MONTANA DEPARTMENT OF TRANSPORTATION
INVITATION FOR BID (IFB)
(THIS IS NOT AN ORDER)

IFB Number: **#HWY-309539-RP**	**IFB Title:** **ROUTING AND CRACK SEALING BLUE MOON TO COLUMBIA HEIGHTS, KALISPELL DIVISION**
IFB Due Date and Time: **APRIL 15, 2010** **3:00 p.m., Local Time**	**Number of Pages: 22**

ISSUING AGENCY INFORMATION	
Procurement Officer: **RICHELE PARKHURST**	**Issue Date:** **MARCH 25, 2010**
MONTANA DEPARTMENT OF TRANSPORTATION **PURCHASING SERVICES SECTION** **424 MOREY STREET** **PO BOX 20437** **BILLINGS MT 59104-0437**	**Phone: (406) 657-0274** **Fax: (406) 256-6487** **TTY Users, (406) 444-7696** **Website: http://gsd.mt.gov/**

INSTRUCTIONS TO BIDDERS	
COMPLETE THE INFORMATION BELOW AND RETURN THIS PAGE WITH YOUR SEALED BID AND ANY REQUIRED DOCUMENTS TO: **#HWY-309539-RP** **PURCHASING SERVICES SECTION** **424 MOREY STREET** **PO BOX 20437** **BILLINGS MT 59104-0437**	**Mark Face of Envelope/Package:** **IFB Number: #HWY-309539-RP** **IFB Due Date: APRIL 15, 2010** **SEALED BIDS** will be received and publicly opened in the **Billings** office at 3:00 pm. **Attachments: 1**

BIDDERS MUST COMPLETE THE FOLLOWING	
Federal Tax ID Number:	**Completion Date:**
Bidder Name/Address:	**Authorized Bidder Signatory:** **(Please print name and sign in ink)**
Bidder Phone Number:	**Bidder FAX Number:**
Bidder E-mail Address:	

IMPORTANT: SEE STANDARD TERMS AND CONDITIONS

BILL TO: DEPT OF TRANSPORTATION
PO BOX 7308
KALISPELL MT 59904-7308

PROJECT SITE: DEPT OF TRANSPORTATION
BLUE MOON TO COLUMBIA HEIGHTS
US-2, MILEPOST 134.0 TO 138.1

Questions may be directed to Kyle DeMars at (406) 751-2010 in Kalispell. However, any changes to the requirements of the Invitation for Bid (IFB) can only be made by the Montana Department of Transportation (Department) in writing and claimed oral modifications are not valid or binding.

1.0. STANDARD TERMS AND CONDITIONS

By submitting a response to this invitation for bid, request for proposal or acceptance of a contract, the Contractor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

1.1. ACCEPTANCE/REJECTION OF BIDS OR PROPOSALS

The Department reserves the right to accept or reject any or all bids or proposals, wholly or in part and to make awards in any manner deemed in the best interest of the Department. Bids and proposals will be firm for 30 days, unless stated otherwise in the text of the invitation for bid or request for proposal.

1.2. ACCESS AND RETENTION OF RECORDS

The Contractor agrees to provide the Department, Legislative Auditor or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of 3 years after either the completion date of the contract or the conclusion of any claim, litigation or exception relating to the contract taken by the State of Montana or third party.

1.3. ALTERATION OF SOLICITATION DOCUMENT

In the event of inconsistencies or contradictions between language contained in the Department's solicitation document and a Contractor's response, the language contained in the Department's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the Contractor's disqualification and possible debarment.

1.4. ANTITRUST ASSIGNMENT CLAUSE

All vendors, Contractors and subcontractors hereby assign to the State of Montana any and all claims or causes of action for any antitrust law violations or damages arising therefrom as to goods, materials and services purchased under the terms of this agreement and any change order that may result from this agreement. This assignment is made on behalf of the vendor, Contractor and all subcontractors, which may be hired or contracted with to furnish goods, materials or services.

1.5. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the Department. (Mont. Code Ann. § 18-4-141.)

1.6. AUTHORITY

The following bid, request for proposal, limited solicitation or contract is issued in accordance with Title 18, Montana Code Annotated and the Administrative Rules of Montana, Title 2, chapter 5.

1.7. BILLING

The State of Montana cannot pay for materials or services in advance. All billing against this purchase order must be made only after completion of receipt of merchandise or services rendered.

1.8. COLLUSION PROHIBITED

Prices quoted shall be established without collusion with other Contractors and without attempt to preclude the Department from obtaining the lowest possible competitive price.

1.9. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under the contract, fully comply with all applicable federal, state or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability or national origin by the persons performing the contract.

1.10. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities or specifications of the contract shall be granted without prior written consent of the Department's Purchasing Bureau. Supplies delivered which do not conform to the contract terms, conditions and specifications may be rejected and returned at the Contractor's expense.

1.11. DEBARMENT

The Contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State.

1.12. DISABILITY ACCOMMODATIONS

The State of Montana does not discriminate on the basis of disability in admission to, access to or operations of its programs, services or activities. Individuals, who need aids, alternative document formats or services for effective communications or other disability-related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

1.13. EXCEPTIONS

A prospective Contractor may take "exception" to bid terms, conditions, specifications and dates stated within the bid package. However, the Department reserves the right to disqualify any and all bids submitted which include exceptions, if deemed not in the Department's best interest.

1.14. FACSIMILE RESPONSES

Facsimile bids sent directly to the Department of Transportation will not be accepted however, facsimile bids sent to a 3rd party and then delivered to the Department in a properly addressed, sealed envelope will be accepted.

1.15. FAILURE TO HONOR BID/PROPOSAL

If a bidder/Contractor to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the Department may, in its discretion, suspend the bidder/Contractor for a period of time from entering into any contracts with the State of Montana.

1.16. FORCE MAJEURE

Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

1.17. HOLD HARMLESS/INDEMNIFICATION

In regard to all duties relating to safety, regardless of whether any such duties are, or are alleged to be, "nondelegable" (e.g., the Montana Scaffolding Act, Montana Safe Place to Work Statute, etc.), as well as matters involving patent, trademark and copyright infringements, Contractor agrees that it will defend, protect, indemnify and save harmless the State of Montana and Department against and from all claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorneys fees) and losses to them from any cause whatever (including any patent, trademark and copyright infringement) arising from the project. This indemnification expressly includes any claim or liability arising from a violation of law, ordinance or regulation. Contractor assumes all responsibility for ensuring and enforcing safe working conditions and compliance with all safety-related rules and regulations for the benefit of its own employees, the employees of its subcontractors and the public. This indemnification is expressly intended by the parties to include claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorneys fees) and losses that are, or are alleged or held to be, based upon a breach by the State or Department of a nondelegable duty relating to workplace safety for the Contractor's employees, the employees of any subcontractor's employees or the public.

This indemnification does not extend to CERCLA and CECRA claims, which are addressed in section 107.26 of the specifications. Contractor will be responsible for any and all damages to property or persons that occur before final acceptance of the project. Contractor will obtain and maintain insurance necessary to comply with the specifications.

The Contractor shall indemnify, protect and defend the owner (State and Department) from any damage, loss or claim of damage arising from, due to or allegedly due to an action or omission of the Contractor or any of its employees and further to protect, hold harmless and indemnify the Department and State from any damages, loss or claims due to or allegedly due to an act or omission of any subcontractor on the project.

Other than the above indemnifications, each party shall be liable for its own negligence.

1.18. LATE BIDS AND PROPOSALS

Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the Contractor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the Contractor at the expense of the Contractor or destroyed if requested.

1.19. PAYMENT TERM

All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the Department is allowed 30 days to pay such invoices. All Contractors may be required to provide banking information at the time of contract execution in order to facilitate state electronic funds transfer payments.

1.20. PREPARATION OF BIDS

Bids must be written in ink and/or typewritten on bid forms furnished herewith. Erasures and alterations must be initialed by the Contractor in ink. Verbal bids will not be accepted. Bid quotations shall be considered firm for 30 days after the date of opening unless otherwise stated in writing within the bid package.

1.21. RECIPROCAL PREFERENCE

The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA and then only if federal funds are not involved. For a list of states that grant resident preference, see http://gsd.mt.gov/procurement/preferences.asp.

1.22. REFERENCE TO CONTRACT

The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

1.23. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at 406 444-3665 or visit their website at http://www.sos.state.mt.us

1.24. REJECTION OF BIDS

The Department reserves the right to reject any and all bids (wholly or in part) which fail to meet the terms, conditions and specifications of the bid package; or, are determined to be not in the Department's best interests; or, for which funding is not available. The Department reserves the right to reject bid proposals, waive technicalities or advertise for new proposals. Bids will be firm for 30 days, unless stated otherwise in the text of this invitation for bid.

A written or verbal explanation regarding rejected bids may be obtained by contacting the Purchasing Services Section (406) 657-0274 in Billings.

1.25. SEPARABILITY CLAUSE

A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

1.26. SHIPPING

Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

1.27. SOLICITATION DOCUMENT EXAMINATION

Contractors shall promptly notify the Department of any ambiguity, inconsistency or error, which they may discover upon examination of a solicitation document.

1.28. TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

1.29. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED

Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at 406 444-2575 for more information concerning nonvisual.

1.30. TERMINATION OF CONTRACT

Unless otherwise stated, the Department may, by written notice to the Contractor, terminate the contract in whole or in part at any time the Contractor fails to perform the contract.

1.31. UNAVAILABILITY OF FUNDING

The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3).)

1.32. UNIT PRICE

Unless otherwise specified, the unit price for each line items must be provided in the appropriate space within the bid document. This shall be known as the "base" bid. The unit price for multiple items must be extended to reflect the total price for the quantity of items requested. Unless otherwise specified, the unit price shall prevail.

1.33. U.S. FUNDS

All prices and payments must be in U.S. dollars.

1.34. VENUE

This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

1.35. WARRANTIES

The Contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

2.0. GENERAL REQUIREMENTS

2.1. BID/PROPOSAL SECURITY – SURETY BONDS ONLY

Each bid/proposal must be accompanied by bid proposal security based upon 10% of the total bid/offer. This security must be in the form of a surety bond licensed in Montana with a Best's rating of no less than A-. The surety bond must be supplied on the form designated by the State of Montana. The required form may be found at http://gsd.mt.gov/procurement/forms.asp and entitled "Bid or Proposal Bond." THE ORIGINAL FORM MUST BE PROVIDED. FACSIMILE, ELECTRONIC OR PHOTOCOPIES ARE NOT ACCEPTABLE.

A bidder failing or refusing to enter into any awarded contract or purchase order within the required 10 working days following the Purchasing Services Section's issuance of request for documents notice shall forfeit the bid security. See Section 18-1-204(1), MCA. "Enter into any contract or purchase order" includes execution of the contract, submission of acceptable performance security and submission of any required liability insurance coverage and workers' compensation insurance coverage or exemption.

The bid security for the unsuccessful bids will be shredded, unless return is requested.

2.2. CONTRACT PERFORMANCE SECURITY – SURETY BONDS ONLY

The Contractor must provide contract performance security based upon 100% of the contract total. This security must be in the form of a surety bond licensed in Montana with a Best's rating of no less than A-. The surety bond must be supplied on the form designated by the State of Montana. The required form may be found at http://gsd.mt.gov/procurement/forms.asp and entitled "Contract Performance Bond." THE ORIGINAL FORM MUST BE PROVIDED. FACSIMILE, ELECTRONIC OR PHOTOCOPIES ARE NOT ACCEPTABLE.

The contract performance security must be provided to the State of Montana within 10 working days from the Request for Documents Notice. This security must remain in effect for the entire term of the contract. A new surety bond must be issued to the State of Montana if this contract is renewed.

The original surety bond form must be provided to the following address: Purchasing Services Section, Attn: Richele Parkhurst, P.O. Box 20437, Billings, MT 59104-0437.

Ref:MCA Title 18, Chapter 4, Part 3; ARM, Title 2, Chapter 5, Sub-Chapter 5.

2.3. OWNER'S AND CONTRACTOR'S PROTECTIVE (OCP) LIABILITY INSURANCE

Obtain an Owner's and Contractor's Protective (OCP) liability insurance policy for all work to be done, on behalf of the owner (State of Montana, the Department, and its agents, employees and officers) to be submitted prior to contract execution, with a general aggregate limit of not less than $2,000,000 and an occurrence limit of not less than $1,000,000. The certificate must be received by the Purchasing Services Section, Attn: Richele Parkhurst, P.O. Box 20437, Billings, MT 59104-0437, within 10 working days of the Request for Documents Notice and must be kept current for the entire term of the contract.

Ref: Standard Specifications for Road and Bridge Construction, 2006 Edition supplemental, Section 107.13.1.

2.4. COMPLIANCE WITH WORKERS' COMPENSATION ACT

The Contractor is required to supply the Purchasing Services Section with proof of compliance with the Montana Workers' Compensation Act while performing work for the State of Montana. (Mont. Code Ann. §§ 39-71-401, 39-71-405, and 39-71-417.) Neither the Contractor nor its employees are employees of the State. The proof of insurance/exemption must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and must be received by the Purchasing Services Section, Attn: Richele Parkhurst, P.O. Box 20437, Billings, MT 59104-0437, within 10 working days of the Request for Documents Notice and must be kept current for the entire term of the contract.

<u>CONTRACTS WILL NOT BE ISSUED TO CONTRACTORS WHO FAIL TO PROVIDE THE REQUIRED DOCUMENTATION WITHIN THE ALLOTTED TIME FRAME.</u>

Coverage may be provided through a private carrier or through the State Compensation Insurance Fund 406 444-6500. An exemption can be requested through the Department of Labor and Industry, Employment Relations Division 406 444-1446. Corporate officers must provide documentation of their exempt status.

2.5. MONTANA PREVAILING WAGE REQUIREMENTS

2.5.1. Montana Resident Preference. The nature of the work performed, or services provided, under this contract meets the statutory definition of a "public works contract" in section 18-2-401, MCA. Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of $25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted in relation to these statutes.

Unless superseded by federal law, each contractor shall ensure that at least 50% of a contractor's workers performing labor on a construction project are bona fide Montana residents.

The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

2.5.2. Standard Prevailing Rate of Wages – Booklet Attached. In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all associated administrative rules. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of $25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA.

Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis. Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

All contractors and employers shall classify each employee who performs labor on a public works project according to the applicable standard prevailing rate of wages for such craft, classification, or type of employee established by the Commissioner of the Montana Department of Labor and Industry, and shall pay each such employee a rate of wages not less than the standard prevailing rate as specified in the Montana Prevailing Wages Rates for Crack Seal project **2010.**

2.6. CONTRACTOR REGISTRATION – FOR CONSTRUCTION

The Contractor is required to be registered with the Department of Labor and Industry under sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution. The State cannot execute a contract for construction to a Contractor who is not registered and may award the contract to the next responsive Contractor if registration is not completed in a timely manner. (Mont. Code Ann. § 39-9-401.)

If you have a Contractor Registration Number, list it here: _____

2.7. CONTRACTOR WITHHOLDING – FOR CONSTRUCTION

Section 15-50-206, MCA requires the state agency or Department for whom a public construction work contract over $5,000 is being performed, to withhold 1% of all payments and to transmit such monies to the Department of Revenue.

2.8. DIESEL FUEL TAX

Pursuant to sections 15-70-310 through 15-70-336, MCA, the Contractor, any subcontractor or anyone using diesel fuel in motor vehicles, motorized equipment or the internal combustion of any and all engines, including stationary engines, is required to comply with the "special fuel use tax." A copy of a current special fuel users permit must be submitted prior to contract execution. Failure to provide this as required, will result in disqualification of your bid.

This requirement applies to all diesel fuel used in connection with work performed on construction, reconstruction or other improvements on highways, streets or within public right-of-way as a result of any contract awarded by a public agency.

Questions on this provision may be addressed to:

FTMA Bureau
Department of Transportation
P.O. Box 201001
Helena, MT 59620-1001

Motor Fuels Information: (406) 444-7689

2.9. INDEPENDENT CONTRACTOR

Due to requirements of Federal labor laws, individuals who are presently a Montana State employee will not be considered for potential award of the Agreement. A successful bidder, who, during the post-bid period or during the term of the Agreement, becomes a Montana State employee, must immediately notify in writing the Department's Field Maintenance Chief. Contractor agrees that, if it becomes a Montana State employee during those periods, or if it hires anyone to perform more than 50% of the work under the Agreement who is a Montana State employee, the Agreement is subject to immediate termination.

It is expressly agreed that the Contractor in fulfilling the terms of this Agreement is not an employee of the DEPARTMENT, but is solely an INDEPENDENT CONTRACTOR and not an employee of the DEPARTMENT.

2.10. PRECONSTRUCTION CONFERENCE

A mandatory preconstruction conference will be held between the Contractor and Department personnel. It is the responsibility of the Contractor to schedule the conference with the Department. This conference will be held a minimum of 5 working days prior to the start of work, including crushing or other work during the off season, unless the Maintenance Chief gives prior written approval. Scheduling for days and hours worked will be set at that time. The Department will designate a Project Manager at this conference. The Project Manager will be the authorized agent for the Department on this project.

The Helena Maintenance Review Section personnel will be considered as inspectors when on the job site.

2.11. CONFIRMATION OF AWARD/NOTICE TO PROCEED

After award has taken place, the successful Contractor will receive a "Request for Documents Notice" letter from the Purchasing Services Section. The "Request for Documents Notice" letter is not authorization to proceed with the project.

The purpose of the letter is to notify the Contractor that he/she must secure (a) proof of workman's compensation insurance coverage or exemption, (b) proof of liability insurance coverage and (c) contract performance security; and that these documents must be received by the Purchasing Services Section, Attn: Richele Parkhurst, 424 Morey Street in Billings before a "Notice to Proceed" with the project can be given.

Upon receipt by the Purchasing Services Section of the Contractor's proof of insurance and contract performance security, a purchase order will be officially signed. Receipt of the signed original purchase order by the Contractor shall be the Department's official "Notice to Proceed" with the project.

2.12. CIVIL RIGHTS

NON-DISCRIMINATION NOTICE

During the performance of this Agreement, _Contractor_ (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

(1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.

(2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.

(3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.

(4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,

(a) Withholding payments to the Party under the Agreement until the Party complies and/or

(b) Cancellation, termination or suspension of the Agreement, in whole or in part

(6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability or national origin by the persons performing the Agreement.

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

(1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.

(2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."**

(3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Party to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

3.0. SPECIAL PROVISIONS - CRACK SEALING

3.1. PURPOSE

3.1.1. The purpose of this contract is to have the successful Contractor crack seal specific sections of road as specified herein. This work consists of routing, cleaning and sealing the transverse and specified longitudinal cracks with the specified sealant. All quantities referenced herein are estimated quantities.

3.1.2. Specific information pertaining to each project, including a brief description of the anticipated work, will be listed on a standard form. The completed forms will be attached to these provisions and thereby made a part of the contract. Bid items will be consolidated from each site into a standard format. Only those bid items with quantities listed are to be bid.

3.2. CONTRACT AUTHORITY

The Purchasing Services Section Supervisor will be the contract authority and the contract will be administered by a Maintenance Chief and/or District Administrator.

3.3. STANDARD SPECIFICATIONS

All references to the "Standard Specifications" shall be the Department's book entitled "Standard Specifications for Road and Bridge Construction", 2006 edition or as amended by current supplemental specifications**.** Current standard specifications and supplementals may be obtained at the following web site: http://www.mdt.mt.gov/business/contracting/standard_specs.shtml

3.3.1. The following Standard Specifications Sections apply in their entirety:

a. Section 101

b. Section 403

3.3.2. The following Standard Specifications Articles apply in their entirety:

a. 102.02, 102.04, 102.05, 102.06 and 102.13

b. 105.01, 105.06, 105.07, 105.09, 105.10 and 105.11

c. 106.06

d. 107.01, 107.02, 107.03, 107.04, 107.05, 107.06, 107.07, 107.08, 107.10, 107.11, 107.12, 107.13, 107.14, 107.15, 107.16, 107.17, 107.18, 107.20, 107.21, 107.25 and 107.26.

e. 108.01, 108.04, 108.05, 108.06, 108.09 and 108.10

3.3.3. The following portions of Standard Specification Articles shall apply:

a. 104.02.1

b. 105.05 replace 1st sentence with the following: The Department will furnish the Contractor with 1 set of contract documents.

c. 105.12 (reference to 105.03 is to 105.03.1 only)

d. 108.07.4-A, 108.07.5 (1st paragraph) and 108.08 (with reference to table 108-1 only).

e. 618.03.1, 618.03.2, 618.03.3, 618.03.4, 618.03.5, 618.03.13, 618.03.14, 618.03.15 and 618.03.16

f. 701.02.1 and 701.02.8

3.4. ADDITIONAL WORK

3.4.1. Any additional work performed under this provision shall be the same type of work for which the contract was awarded and will only apply if the Contractor is set-up and operational. Subsequently, no additional compensation for "mobilization" will be allowed. The additional work provision will not apply if the Contractor has to be mobilized to a new location.

The Maintenance Chief reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered. If additional work or changes in quantity significantly change the scope of work, an adjustment will be made to the contract. A significant change is defined as an increase in excess of 125% or a decrease below 75% of the original contract quantity item. Any adjustment for an increase in quantity shall apply only to that portion in excess of 125% of the original contract item quantity, or in case of a decrease below 75%, to the actual amount of work performed.

3.4.2. Payment for work under this provision will be at the unit price bid for work for which the contract was awarded. Any additional work must connect with either end of each specified project site. Any additional work must be for the same type as specified in the original contract.

3.4.3. Additional work can only be performed after prior approval of the Helena Maintenance Division Administrator and written addenda from the Purchasing Services Section. These addenda must be in the form of a Purchase Order Adjustment.

3.4.4. The addenda will include the following information:

3.4.4.1. A description of the work to be performed.
3.4.4.2. Additional time adjustments, if any.
3.4.4.3. The cost associated with the additional work.

3.5. CONTRACT TIME

3.5.1. Contract time will be determined as follows:

3.5.1.1. Designated Contract Date -- will be the actual calendar date by which all work under the contract shall be completed.

3.5.2. Number of working days allowed to complete the work will be based on placing 3,000 pounds of material per day. Contractor must complete the project within **9** working days of commencement of work.

3.5.3. Contractor shall submit a written proposed work schedule that accommodates the contract dates to the Maintenance Chief. This schedule must be submitted at the pre-construction meeting. The Maintenance Chief may request changes to the schedule to best meet the needs of the Department as long as the changes do not impact the sequence of work or contract completion date to the point it changes the terms of the contract bid.

The Contractor shall submit in writing, to the Maintenance Chief, any subsequent changes to the schedule for approval. The Maintenance Chief will review the request and will provide the Contractor with a written response indicating approval (in which case a new “start date” will be provided) or disapproval with appropriate reasons. If the Contractor is dissatisfied with the Maintenance Chief’s response, he may appeal the decision to the District Administrator. The District Administrator’s decision is final.

3.5.4. Working days - Contractor shall complete the work within the number of working days outlined in the contract. Assessment of time for all working days will begin on the start date stipulated and agreed upon at the pre-construction meeting. Working days will be assessed against the contract except for days when inclement weather (rain, snow, cold, etc) or the aftermath of inclement weather prevents the performance of the Contractor's operations that would be in progress for at least 60% of the normal daily schedule being worked. Working days may be suspended for inclement weather or other conditions that are detrimental to the quality of the work.

Working days will be determined and agreed upon daily between the Department's Project Manager and the Contractor's Project Manager

3.5.5. Contract Completion Date – Contractor shall complete the project by the completion date specified in the contract. The completion date shall supercede the number of working days outlined in the contract. The completion date may be extended as per standard specification 108.07.4-A and 108.07.5 (1st paragraph) as listed in Section 3 "Standard Specifications".

The Maintenance Chief will review the request and will provide the Contractor with a written response indicating approval (in which case a new "contract completion date" will be provided by means of a "Purchase Order Adjustment" issued by the Purchasing Services Section) or disapproval with appropriate reasons. If the Contractor is dissatisfied with the Maintenance Chief's response, he may appeal the decision to the District Administrator. The District Administrator's decision is final.

3.5.6. In the event the state increases quantities, additional days will be added to the contract by using the following formula:

$$\text{Time extension in days} = \frac{\text{Total amount of additional pounds}}{\text{3,000 pounds}}$$

Contract time will not be decreased due to a decrease in quantities.

Designated contract date will be extended as appropriate to accommodate an increase in quantities.

3.5.7. The Contractor shall not work on Saturdays, Sundays or legal holidays observed by the state unless specifically approved in writing by the Maintenance Chief. Requests must be made in writing and received by the Department's Project Manager by noon of the preceding Wednesday.

3.5.8. The sequence of operations to meet the designated contract date shall be at the Contractor's discretion. The Maintenance Chief will be given a minimum of 48 hours notice prior to commencement of any work.

3.5.9. In the event the Contractor does not complete the work by the designated contract date or within the designated working days, liquidated damages will be assessed in the form of a daily charge for each day, except Saturdays, Sundays and legal holidays, which exceed the designated contract date or working days. The daily charge will be determined from the schedule in Standard Specification Article 108.08 under calendar day. This charge will be deducted from money due the Contractor.

3.6. MATERIALS

All material used must meet or exceed the following specifications.

The Montana Department of Transportation, Materials Lab, maintains a Qualified Product List (QPL) for Crack Filler. If the crack filler has been qualified for the QPL, the pre-testing requirements of this contract will defer to the random testing requirements of the QPL list. The Department reserves the right to sample materials at any time.

If the crack filler is not listed on the QPL then the sampling and pretesting procedures detailed herein will apply.

3.6.1. Sampling

An independent certified tester or another organization (both must be <u>approved by the Department)</u> must physically take the sample. The tester representing the Department must have free access to the material to be sampled. The tester must be afforded all reasonable facilities for sampling, which shall be conducted so as not to interfere unnecessarily with the operation of the works.

Submit a 30 lb. sample for all lots or batches of the sealer proposed for project use to the Helena Materials Bureau for testing at least 20 calendar days before its intended application. Contractor must provide a copy of the lot approval form from the Department's Materials Bureau at the preconstruction conference for the first lot that will be used on the project. Contractor must provide a copy of the lot approval form from the Department's Materials Bureau for all other lots prior to use on the project.

After the sample is taken, the sample shall be immediately freighted or delivered in person to the following address by the tester:

Department of Transportation
Materials Bureau
2701 Prospect Ave
Helena MT 59620

Each sample shall be delivered in the manufacturer's original container and accompanied by the following information. This information must be legible, firmly attached to or written on each sample container.

3.6.1.1. MAINTENANCE PROJECT SAMPLE
3.6.1.2. Name of manufacturer
3.6.1.3. Trade name of sealant
3.6.1.4. Date sample was taken
3.6.1.5. Lot or batch number[1] designation
[1] A batch or lot shall be considered as all finished material that was manufactured simultaneously or continuously as a unit between the time of compounding and the time of packaging or placing in shipping containers
3.6.1.6. Pouring temperature
3.6.1.7. Safe heating temperature
3.6.1.8. Quantity of material in lot or batch
3.6.1.9. Pallet numbers represented in the lot or batch
3.6.1.10. Full name and title of person taking sample

Upon arrival in Helena, each sample may be tested in the Department's Materials Bureau Laboratory.

The sampling and testing procedure detailed above does not constitute final acceptance of any material and should not be considered a waiver of the Department's right to test (and accept or refuse) each batch or lot. The Department will take random field samples at any time during the project. Each sample will represent approximately 44,000 lbs. of material. There will be a minimum of 1 sample per project.

3.7. BASIS OF PAYMENT FOR CRACK SEALING

Crack sealing will be paid for by the pound of material placed and accepted. This quantity will be paid for at the contract unit price and will be full compensation for all resources necessary to complete that item of work.

The quantities listed herein are estimates only and may increase or decrease as necessary.

Due to the duration of most maintenance projects, no partial payment progress estimates will be made. In those cases, only one final progress payment will be made. <u>However, if a project is scheduled to last longer than 3 months a progress estimate will be done quarterly or every 3 months.</u>

3.8. TRAFFIC CONTROL

3.8.1. Traffic Control

3.8.1.1. The Contractor will present, to the Maintenance Chief for approval, a traffic control plan and the sequence of operations. The traffic control must be in accordance with MUTCD Section 61-8-314, MCA and standard detail drawings 618-M1 and 618-M3.

3.8.1.2. Traffic control costs are to be included in the crack sealing unit price.

3.8.2. Sequence of Operations

The Contractor will schedule crack sealing/traffic control operations in a sequence to provide the least amount of inconvenience possible to the traveling public. One-way traffic will be permitted during daylight hours only. All traffic will be returned to two-way traffic at night. On Interstate projects overnight lane closures will not be permitted.

3.8.3. Basis of Payment for Traffic Control

Traffic control cost will be included in the unit price bid for crack sealing.

3.9. BASIS OF PAYMENT FOR MOBILIZATION

Mobilization shall be paid for on a lump sum basis. No adjustment to the contract lump sum price will be allowed during the execution of the contract.

3.10. ACCEPTANCE

3.10.1. Partial Acceptance. If the Contractor substantially completes a unit or portion of the project, such as a section of road or pavement, the Contractor may request the Maintenance Chief to make final inspection of that unit. If the Maintenance Chief finds that the unit has been completed in compliance with the contract that unit may be accepted as being completed and the Contractor may be relieved of further responsibility for that unit. Such partial acceptance shall not void or alter any of the terms of the contract.

3.10.2. Final Acceptance. When the Contractor provides proper notice of completion of the entire project, the Maintenance Chief will arrange to make a final inspection. Where all work is complete but deferment of final inspection is necessary due to causes not within the control of the Contractor, the Maintenance Chief will issue a suspend work order and no time charge shall accrue against the Contractor for such elapsed period. If the contract is found satisfactorily completed, the inspection shall constitute the final acceptance.

If the inspection discloses unsatisfactory work, the Maintenance Chief will give the Contractor the necessary instructions for correction and the Contractor shall immediately comply to remedy listed defects within 7 days of notice. When the Contractor has corrected the deficiencies, another inspection will be made and, provided the work has been satisfactorily corrected, the Maintenance Chief will then accept the project.

3.10.3. In the event of a discrepancy or grievance on the part of the Contractor or the Department, the affected party will make a written request for a hearing to the Purchasing Services Section Supervisor. This request must be made, in writing, no later than 30 days after the disagreement, questions or dispute has arisen.
Upon receipt of the written request, a hearing date will be scheduled at the earliest possible convenience of all affected parties. A hearing committee will consist of the Contractor and Department representatives to include the Maintenance Division Administrator, Administration Division Administrator and the Chief Operations Officer(s). As this is not intended to be an adversarial meeting, but a problem-solving one, it is recommended that no party be represented by legal counsel at the hearing. Any resolution decided on as a result of this hearing will be binding for all parties involved. Contractor must notify the Purchasing Services Section Supervisor a minimum of 5 working days prior to the meeting if their legal counsel will be attending the meeting. If Contractor is to be represented by legal counsel and the Department's legal counsel is not available for the initially scheduled meeting, then the meeting will be rescheduled.

3.11. PARTIAL PAYMENT

Partial payment for work completed may be made at the discretion of the Maintenance Chief. Partial payment can be made **only** on the pounds of material unit cost for cracks sealed and accepted. Payment will be made at the crack sealing unit bid price. No partial payment will be made on any "lump sum" bid items. Partial payment may be considered only in the following circumstances:

3.11.1. The contract has more than 1 location for crack sealing. Partial payment may be made on a location-by-location basis.

3.11.2. Weather conditions necessitated that the work cease until a later date.

3.12. PENALTIES

If random field samples fail to meet 1 or more of the specifications stated herein, the following penalties would apply.

3.12.1. The crack-sealing unit bid price will be reduced by 5% for each property that falls outside of the specification by 5% to 10%. [Bond Test – if the product passes only 2 cycles]

3.12.2. The crack-sealing unit bid price will be reduced by 10% for each property that falls outside of the specification by 11% to 25%. [Bond Test – if the product passes only 1 cycle]

3.12.3. The crack-sealing unit bid price will be reduced by 50% for each property that falls outside of the specification by more than 25%. [Bond Test – if the product passes 0 cycles]

If a test results in a price reduction, the Contractor may make a written request for an independent laboratory to test the property that failed. The Department must receive the written request within 30 calendar days of the notification of price reduction. The Contractor and the Department will agree upon the choice of the independent laboratory. The independent laboratory results are binding on both parties for acceptance and payment of the material in question. The Contractor will pay the cost of the duplicate testing, on a per lot basis, if the price reduction is confirmed or increased. The Department will pay the cost of the duplicate testing, on a per lot basis, if the price reduction is reduced.

3.13. AWARD

Award will be made to one (1) Contractor whose valid bid meets all terms, conditions, specifications and dates as stated herein.

The prospective Contractor may take "exception" to bid terms, conditions, specifications and dates listed herein or the prospective Contractor may submit an "alternate" proposal. However, the Department reserves the right to disqualify any and all bids submitted which include either "exceptions" or "alternates." Additionally, the Department reserves the right to reject any and all bids if deemed to be in the Department's best interest.

The Department also reserves the right, due to reduced funding, due to failure of the successful contract to secure an approved air quality permit, or due to weather/seasonal consideration, to cancel all or any single or multiple project sites as referenced herein, if deemed in the Department's best interest.

CONTRACT INFORMATION

PROJECT SITE: BLUE MOON TO COLUMBIA HEIGHTS
ROUTE: US-2
MILEPOST: 134.0 TO 138.1

SPECIFICATIONS FOR WORK:

Provide all labor, materials, equipment, traffic control and incidentals necessary to crack seal 4.1 miles of road on route US-2. Average roadway width is 80 - 90 feet. Cracks shall be routed and sealed per the special provisions.

CONTACT PERSON: RICHARD SIPE PHONE NUMBER: (406) 751-2012

DESIGNATED CONTRACT DATE:

WORK IS REQUIRED TO BE COMPLETED ON OR BEFORE: JUNE 5, 2010

QUANTITY SHEET

Item & Description	Unit of Measure	Quantity	Unit Price	Total Price
Mobilization	Per L.S.	1.0	$ _____	$ _____
Crack Sealing	Per Pound	26,465.0	$ _____	$ _____
			GRAND TOTAL:	$ _____

The pounds listed on this quantity sheet are an estimated amount.

NOTE: Contractors must extend and total their bid. All measurements are in English units.

CONDITIONS OF BID DISQUALIFICATION:

Failure on the part of the Contractor to display Invitation for Bid #HWY-309539-RP on the outside of the envelope containing a sealed bid will result in bid disqualification.

HAVE YOU REMEMBERED TO:

- Check our website for the latest addendum to the IFB
- Sign and return each addendum as required
- Properly identify return envelope
- Sign your bid on the front page
- Initial any bid changes you made
- Submit bid security
- List Contractor registration number
- Review and complete all requirements listed herein to ensure compliance

MDT attempts to provide accommodations for any known disability that may interfere with a person participating in any service, program or activity of the Department. Alternative accessible formats of this information will be provided upon request. For further information call Richele Parkhurst at 406-657-0274 Voice, 1-800 335-7592 TTY or TTY 406 444-7696.

PRECONSTRUCTION MEETING TOPICS

The following is list of suggested topics for the Preconstruction meeting with the Contractor. The Preconstruction meeting is a requirement part of the Crack Sealing Contract and must be held at least 5 days prior to the commencement of work:

- Designate Department and Contractor Project Managers for the project
- Chain of Command
- Authority of Department's Project Manager
- EEO and ADA Requirements
- Ensure all the Required Permits have been obtained by the Contractor
- Work Shifts and Schedules (Holidays and Saturdays)
- Start date
- Contract Specifications for Work and Special Provisions (overruns/underruns)
- Work Quality Issues
- Pounds of Material Measurement
- Unsatisfactory Work
- Designated Contract Date
- Material Testing/Certification/Sampling
- Backer Rod Requirements and Blotter Material
- Routing Requirements and Material Tracking
- Pounds of Crack Sealing Material Used
- RWIS Sites
- Temperature Limitations and Road Surface Requirements\
- Traffic Control Operations, Flagger certification
- Work Zones (Moving Work Zones)
- Stockpiling of Materials
- Melter Material Temperature
- Air Equipment CFM & PSI
- Waste Disposal
- Number of Working Days and Exceptions
- Dispute resolution
- Safety Meeting (Hard Hats, Vests Etc)
- Restrooms
- Contractor's Work Load