

#13

To: City Council and Mayor  
From: Matt Kerbs, Deputy City Attorney MK  
Date: March 29, 2023  
Re: Piggyback purchase of Sealing Oils from Idaho Asphalt Supply, Inc.

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I have reviewed the above referenced documents relating to the piggyback the purchase of sealing oils from a bid approved by the Power County Highway District, and have no legal concerns with Council approving the piggyback purchase, as allowed by Idaho Code §67-2803(1), and authorizing the Mayor to sign the contract effectuating the purchase.

#13



Street Operations Department  
2405 Garrett Way  
Pocatello, Idaho 83201  
208.234.6250  
Fax 208.478.7152

**MEMO**

DATE: March 20, 2023  
TO: Mayor Brian Blad  
FROM: Tom Kirkman, Deputy Public Works Director  
SUBJECT: Recommendation for Sealing Oils – Piggyback

It is my recommendation that the City of Pocatello Street Operations Department piggyback the February 1, 2023 Power County bid for the following materials from Idaho Asphalt Supply, Inc. for Street Department’s 2023 Pavement Maintenance Program:

Material	Tonnage	Price Per Ton	Total Cost
CSS-1H-DIL 50/50	~20 Tons	\$415 (\$434.50 FOB job site)	~\$8,300 - \$8,690
Quickseal 50	~168 Tons	\$390 (\$409.50 FOB job site)	~65,520 - \$68,796

Idaho Asphalt Supply, Inc. was the lowest bidder for Power County and has agreed to allow the City of Pocatello Street Operations Department to piggyback the material upon your approval. The amount has been budgeted for in Street Department’s FY2023 budget line 003-2002-500.80-01.

The contract from Idaho Asphalt Supply, Inc. to the City of Pocatello to honor the piggyback price is attached for Mayor execution.



# Idaho Asphalt Supply, Inc.



Asphalts • Road Oil  
P.O. Box 941, Blackfoot ID 83221-0941  
Phone: (208) 785-1797 Fax: (208) 785-1818

IAS CONTRACT No: 31829

DATE: 3/15/2023

PROJECT #:

PROJECT: Year 2023 Road Oils  
BUYER: POCATELLO, CITY OF - ID

DATE OF BID LETTING: February 01, 2023

STREET ADDRESS OR SITE:  
2405 Garrett Way  
Pocatello, ID 83201

OWNER:

**1. Project Details.** Idaho Asphalt Supply, Inc ("Seller") agrees to sell and deliver to POCATELLO, CITY OF - ID ("Buyer"), or cause to be sold and delivered to Buyer asphalt product(s) of the kinds and quantities (the "Products") listed below and under the terms and conditions set forth in this Agreement, and Buyer agrees to purchase and receive and pay for the same, for use by Buyer on the above Project, on the terms and conditions herein stated:

PRODUCT	QUANTITY (Tons)	UNIT PRICE Excluding Sales Tax	Effective Thru	FREIGHT Per Ton	F.O.B.
CSS-1H 50:50 Dilute	20.00	\$415.00	10/31/2023	\$19.50	Blackfoot
Quickseal 50	168.00	\$390.00	10/31/2023	\$19.50	Blackfoot
DISTRIBUTOR SERVICE \$1,700.00 Minimum Charge		\$56.00/TON or \$250.00/HR (Whichever is Greater)			

**Special Contract Provisions:**

Pricing "piggybacks" awarded offering to the Commissioners of the Power County Highway District on February 01, 2023 and will remain firm for the 2023 season. Fuel surcharge on freight will be assessed once the e.i.a. diesel fuel index for the Rocky Mountain region meets and exceed \$3.10/gallon.

**2. Price Terms.** The price for the above Products is valid through the **2023** season and is based upon product(s) sold by Seller FOB one of Seller's facilities. Seller reserves the right to supply product(s) from any of Seller's or its affiliated facilities.

**3. Adjustments for Escalation.** If a price escalation for the Products subject to this Agreement occurs automatically or is invoked by Seller or Buyer in accordance with state contract specifications, Buyer agrees to pay Seller, or pass directly through to Seller, the amount of such escalation in addition to the prices above within fifteen (15) days of Buyer's receipt of such escalation. Buyer will provide Seller with all information pertinent to escalation. Escalation/de-escalation amounts will be reconciled monthly and invoiced as a debit/credit based on monthly shipping reports.

**4. Schedule.** Buyer and Seller shall agree in writing to a delivery schedule at least thirty (30) days prior to commencement of the Project. Proposed changes to the project delivery schedule must be submitted to Seller in advance via facsimile or electronic mail and will be fulfilled at the discretion of Seller; Seller shall not be responsible for delay or back charges resulting from such schedule changes. Buyer shall provide to Seller a written order for all Products to be delivered by Seller at least one (1) week prior to the requested delivery date. If Buyer does not take delivery of ordered product in accordance with the delivery schedule, Buyer may be held responsible for Seller's costs for said product, including, but not limited to: manufacturing, additive, storage and reprocessing costs. Buyer shall notify Seller immediately of any Project change orders or anticipated volume changes for which the changes are in excess of ten percent (10%) of the original order. Quantities deleted in excess of 10% of the original order may be subject to restocking fees or reprocessing costs while quantity overruns exceeding 10% of the original order are subject to re-pricing based on current market conditions.

**5. Payment/Billing.** Seller shall submit to Buyer an invoice, sent to the address indicated above, evidencing amounts due pursuant to this Agreement (the "Invoice"). Invoice amount(s) are due and payable by **the 15th of following month**. Buyer shall submit a copy of each invoice or invoice number with payment. Any invoice amounts not paid in accordance with the terms stated above shall bear interest at a rate of 1¼% per month from and as of the due date. In the event payment is not received as stated above Seller may, at its discretion, suspend further shipment(s) to Buyer. Buyer does not have the right to offset for any reason.

Bid Number: 0000031792 Buyer Initials \_\_\_\_\_ Contract # 31829

**6. Specifications - Seller's Limited Liability.** The Products will conform to the specifications of Idaho Transportation Department. Conformity of the Products to such specifications shall be determined by Seller's certified test results at the point of title transfer. Buyer agrees to strictly adhere to Sellers Product Handling Guidelines. In the event anti-strip is added to any product at the request of Buyer, Seller shall not be responsible for any resulting non-conformance of the product. IN THE EVENT PRODUCT IS DELIVERED TO BUYER THAT DOES NOT CONFORM TO THE AGREEMENT SPECIFICATIONS AT THE POINT OF TITLE TRANSFER, THE EXTENT OF SELLER'S LIABILITY IS EXPRESSLY LIMITED TO THE COST OF REPLACEMENT OF ANY SUCH NON-CONFORMING PRODUCT. SELLER SHALL NOT BE LIABLE TO BUYER OR A THIRD PARTY FOR ANY OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES. BUYER SHALL BEAR THE BURDEN OF PROOF THAT THE PRODUCTS FAILED TO CONFORM TO THE APPLICABLE SPECIFICATIONS AT THE POINT OF TITLE TRANSFER.

**7. Product Return Policy.** Products may only be returned upon Seller's written approval. In the event Seller agrees in writing to accept the return of any Product, Buyer shall be responsible for the full transportation costs, including, without limitation, restocking fees on the returned Product and, in the event of transportation arranged by Seller, any incidental charges as set forth under Paragraph 8. In the event Seller agrees to accept return of contaminated and/or diluted material, Buyer shall be responsible for all reprocessing and/or additional chemical costs.

**8. Seller-Arranged Transport.** If Seller agrees to arrange for transportation of the Product by a carrier, additional charges will apply, including, freight/transportation charges, which are a separate item. Product shall be shipped by any carrier designated by Seller. Delivery of quantities less than 30-tons will result in minimum freight charges. Where specified, freight prices are subject to a fuel surcharge at the time of delivery. A surcharge schedule is available upon request. Buyer agrees to pay the following additional charges as invoiced: (i) Unloading fees in excess of 3.00 hours, \$125.00 per hour, (ii) Overnight holdover fee, \$400.00 per night, (iii) Restocking fee on returned product, \$250.00, (iv) Multiple location unload fee, \$150.00 per each additional site, Equipment charge for jobsite pump-off flat fee, each occurrence (no polymer modified asphalts) \$125.00. Truck hold fee for each truck placed on hold at the plant by the customer in excess of 2.00hours, \$100.00 per hour. Freight charges will be assessed and invoiced at 50% of the quoted freight rate per ton for returned product.

**9. Buyer-Arranged Transport.** Unless Seller agrees to arrange for the transportation of the Product in writing, Buyer shall be responsible for arranging the transportation of the Product. Buyer agrees to provide to Seller all Seller required insurance documentation for carrier to access any Seller facility.

**10. Bond Disclosure.** Upon written request by Seller, Buyer agrees to provide a copy of the applicable contractor's bond or payment bond, which shall include the name and address of the general contractor and the owner of the property.

**11. Transfer of Title/Risk of Loss.** Title and risk of loss for the Products transfers to Buyer at the loading flange of Seller's facility.

**12. Seller's Right to Lien.** Seller is entitled to full lien and other rights provided by law to a supplier or installer of materials for all Products supplied.

**13. Unfulfilled Agreement Penalty.** If Buyer has failed to take delivery of at least seventy-five percent (75%) of the contracted Product(s) by the end of the applicable delivery schedule, Buyer shall pay to Seller an amount equal to (a) the purchase price of the contracted Products that have not been delivered to Buyer, multiplied by (b) fifteen percent (15%) (the "Unfilled Agreement Penalty"). For purposes of this paragraph, the determination of the Unfilled Agreement Penalty shall exclude any Products requested by Buyer which Seller opted not to supply pursuant to Paragraph 14 of this Agreement.

**14. Termination.** Seller may terminate this Agreement if, in Seller's reasonable judgment, Buyer is unworthy of commercial credit or is in default of this Agreement. In addition, Seller may immediately terminate this Agreement and any other contract between the parties without advance notice in the event Buyer is in default for non-payment pursuant to this Agreement or any other agreement between the parties hereto.

**15. Force Majeure.** Seller shall be relieved from liability for failure to deliver the Products for the time, and to the extent, such failure is occasioned by: government regulation, shortage of transportation, raw materials and/or supplies, disruption or breakdown of production or transportation facilities or equipment, war, fire, explosion, riot, strike or other industrial disturbance, act of God, or Seller's inability, after reasonable diligence, to obtain necessary equipment, materials or supplies, in whole or in part, at reasonable prices in relation to the prices established herein, or by any other cause, whether or not listed above, which is beyond the reasonable control of Seller.

**16. Buyer's Indemnification of Seller.** Buyer agrees to defend and indemnify Seller against any private or public administrative or judicial inquiry or action brought under any local, state, or federal environmental laws or rules as a result of Buyer's use of any Products purchased under this Agreement. Buyer further agrees to defend and indemnify Seller against any private or public administrative or judicial inquiry or action brought under any local, state, or federal environmental laws or rules as a result of Seller's transport of any Product to a site selected or designated by Buyer.

**17. Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho without regard to conflicts-of-laws principles that would require the application of any other law. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may only be brought against a Party in the State courts sitting in Idaho Falls, Idaho or Federal courts sitting in Pocatello, Idaho and each Party consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objections to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere in the world.

**18. Integration.** This Agreement embodies the entire Agreement between Seller and Buyer and supersedes any prior agreement for the Project, whether oral or written.

**19. Fees and Costs.** Should Buyer default in the performance of any of the covenants or agreements contained herein, Buyer shall pay to Seller all costs and expenses, including but not limited to a reasonable attorney fees, including such fees on appeal, which Seller may incur in enforcing this Agreement or in pursuing any remedy allowed by law for breach hereof, whether such is incurred by the filing of suit or otherwise.

**20. Modifications, Waiver, and Assignment.** Modification of this Agreement is valid only if executed in writing by the parties hereto. Waiver of any breach by Seller or Buyer of any terms, conditions or obligations hereto shall not be deemed a waiver of subsequent breaches of the same or other nature. Buyer may not assign this Agreement or any interest herein without the prior written consent of Seller

**21. Ratable for Commercial HP Tons.** For commercial Hotplant contracts, Buyer agrees to take possession of Products in a Ratable fashion unless previous arrangements have been agreed to in writing by Seller. In the event Buyer does not take possession of Products in a Ratable fashion, Seller reserves the right to reduce any committed quantities upon providing 15 day advance written notice to Buyer. Seller recognizes that weather and seasonality may impact Buyer's delivery schedule.

**22. Enforceability.** In order to be enforceable, this Agreement must be executed and returned to Seller within ten (10) days of 3/15/2023 the date in the heading block. In the event Buyer accepts delivery of product from Seller without providing to Seller an executed copy of this Agreement, Buyer shall be deemed to have agreed to and accepted all of the terms and provisions of this Agreement and all product delivered to Buyer shall be subject to the terms and provisions of this Agreement to the same extent as if Buyer executed and delivered to Seller this Agreement. In the event of any conflict between the terms and provisions of this Agreement and any purchase orders or other documentation provided to Seller by Buyer, the terms and provisions of this Agreement shall take precedence and be controlling. Seller may, at its discretion, refuse to deliver product represented by this Agreement to Buyer until this Agreement has been executed in full by both parties.

BUYER:  
POCATELLO, CITY OF - ID

By: \_\_\_\_\_ Date: \_\_\_\_\_

SELLER:  
Idaho Asphalt Supply, Inc

By: \_\_\_\_\_ Date: \_\_\_\_\_

# Power County Highway District

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Tel 208.226.2661  
Fax 208.226.5246

3090 Lamb Weston Rd.  
PO Box 513  
American Falls, ID  
83211

pocohwy@co.power.id.us

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February 01, 2023

Idaho Asphalt Supply  
Adam Ackerman  
P.O. Box 50538  
Idaho Falls, ID 83405

Dear Adam,

Thank you so much for submitting your Road Oil bid to the Power County Highway District. We are pleased to announce that you are the successful bidder this year. As always we really appreciate your response and look forward to working with you this year.

Sincerely,

A handwritten signature in black ink that reads "Angela Munk".

Angela Munk  
District Clerk

cc. aackerman@idahoasphalt.com

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Robert N. Wetzel  
Chairman

Gilbert Hofmeister  
Commissioner

Wade Povey  
Commissioner

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## **Notice for purchasing, Transporting and Spreading of Asphalt 2023**

Notice is hereby given that Power County Highway District will hold a bid opening at 3090 Lamb Weston Road at American Falls, Idaho on **February 1<sup>st</sup>, 2023 at 1:00 p.m.** at which time bids covering the following items will be publicly opened and read:

### **Purchasing, Transporting and Spreading of Asphalt 2023**

Complete contract documents, including specifications and requirements are available upon request from the Power County Highway District at 3090 Lamb Weston Road, American Falls, Idaho – Phone number 208-226-2661 between the hours of 8am to 5pm- Monday through Thursday. All communications relative to the work and bid are to be directed to the Road Oil District Supervisor, Bill Curry, at 208-226-2661.

Bids will be received until 12:55 pm on February 1<sup>st</sup>, 2023. All bids sent by mail shall be addressed to the Power County Highway District, P.O. Box 513, American Falls, Idaho 83211, % Commissioner - Chairman, and shall be clearly marked **Purchasing, Transportation and Spreading of Asphalt 2023 Bid Opening.**

The Power County Highway District Commissioners reserve the right to reject any or all bids or to award to the bidder as determined to be in the best interest of Power County Highway District. All bidders are expected to familiarize themselves with the requirements of Chapter 40, Title 31 of the Idaho Code as amended covering bidding, bidder's security and expenditures by the County. Five percent (5%) bidder's security is required to be included with the bid.

**ALL BIDDERS AGREE THAT REJECTION SHALL CREATE NO LIABILITY ON THE PART OF POWER COUNTY HIGHWAY DISTRICT BECAUSE OF SUCH REJECTION AND THE FILING OF ANY BID IN RESPONSE TO THIS INVITATION SHALL CONSTITUTE AN AGREEMENT OF THE BIDDER TO THESE CONDITIONS.**

PUBLISHING DATE: January 11<sup>th</sup>, 2023, and January 18<sup>th</sup>, 2023

BIDDING OPENING: February 1<sup>st</sup>, 2023



SUBMITTED BY IDAHO ASPHALT SUPPLY, INC.

**BID FORM**

**OWNER'S RIGHTS RESERVED**

The Power County Highway District Commissioners reserve the right to reject any or all bids or to award to the bidder as determined to be in the best interest of Power County Highway District.

**SPECIFICATION**

All asphalt materials must meet the specifications outlined in the most recent Idaho Transportation Department's "Standard Specifications for Highway Construction" and must meet the most current ASTM standards for the specific material being delivered. The County may, at its discretion, randomly sample any or all loads to determine specifications compliance.

**PENALTY**

A penalty of twenty five percent (25%) of the total purchase price will be deducted from each LOAD not meeting specifications.

**BIDDING RESPONSIBILITIES**

The Bidder has carefully examined the specification and contract documents and also understands that all materials and services called for shall be for the bid price.

The Bidder will bill the different entities directly for any of the liquid asphalt and transportation ordered independently.

**PIGGYBACK**

The Bidder recognizes and agrees that this bid is available to other government agencies in accordance with Idaho Code. Counties, Cities, Highway Districts may piggyback on this bid for the period of 45 days from the date of the bid opening to the changing nature of the oil prices.

**BID**

The Bid is broken into sections. The product price is listed as Free on Board (FOB). The prices quoted are the product at BLACKFOOT, ID (you choose). If you bid on the freight, it is understood that the freight will be delivered anywhere in Power County. It is further understood that the freight price will be adjusted for each agency piggybacking off this bid. The spreading cost is a separate line item that may be used if needed. If there are additional or hidden costs, they must be disclosed at this time. The County has an option of accepting or awarding individual products, or segregating the bid by purchasing the oils, transportation, or spreading of the oil separately based upon the line item total from a Bidder for each agency.

**TRANSPORTATION BID**

Delivery fee per ton delivered to Power County \$ 28.90 /ton.

Bidder must attach an explanation discussing fuel surcharge rates and how they will be applied or transportation of the material.

**SPREADING BID**

Spreading fee per ton of oil \$ 56.00 /ton.

# Power County Highway District

## 2023 Road Oil Bid

SUBMITTED BY:  
IDAHO ASPHALT SUPPLY, INC.

<u>No.</u>	<u>ITEM</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
<u>1.</u>	<u>MC-500</u>	<u>130</u>	<u>Ton</u>	\$825.00/TON	\$107,250.00
<u>2.</u>	<u>MC-800</u>	<u>620</u>	<u>Ton</u>	\$795.00/TON	\$492,900.00
<u>3.</u>	<u>CRS-2</u>	<u>900</u>	<u>Ton</u>	\$545.00/TON	\$490,500.00
<u>4.</u>	<u>Alternate Quickseal 60/40</u>	<u>225</u>	<u>Ton</u>	\$425.00/TON	\$95,625.00
<u>5.</u>	<u>CSS-1 Dilute 50/50</u>	<u>25</u>	<u>Ton</u>	\$415.00/TON	\$10,375.00
<u>6.</u>	<u>Quickseal 50</u>	<u>225</u>	<u>Ton</u>	\$390.00/TON	\$87,750.00

*1,284,400.00*

**ASPHALT BID ITEMS**

Product Only: FOB Location Blackfoot, ID (you choose)  
 Prices do not include freight and is the price per ton on doc.

Asphalt Type	\$/Ton on Dock
MC-500	825.00
MC-800	795.00
CRS-2	545.00
Quickseal 50	390.00

Asphalt Type	\$/Ton on Dock
CSS-1 DIL 50/50	415.00
Quickseal 60	425.00

**ALTERNATIVE ASPHALT BID ITEM**

If the bidder has a product that is not on the Asphalt Bid Item listed above and would prefer to bid a product for piggyback purposes, the Bidder may place this below.

Product Only: FOB Location Blackfoot ID (you choose)  
 Prices do not include freight and is the price per ton on doc.

Asphalt Type	\$/Ton on Dock
MC-250	845.00
SC-800	795.00
MC-3000	790.00
CMS-2	550.00
CMS-2P	575.00
COS-1HP	610.00
CRS-2R	560.00

Asphalt Type	\$/Ton on Dock
CRS-2P	560.00
CRS-3P	595.00
CSS-1	545.00
CSS-1H	545.00
CSS-1H-DIL	415.00
DP-1	565.00
HFE 150	590.00

Asphalt Type	\$/Ton on Dock
HFE 300	615.00

**SIGNATURE**

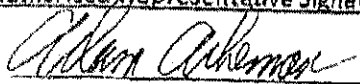
By signing this bid, the Bidder acknowledges that they have carefully checked all of the above figures, have read and understand all the accompanying bid documents and specifications and understands that Power County and/or any other officer thereof will not be responsible for any errors or omissions on the part of the undersigned submitting the bid

Firm's Name Idaho Asphalt Supply, Inc.

Address P.O. Box 50538 Idaho Falls, ID 83405

Authorized Representative Signature

Title



Regional Sales Manager

Print Name

Date

Adam Ackerman

February 1, 2023



# IDAHO ASPHALT SUPPLY, INC.

ASPHALTS • ROAD OILS  
P.O. Box 50538 Idaho Falls, Idaho 83405-0538  
Phone: (208) 524-6871 Fax: (208) 524-1923



February 1, 2023

COMMISSIONERS OF THE POWER COUNTY HIGHWAY DISTRICT  
3090 Lamb Weston Road  
American Falls, ID 83211

RE: Attachment to the "Purchasing, Transporting & Spreading of Asphalt 2023" bid offering.

- All quotes will remain firm for the 2023 Road Oil season.
- All quotes are based on 30-ton minimum loads.
- Unloading time: 3 hours free, \$125.00/hour thereafter.
- Overnight holdover: \$400.00 per night.
- Returned oil will be billed at full freight to the job-site and ½ freight rate for returned product.
- Restocking charge for returned product: \$250.00.
- Credit not given for anti-strip, altered or diluted products.
- Large distributor spreading charge: \$56.00/ton or \$250.00/hour whichever is greater. \$1,700.00 Minimum Charge.
- Small distributor spreading charge: \$250.00/hour portal to portal. \$1,700.00 Minimum Charge.
- Truck hold fee for each truck placed on hold at the plant by the customer in excess of two hours, \$100.00 per hour.
- Fuel surcharges will be assessed once the "e.i.a. Weekly Retail On-Highway Diesel Price" meets and exceeds \$3.10/gal. A schedule is attached.
- The Power County Highway District will receive two invoices. One from Idaho Asphalt Supply, Inc. for the asphalt products (emulsions and cutbacks), the other from Johnny B. Transport for freight and distributor services.
- Idaho Asphalt Supply, Inc. reserves the right to "piggyback" at its sole discretion, based on asphalt availability and the provisions in accordance with Idaho Code.
- Due to the volatile nature of the asphalt market, Idaho Asphalt Supply, Inc. will not offer awarded prices after March 17, 2023.

Sincerely,

Adam Ackerman  
Regional Sales Manager