

FILED FOR RECORD: 9-26-1978 at 1:00 o'clock P. M

DULY RECORDED: 9-28-1978 at 9:00 o'clock A. M

INSTRUMENT NO. _____ GRACE BOSTICK, TYLER CO. CLK.
By Grace Bostick Deputy

TYLER COUNTY COMMISSIONER'S COURT

SPECIAL MEETING

SEPTEMBER 22, 1978

Vol 4 Pg 721

A Special Meeting of the Commissioner's Court, met on Friday September 22, 1978 at 10:00 A.M. All members being present. The meeting was opened with prayer by Commissioner Jordan.

A recommendation was made by the County Judge, to set a workshop for Tuesday Sept. 26, 1978 at 9:00 A.M. This will be on specifications for roads, subdivisions, and plats for Tyler County. Commissioner Maxie Riley to serve as Chairman.

A motion was made by Commissioner Riley and seconded by Commissioner Lowe to, place in Files the Report of the Highway Study Committee. All voted yes and none no. A letter of appreciation is being written to the members of the Tyler County Highway Study Commission, by the Tyler County Commissioners Court. See attached:

There being no further business, the meeting adjourned.

SIGNED: Allen Sturrock Allen Sturrock, County Judge

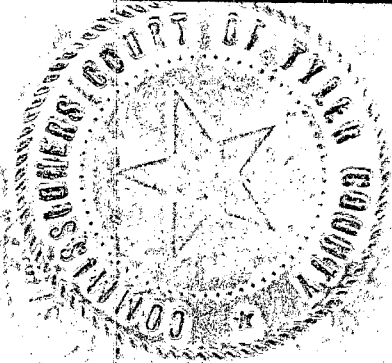
Maxie Riley Maxie Riley, Comm. Pct. #1

H.K. Lowe H.K. Lowe, Comm. Pct. #2

Leon Fowler Leon Fowler, Comm. Pct. #3

James R. Jordan James R. Jordan, Comm. Pct. #4

ATTEST: Grace Bostick Grace Bostick, County Clerk



Tyler County

WOODVILLE, TEXAS

September 23, 1978

ALLEN STURROCK
County Judge
Woodville, Texas 75979

Vol 4 Pg 722

Members of the Tyler County Highway
Study Commission
Tyler County Texas

Dear Friends :

We the undersigned wish to express our gratitude for the
"most complete" report of the Tyler County Highway Study
Committee:

We realize that this took much of your time and efforts
and want you to know how deeply it is appreciated by all
of us. It is such efforts as yours that makes Tyler County
what it is and a place to be proud of.

If there is any way that we can ever be of assistance to
you please do not hesitate to call us.

Sincerely,

/S/ Allen Sturrock, County Judge
Allen Sturrock, County Judge

/S/ Maxie Riley, Comm. Pct. #1
Maxie Riley,
Commissioner, Pct. 1

/S/ Kenneth Lowe, Comm. Pct. #2
Kenneth Lowe,
Commissioner, Pct. 2

/S/ Leon Fowler, Comm. Pct. #3
Leon Fowler,
Commissioner, Pct 3

/S/ James Robert Jordan, Comm. Pct. #4
James Robert Jordan
Commissioner, Pct. 4

BID DOCUMENTS

DESCRIPTION OF PROJECT

TYLER COUNTY C.D. ROAD PAVING PROJECT - 1978
ASPHALT CEMENT, CUT-BACK ASPHALT AND
AGGREGATE SURFACE TREATMENT

LOCATION

TYLER COUNTY, TEXAS

HUD GRANT NO.

B-77-DN-48-0060

PREPARED BY

TEMPLE ASSOCIATES, INC.-ENGINEERING DIVISION

700 NORTH TEMPLE DRIVE

DIBOLL, TEXAS 75941

713/829-4711

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ADVERTISEMENT FOR BIDS

Project No. CDBG #B-77-DN-48-0060

Tyler County, Texas
(Owner)

Separate sealed bids for Asphalt Cement (AC-S), Cut-Back Asphalt (MC-800 and MC-30) and Aggregate Surface Treatment (301 Class A, Type A, Grade 4 & 5) for paving Beaumont Hill Road located off FM 1013, Tyler County will be received by the Honorable Allen Sturrock, County Judge at the office of the County Judge located in the Tyler County Courthouse until 10:00 o'clock A.M., D.S.T. on August ~~31~~, 1978, and then at said office publicly opened and read aloud.

The Information for Bidders, Form of Bid, Form of Contract, Specifications, and other contract documents may be examined at the following: Office of the Honorable Allen Sturrock, County Judge, Tyler County Courthouse, 100 Courthouse, Woodville, Texas 75979.

Copies may be obtained at the office of County Judge located at Tyler County Courthouse, 100 Courthouse, Woodville, Texas, 75979.

The owner reserves the right to waive any informalities or to reject any or all bids.

No bidder may withdraw his bid within 30 days after the actual date of the opening thereof.

8-11-78
(Date)


Allen Sturrock, County Judge

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

INFORMATION FOR BIDDERS

1. Receipt and Opening of Bids

The County of Tyler (herein called the "Owner"), invites bids on the form attached hereto, all blanks of which must be appropriately filled in. Bids will be received by the Owner at the office of the County Judge until 10:00 o'clock A.M./D.S.T. August 31, 1978, and then at said office publicly opened and read aloud. The envelopes containing the bids must be sealed, addressed to Allen Sturrock, County Judge at 100 Courthouse, Woodville, Texas 75979, and designated as Bid for Asphalt Cement, Cut-Back Asphalt and Aggregate Surface Treatment.

The Owner may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids. Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. No bidder may withdraw a bid within 30 days after the actual date of the opening thereof.

2. Preparation of Bid

Each bid must be submitted on the prescribed form. Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, his address, and the name of the project for which the bid is submitted. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in the bid form.

3. Telegraphic Modification

Any bidder may modify his bid by telegraphic communication at any time prior to the scheduled closing time for receipt of bids, provided such telegraphic communication is received by the Owner prior to the closing time, and, provided further, the Owner is satisfied that a written confirmation of the telegraphic modification over the signature of the bidder was mailed prior to the closing time. The telegraphic communication should not reveal the bid price but should provide the addition or subtraction or other modification so that the final prices or terms will not be known by the Owner until the sealed bid is opened. If written confirmation is not received within two days from the closing time, no consideration will be given to the telegraphic modification.

4. Method of Bidding

The Owner invites the following bid(s):

On a unit price basis as shown on Schedule One (1).

5. Qualifications of Bidder

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

6. Time of Completion and Liquidated Damages

Bidder must agree to commence work on or before a date to be specified in a written "Notice to Proceed" of the Owner and to fully complete the project within 30 consecutive calendar days thereafter. Bidder must agree also to pay as liquidated damages, the sum of \$50.00 for each consecutive calendar day thereafter as hereinafter provided in the General Conditions.

7. Addenda and Interpretations

No interpretation of the meaning of the plans, specifications or other pre-bid documents will be made to any bidder orally.

Every request for such interpretation should be in writing addressed to Bo Jordan at Tyler County Courthouse, 100 Courthouse, Woodville, Tx. 75979 and to be given consideration must be received at least five days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be mailed by certified mail with return receipt requested to all prospective bidders (at the respective addresses furnished for such purposes), not later than three days prior to the date fixed for the opening of bids. Failure to any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents.

8. Laws and Regulations

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

9. Method of Award - Lowest Qualified Bidder

If at the time this contract is to be awarded, the lowest base bid submitted by a responsible bidder does not exceed the amount of funds then estimated by the Owner as available to finance the contract, the contract will be awarded on the base bid only. If such bid exceeds such amount, the Owner may reject all bids or may award the contract on the base bid combined with such deductible alternates applied in numerical order in which they are listed in the Form of Bid, as produces a net amount which is within the available funds.

10. Obligation of Bidder

At the time of the opening of bids each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the plans and contract documents (including all addenda). The failure or omission of any bidder to examine any form, instrument or document shall in no way relieve any bidder from any obligation in respect of his bid.

SCHEDULE ONE

BID FOR UNIT PRICE CONTRACTS

Place _____

Date _____

Project No. _____

Proposal of _____ (hereinafter called "Bidder")* a corporation, organized and existing under the laws of the State of _____*a partnership, or an individual doing business as _____

To the _____ (hereinafter called "Owner")

Gentlemen:

The Bidder, in compliance with your invitation for bids for materials of a _____,

having examined the plans and specifications with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the provision of the proposed materials including the availability of the materials, hereby proposes to furnish all labor, materials, and supplies needed to provide said materials in accordance with the contract documents, within the time set forth therein, and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the contract documents, of which this proposal is a part.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in written "Notice to Proceed" of the Owner and to fully complete the project within 30 consecutive calendar days thereafter as stipulated in the specifications.

Bidder acknowledges receipt of the following addendum:

* Insert corporation, partnership or individual as applicable.

Bidder agrees to provide all the materials for work described in the specifications and shown on the plans, for the following unit prices:

<u>Item Number</u>	<u>Estimated Quality</u>	<u>Description</u>	<u>Unit Price (Each)</u>	<u>Total</u>
*1	<u>23,000 gal.</u>	Asphalt Cement AC-5	_____	_____
*2	<u>4500 gal.</u>	Cut-back Asphalt MC-30	_____	_____
*3	<u>44,600 gal.</u>	Cut-back Asphalt MC-800	_____	_____
*4	<u>410 C.Y.</u>	Aggregate surface treatment Item 301, Class A, Type A, Grade 4	_____	_____
*5	<u>405 C.Y.</u>	Aggregate surface treatment Item 301 Class A, Type A Grade 5	_____	_____

*Note: Each item is to be considered a separate bid item.

(Amounts are to be shown in both words and figures. In case of discrepancy, the amount shown in words will govern.)

The above unit prices shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

The bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 calendar days after the scheduled closing time for receiving bids.

Upon receipt of written notice of the acceptance of this bid, bidder will execute the formal contract attached within 10 days.

Respectfully submitted:

By _____

(Title)

(SEAL - if bid is by a corporation)

(Business Address and Zip Code)

CONTRACT

THIS AGREEMENT, made this _____ day of _____, 1977,

by and between _____, herein called
(Corporate Name of Owner)

"Owner," acting herein through its _____,
(Title of Authorized Official)

and _____
STRIKE OUT (a corporation) (a partnership)
INAPPLICABLE (an individual doing business as _____)
TERMS _____)

of _____, County of _____, and State of _____,

hereinafter called "Contractor."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the OWNER, the CONTRACTOR hereby agrees with the OWNER to commence and complete the construction described as follows:

Provision of reinforced concrete culverts and metal culverts

hereinafter called the project, for the sum of _____ Dollars (\$) and all extra work in connection therewith, under the terms as stated in the General and Special Conditions of the Contract; and at his (its or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Proposal, the General Conditions, Supplemental General Conditions and Special Conditions of the Contract, the plans, which include all maps, plats, blue prints, and other drawings and printed or written explanatory matter thereof, the specifications and contract documents therefor as prepared by _____ Tyler County _____, herein entitled the Owner, and as enumerated in Paragraph 1 of the Supplemental General Conditions, all of which are made a part hereof and collectively evidence and constitute the contract.

The Contractor hereby agrees to commence work under this contract on or before a date to be specified in a written "Notice to Proceed" of the Owner and to fully complete the project within 30 consecutive calendar days thereafter. The Contractor further agrees to pay, as liquidated damages, the sum of \$ 50.00 for each consecutive calendar day thereafter as hereinafter provided in Paragraph 19 of the General Conditions.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the contract, subject to additions and deductions, as provided in the General Conditions of the Contract, and to make payments on account thereof as provided in "Payments to Contractor," of the General Conditions

IN WITNESS WHEREOF, the parties to these presents have executed this contract in six (6) counterparts, each of which shall be deemed an original in the year and day first above mentioned.

(Seal)
ATTEST:

(Secretary)

(Witness)

(Seal)

(Secretary)

(Witness)

(Owner)

By _____

(Title)

(Contractor)

By _____

(Title)

(Address and Zip Code)

GENERAL CONDITIONS

1. Contract and Contract Documents

The materials to be provided pursuant to this contract will be financed with assistance from the Department of Housing and Urban Development and is subject to all applicable Federal laws and regulations.

The Specifications and Addenda, hereinafter enumerated in Paragraph 1 of the Supplemental General Conditions shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light on the interpretation of the provisions to which they refer.

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- | | |
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| 10. Extras | 23. Provisions Required by Law Deemed Inserted |
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2. Contractor's Title to Materials

No materials or supplies for the work shall be purchased by the Contractor or by any Sub-contractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies used by him in the work, free from all liens, claims or encumbrances.

3. Inspection and Testing of Materials

- (a) All materials and equipment used in the provision of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner. The Owner will pay for all laboratory inspection service direct, and not as a part of the contract.
- (b) Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

4. "Or Equal" Clause

Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed, is, in the opinion of the Owner, of equal substance and function. It shall not be purchased or installed by the contractor without the Owner's written approval.

5. Patents

- (a) The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents.
- (b) License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized licensee, direct by the Owner and not by or through the Contractor.

(c) If the Contractor uses any design, device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood, that without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

6. Surveys, Permits, and Regulations

Unless otherwise expressly provided for in the Specifications, the Owner will furnish to the Contractor all surveys necessary for the execution of the work.

The Contractor shall procure and pay all permits, licenses and approvals necessary for the execution of his contract.

The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

7. Inspection

The authorized representatives and agents of the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

8. Reports, Records, and Data

The Contractor shall submit to the Owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the Owner may request concerning work performed or to be performed under this contract.

9. Changes in Work

No changes in the work covered by the approved Contract Documents shall be made without having prior written approval of the Owner. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

- (a) Unit bid prices previously approved.
- (b) An agreed lump sum.
- (c) The actual cost of:
 1. Labor, including foremen;
 2. Materials entering permanently into the work;
 3. The ownership or rental cost of construction plant and equipment during the time of use on the extra work;
 4. Power and consumable supplies for the operation of power equipment;
 5. Insurance;
 6. Social Security and old age and unemployment contributions.To the cost under (c) there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

10. Extras

Without invalidating the contract, the Owner may order extra work or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the Owner, and the price is stated in such order.

11. Time for Completion and Liquidated Damages

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the "Notice to Proceed."

The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the Owner the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the contract for completing the work.

The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates.

It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner; Provided, further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

- (a) To any preference, priority or allocation order duly issued by the Government;
- (b) To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and
- (c) To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article:

Provided, further, that the Contractor shall, within ten (10) days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the contract, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

12. Correction of Work

All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the owner who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet his approval they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at his own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the Owner, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Owner shall be equitable.

13. Claims for Extra Cost

No claim for extra work or cost shall be allowed unless the same was done in pursuance of a written order approved by the Owner, and the claim presented with the first estimate after the changed or extra work is done. When work is performed under the terms of subparagraph changes of work (c) of the General Conditions, the Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the Owner, give the Owner access to accounts relating thereto.

14. Right of the Owner to Terminate Contract

In the event that any of the provisions of this contract are violated by the Contractor, or by any of his subcontractors, the Owner may serve written notice upon the Contractor of its intention to terminate the contract, such notices to contain the reasons for such intention to terminate the contract, and unless within ten (10) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement of correction be made, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Owner shall immediately service notice thereof upon the Contractor. (The Surety, there being one, shall have the right to take over and perform the contract); Provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the Owner may take over the work and prosecute the same to completion by contract or by force account for the account and at the expense of the Contractor and the Contractor and his Surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor.

15. Payments to Contractor

Payment to the Contractor shall be in installments based on an approved percentage of materials delivered. Said approval shall be based on actual inspection and count by the precinct commissioner in charge in a written format.

16. Acceptance of Final Payment Constitutes Release

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this contract or the Performance and Payment Bond (in those cases where such situation exists).

17. Insurance

The Contractor shall not commence work under this contract until he has obtained all the insurance required by law.

18. Assignments

The Contractor shall not assign the whole or any part of this contract or any moneys due or to become due hereunder without written consent of the Owner. In case the Contractor assigns all or any part of any moneys due or to become due under this contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations of services rendered or materials supplied for the performance of the work called for in this contract.

19. Storage of Materials

The Contractor shall coordinate his operations with those of the Owners. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work.

20. General Guaranty

Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the Owner, shall constitute an acceptance of materials provided in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the materials and pay for any damage to other materials resulting therefrom, which shall appear within a period of one year from the date of final acceptance of the work unless a longer period is specified. The Owner will give notice of observed defects with reasonable promptness.

21. Conflicting Conditions

Any provisions in any of the Contract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of such conflict or inconsistency.

22. Notice and Service Thereof

Any notice to any Contractor from the Owner relative to any part of this contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, by certified or registered mail, to the said Contractor at his last given address, or delivered in person to the said Contractor or his authorized representative on the work.

23. Provisions Required by Law Deemed Inserted.

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

24. Equal Employment Opportunity

During the performance of this contract the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, sex, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color, or national origin.

25. Interest of Member of or Delegate to Congress

No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

26. Other Prohibited Interests

No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the Owner who is authorized in such capacity and on behalf

of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, or any other contract pertaining to the project.

**ATTACHMENT TO FEDERAL LABOR STANDARDS PROVISIONS
SO-CALLED "ANTI-KICKBACK ACT" AND REGULATIONS PROMULGATED
PURSUANT THERETO BY THE SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR**

TITLE 18, U.S.C., section 874

(Replaces section 1 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C.,
sec. 276b) pursuant to the Act of June 25, 1948, 62 Stat. 862)

KICKBACKS FROM PUBLIC WORKS EMPLOYEES .

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

**SECTION 2 OF THE ACT OF JUNE 13, 1934, AS AMENDED (48 Stat. 948, 62 Stat. 862,
63 Stat. 108, 72 Stat. 967, 40 U.S.C., sec. 276c)**

The Secretary of Labor shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States, including a provision that each contractor and subcontractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding week. Section 1001 of Title 18 (United States Code) shall apply to such statements.

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Pursuant to the aforesaid Anti-Kickback Act, the Secretary of Labor, United States Department of Labor, has promulgated the regulations hereinafter set forth, which regulations are found in Title 29, Subtitle A, Code of Federal Regulations, Part 3. The term "this part," as used in the regulations hereinafter set forth, refers to Part 3 last above mentioned. Said regulations are as follows:

TITLE 29 -- LABOR

Subtitle A -- Office of the Secretary of Labor

**PART 3--CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN
WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES**

Section 3.1 Purpose and scope.

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with Federally-assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14

(e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

Section 3.2 Definitions.

As used in the regulations in this part:

(a) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part.

(b) The terms "construction," "prosecution," "completion," or "repair" mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms "public building" or "public work" include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term "building or work financed in whole or in part by loans or grants from the United States" includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term does not include building or work for which Federal assistance is limited solely to loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is "employed" and receiving "wages," regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term "any affiliated person" includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary or otherwise, and an officer or agent of such corporation.

(g) The term "Federal agency" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

Section 3.3 Weekly statement with respect to payment of wages.

(a) As used in this section, the term "employee" shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by 29 CFR Parts 3 and 5 during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on form WH 318, "Statement of Compliance", or on an identical form on the back of WH 317, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Sample copies of WH 317 and WH 318 may be obtained from the Government contracting or sponsoring agency, and copies of these forms may be purchased at the Government Printing Office.

(c) The requirements of this section shall not apply to any contract of \$2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[29 F.R. 95, Jan. 4, 1964, as amended at 33 F.R. 10186, July 17, 1968]

Section 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under § 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

Section 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: *Provided, however,* That the following standards are met: (1) The deduction is not otherwise prohibited by law; (2) it is either: (i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; (3) no profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and (4) the deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: *Provided, however,* That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and Part 531 of this title. When such a deduction is made the additional records required under § 516.27 (a) of this title shall be kept.

Section 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under § 3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

Section 3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under § 3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

- (a) The application shall be in writing and shall be addressed to the Secretary of Labor.
- (b) The application shall identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions only on specific, identified contracts, except upon a showing of exceptional circumstances.
- (c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of § 3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.
- (d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.
- (e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

Section 3.8 Action by the Secretary of Labor upon applications.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of § 3.6; and shall notify the applicant in writing of his decision.

Section 3.9 Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under § 3.6 are prohibited.

Section 3.10 Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

Section 3.11 Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see § 5.5 (a) of this subtitle.

TECHNICAL SPECIFICATIONS

Bid Item #1

Asphalt Cement-AC-5

Material furnished shall be in accordance with Texas Highway Department, 1972 standard specifications for construction of Highways, Streets and Bridges; Item 300, "Asphalts, Oils and Emulsions", paragraph 300.2 (2), page 204.

Bid Item #2

Cut-Back Asphalt-MC-30

Material furnished shall be in accordance with Texas Highway Department, 1972 standard specifications for construction of Highways, Streets and Bridges; Item 300, "Asphalts, Oils and Emulsions", paragraph 300.2 (4), page 205.

Bid Item #3

Cut-Back Asphalt-MC-800

Material furnished shall be in accordance with Texas Highway Department, 1972 standard specifications for construction of Highways, Streets and Bridges; Item 300, "Asphalts, Oils and Emulsions", paragraph 300.2 (4), page 205.

Bid Item #4

Aggregate Surface Treatment - Class A, Type A, Grade 4

Material furnished shall be in accordance with Texas Highway Department, 1972 standard specifications for construction of Highways, Streets and Bridges; Item 301, "Aggregates for Surface Treatments (Class A)", paragraphs 301.1 through 301.5, pages 211 and 212.

Bid Item #5

Aggregate Surface Treatment - Class A, Type A, Grade 5

Material furnished shall be in accordance with Texas Highway Department, 1972 standard specifications for construction of Highways, Streets and Bridges; Item 301, "Aggregates for Surface Treatments (Class A)", paragraphs 301.1 through 301.5, pages 211 and 212.