior to the signing of a Contract.

Comal County will not be liable for any costs incurred by the bidder in preparing a response to this ITB. Comal County makes no guarantee that any goods and/or services will be purchased as a result of this Invitation to Bid, and reserves the right to reject any and all bids. All bids and their accompanying documentation will become the property of Comal County.

The bidder is expected to examine all documents, forms, specifications, and all instructions. Failure to do so will be at bidder's risk.

1.17. **ETHICAL CONDUCT:** The bidder shall not offer or accept gifts or anything of value, not enter into any business arrangement with any employee, official, or Director of Comal County. No public official shall have interest in this Contract, in accordance with Texas Local Government Code Annotated Title 5, Subtitle C, Chapter 171.

The bidder affirms that the only person or parties interested in this bid/offer as principals are those named herein, and that this bid/offer is made without collusion with any other person, firm, or corporation.

1.18. **MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE BIDDERS:** A prospective bidder must affirmatively demonstrate bidder's responsibility. A prospective bidder must 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 an award.

Comal County may request representation and other information sufficient to determine bidder's ability to meet these minimum standards listed above.

1.19. Bidder/Offeror must provide any and all warranty terms and conditions. Bidder/Offeror Terms & Conditions are subject to the review and approval of Comal County. In the event of conflicting Terms & Conditions, the terms submitted in the solicitation package shall prevail. Bidder/Offeror must clearly identify any conflict with terms & conditions by denoting them on the same page where the conflicting terms and conditions appear.

1.20. The vendor shall make himself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances and regulations which in any manner affect the conduct of the work.

1.21. All insurance requirements, including workmen's compensation and liability, as outlined in Texas state statutes, shall be met prior to any services rendered and shall remain in effect during the time of this contract. Payments shall not become due and payable until such certificates have been filed.

1.22. HAZARDOUS SUBSTANCES: State law requires that shipments of hazardous substances shall include MATERIAL SAFETY DATA SHEETS (MSDS). MSDS must be supplied with the first order shipped under any contract, and at any time MSDS is revised.

1.23. If the bid is accepted and approved by Commissioners Court then this bid becomes the contract and there are no oral agreements either expressed or implied. No different or additional terms will become part of this contract with the exception of a change arising.

1.24. The parties herein agree that this Contract shall be enforceable in Comal County, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in Comal County, Texas.

1.25. This Contract shall be governed by and construed on accordance with the laws of the State of Texas and all applicable Federal Laws.

1.26. This Contract embodies the complete agreement of the parties hereto, superceding all oral or written previous and contemporary agreements between the parties and relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

1.27. The vendor shall indemnify and hold harmless the County and its duly appointed officers, agents and employees for all suits, actions, losses, damages, claims, or liability of any character, type, or description, including without limiting the generality of the foregoing all expenses of litigation, court costs, and attorney's fees for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, the acts of vendor's officers, agents or employees.

1.28. If a court of competent jurisdiction determines that any term of this agreement is invalid or unenforceable to any extent under applicable law, the remainder of this agreement (and the application of this agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

1.29. This Contract shall not be assignable by the vendor without prior written consent of County. This agreement shall be binding on and inure to the benefit of the successors and assigns of the respective parties to this agreement.

1.30. If the vendor defaults in the performance of this contract or materially breaches any of its provisions, County shall have the right to terminate this contract by giving written notice of termination within thirty (30) days of the occurrence of the default or material breach.

1.31. INTERLOCAL PARTICIPATION: It is hereby made a precondition of any bid/offer for a Contract for supplies or services and a part of these specifications, that the submission of any bid/offer in response to this request constitutes a bid/offer made under the same conditions, for the same price, and for the same effective period as this bid/offer, to any other governmental entity having an interlocal agreement with Comal County.

It is further understood, that any other governmental entity that elects to use a Comal County Semi-annual or annual award will issue its own Contracts or purchase orders and will require separate billing.

1.32. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally, or three (3) days after the date of mailing if mailed, by first class mail, registered or certified, postage prepaid and addressed as follows:

For the COUNTY:

Comal County, Texas
C/O County Judge
199 Main Plaza
New Braunfels, Texas 78130

With Copy to Purchasing Agent:

Comal County Purchasing Agent
178 E. Mill
New Braunfels, Texas 78130

For the VENDOR:

Fax (_____)_____

Any notices served by fax shall be deemed to have been given and received only when written confirmation of the receipt of such fax has been received by the sender. Any party hereto may, at any time by giving fifteen (15) days' written notice to the other party hereto, designate any other address in substitution of the foregoing address to which such notice shall be given.

1.33. No provision of this agreement shall affect or waive any sovereign or governmental immunity available to the County and/or its elected officials, officers, employees and agents under Federal or Texas law nor waive any defenses available to the County and/or its elected officials, officers, employees and agents under Federal or Texas law.

II. SPECIFICATIONS

2.1. BID PURCHASE:

2.1.1. County reserves the right to purchase materials from another supplier if the successful bidder cannot fill the order when needed.

2.2. MATERIALS:

2.2.1. Materials shall meet the 2004 Texas Department of Transportation standard specifications for construction and maintenance of highways, streets and bridges, item 334 HOT MIX COLD LAID / FINE SURFACE, TYPE B.

2.2.2. Materials shall be tested by Texas Department of Transportation test methods and results must be available to County on demand.

2.2.3. No payment shall be made for materials not in compliance with the specifications and said materials shall be returned at vendor's expense.

2.3. DELIVERY:

2.3.1. To be provided in quantities as ordered.

2.3.2. At Comal County's option, material may be ordered: F.O.B. Plant, OR F.O.B. delivered anywhere with 25 mile radius Comal County, delivery arrangements to be coordinated through Comal County Purchasing.

2.4. APPROXIMATE QUANTITY: 25,000 tons per year

3.1. FACILITY LOCATIONS

The County contracts with multiple Vendors for the services listed in the bid on page six (6); however, County retains the right to seek other materials at alternate facilities if the County deems it necessary. This contract in no way restricts the County's ability to contract with similar services.

III. VENDOR REFERENCE INFORMATION SHEET (PRINT)

VENDOR FIRM/BIDDER:

By: _____
AUTHORIZED AGENT TITLE

ADDRESS: _____
STREET ADDRESS AND /OR P.O. BOX NO.

CITY STATE ZIP CODE

PHONE: _____ FAX: _____

REFERENCES

LIST THREE (3) COMPANIES OR GOVERNMENTAL AGENCIES WHERE THESE COMMODITIES HAVE BEEN PROVIDED:

1. COMPANY NAME: _____

ADDRESS: _____ PHONE: _____

CONTACT PERSON: _____ TITLE: _____

2. CONTACT NAME: _____

ADDRESS: _____ PHONE: _____

CONTACT PERSON: _____ TITLE: _____

3. CONTACT NAME: _____

ADDRESS: _____ PHONE: _____

CONTACT PERSON: _____ TITLE: _____

IV. CONTRACT

**STATE OF TEXAS
COUNTY OF COMAL COUNTY**

WHEREAS, The attached bid package, including but not limited to the **Cover Sheet, Terms & Conditions, Specifications, and Bid Sheet(s)** for the item(s) being published for competitive bid, were solicited pursuant to Texas Local Government Code 262.021; and

WHEREAS, The Comal County Commissioners Court as the governing body of Comal County did on _____, 20____ award a contract to _____, Vendor for furnishing the materials, equipment, supplies, and/or services in quantities and at prices as set forth in the above-attached bid package; and

THEREFORE, Knowing all men by these present, that this contract is entered into by Comal County, Texas (hereinafter called "County") and the undersigned Vendor, (hereinafter called "Vendor").

WITNESSETH

THAT IN ACCORDANCE with the above attached bid package in every particular, the Vendor will perform in accordance with the terms thereof and the County agrees to make payment for such items or services purchased on appropriate Purchase Orders in accordance with the items of said bid package which is made a part of this contract and incorporated herein for all purposes contingent on respective equipment, materials and supplies/services covered by any claims that (1) conform to the attached specifications, (2) the equipment, materials, and supplies/services were delivered in good condition, and (3) services contracted for the Commissioners Court have been satisfactorily performed.

Prior Agreements Superseded

This Contract, with the entire bid package, including but not limited to the Cover Sheet, Terms & Conditions, Specifications, Bid Sheet(s), and any required supporting literature, brochures, and/or data sheets or samples, incorporated herein constitutes the sole agreements of the parties to the agreement and supersedes all oral or written previous and contemporary agreements between the parties and relating to matters herein.

Amendment

No amendment, modification or alteration of the terms of this contract shall be binding unless same is in writing, dated subsequent to the date of this contract, and duly executed by authorization representatives of each party.

COMAL COUNTY BID 2009PO37
HOT MIX COLD LAID ASPHALT / FINE SURFACE, TYPE B (Item 334)

IN TESTIMONY WHEREOF: Witness our hands at New Braunfels, Texas, effective as of the date awarded above, if any.

VENDOR

COMAL COUNTY

BY: _____ BY: _____
AUTHORIZED AGENT PURCHASING AGENT

******Failure to sign the Contract page(s) may disqualify the bid from being considered by the Commissioners Court. However, this contract is not valid until awarded in Commissioners Court.*****

COMAL COUNTY STATEMENT OF NO BID

If bidder is not bidding on the goods and/or services as stated in this ITB, please complete and return this form to:
Comal County Purchasing, Attn: Ramona Womack, 178 East Mill Street, New Braunfels, Texas, 78130.

NAME OF FIRM: _____

ADDRESS: _____

SIGNATURE: _____

TELEPHONE: _____ DATE: _____

The above has declined to submit a bid response for the following reason(s) [please check all that apply]:

- Specifications too "restrictive", i.e., goods offered by our company do not meet stated specifications.
- Specifications unclear (please explain below).
- We do not offer this commodity and/or service or an equivalent.
- Insufficient time to respond to the ITB.
- Our schedule would not permit us to perform.
- Can not meet insurance requirements.

Remarks: _____

COMAL COUNTY BIDDER/OFFEROR'S AFFIRMATION

This sheet must be completed, signed, and returned by Bidder/Offeror

NOTE: FAILURE TO SIGN AND RETURN THIS FORM WITHIN 10 DAYS OF AWARD MAY RESULT IN THE TERMINATION OF ANY RESULTING PURCHASE ORDER OR CONTRACT.

1. Bidder/Offeror affirms that they are duly authorized to execute this Contract, that this company, corporation, firm, partnership or individual has not prepared this bid/offer in collusion with any other bidder, and that the contents of this bid/offer as to prices, terms or conditions of said bid/offer have not been communicated by the undersigned nor by any employee or Director to any other person engaged in this type of business prior to the official opening of this bid/offer.

2. Bidder/Offeror hereby assigns to purchaser any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.

3. Pursuant to §262.076 (a) of the Texas Local Government Code, Bidder/Offeror, hereby affirms that Bidder/Offeror:
(Please check all that are applicable)

_____ Does not own taxable property in Comal County.

_____ Does not owe any ad valorem taxes to Comal County or is not otherwise indebted to Comal County.

If any additional information is required regarding these requirements, please contact The Comal County Purchasing Department PRIOR to execution.

Bidder/Offeror Company Name _____

Bidder (Signature) _____ Date _____

Bidder (Print Name) _____ Date _____

Position with Company _____

Signature of Company Official
Authorizing the Bid/Offer _____ Date _____

Company Official
(Printed Name) _____

Official's Position _____

Corporate Vendors Shall Furnish the Following Information:

Where Incorporated _____ Charter Number _____

IMPORTANT BIDDER'S CHECKLIST

Check off each of the following as the necessary action is completed

- 1. The Bid Page/Bidder Certification has been signed and is the first page.
- 2. The Vendor Reference Information Sheet is complete.
- 3. The contract is completed and signed.
- 4. The price extensions and totals have been checked, if applicable.
- 5. Any required drawings or descriptive literature have been included.
- 6. If required, the amount of the bid surety has been checked, and the surety has been included.
- 7. Any addendums have been signed and are included.
- 8. Conflict of Interest Questionnaire has been signed.
- 9. Bidders/Offeror's Affirmation Page has been completed and included.
- 10. The mailing envelope has been addressed to:
Comal County Purchasing Dept.
Landa Offices
178 E. Mill (Basement)
New Braunfels, Texas 78130
- 11. The envelopes have been sealed and marked with (a label has been provided or your convenience

Bid title
Bid number
Opening date
Opening Time

**COMAL COUNTY
RETURN LABEL**

*******LATE BIDS CAN NOT BE ACCEPTED*******

<u>SEALED INVITATION TO BID</u>	
ITB#:	2009PO37
OPENING DATE:	JUNE 11, 2009
OPENING TIME:	1:00 P.M. C.S.T.
ITB DESCRIPTION:	HOT MIX COLD LAID - FINE SURFACE, TYPE B
<i>DATED MATERIAL – DELIVER IMMEDIATELY</i>	

PLEASE CUT OUT AND AFFIX THE ITB LABEL ABOVE TO THE
OUTER MOST ENVELOPE OF YOUR RESPONSE

*******LATE BIDS CAN NOT BE ACCEPTED*******