FI84 9/96
Division of Finance

CONTRACT # 049065

# STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following Agency of the State of Utah:

Dept. of Transportation (Agency Name) | 810 (Agency Code) | Proc./Region 3 & Price (Division) referred to as STATE and the following:

CONTRACTOR Nielson Construction (Name)

P O Box 620 (Address)

Huntington (City) | UT (State) | 84528-0620 (Zip Code)

Wayne L Nielson (Contact Person) | (435) 687-2494 (Phone Number)

870384698 (Federal ID#) | 50751G (Vendor Number) | 75054257359 (Commodity Code(s))

LEGAL STATUS OF CONTRACTOR
- ____ Sole Proprietor
- ____ Non-Profit Corporation
- X For-Profit Corporation
- ____ Partnership
- ____ Government Agency

2. CONTRACT TYPE AND PURPOSE:

This is a requirements contract to provide the State with deslicking grit. A performance bond in the amount of $20,047.50 is required.

3. PROCUREMENT: This contract is entered into as a result of the Procurement process on bid RF4047, Requisition # 810 46000000047, FY 2004.

4. CONTRACT PERIOD: Effective date 10/15/03. Termination date 10/15/06, unless terminated early or extended in accordance with the terms of this contract. Renewal Options (if any) None.

5. CONTRACT COSTS: CONTRACTOR will be paid a maximum of $999,999,999.99 for costs authorized by this contract

6. ATTACHMENT A: Division of Purchasing's Standard Terms and Conditions.
ATTACHMENT B: Scope of Work.
ATTACHMENT C: Itemized Price List.
ATTACHMENT D: Special Terms and Conditions.
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.

7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
A. All other governmental laws, regulations or actions applicable to the goods and/or services authorized by this Contract.
B. Utah State Procurement Code, Procurement Rules and Contractor's responses to Bid # RF4047 dated 09/26/03.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

**CONTRACTOR**
SEE ATTACHED
Contractor's Signature
WAYNE L NIELSON
Contractor's Name
PRESIDENT
Title

**STATE OF UTAH**
David K. Miles, Operations Engineer
Director, Division of Purchasing
Director, Division of Finance

| Debra Boulton | (801) 965-4070 | (801) 965-4073 | dboulton@utah.gov |
|---|---|---|---|
| Agency Contact Person | Phone Number | Fax Number | Email Address |

ENT'D MAR 0 6 2005

039065

MAIL TO:

STATE OF UTAH
DIVISION OF PURCHASING
3150 STATE OFFICE BUILDING, CAPITOL HILL
P.O. BOX 141061
SALT LAKE CITY, UTAH 84114-1061
TELEPHONE (801) 538-3026
http://purchasing.utah.gov

# Invitation to Bid

Solicitation Number: RF4047

Due Date: 09/30/03 @ 2:00 P.M.

Date Sent: September 15, 2003

Goods and services to be DESLICKING GRIT

**Please complete**

| | | | |
|---|---|---|---|
| Company Name: Nielson Construction | | Federal Tax Identification Number: 87-0384698 | |
| Ordering Address: 825 North Loop Road | City: Huntington | State: UT | Zip Code: 84528 |
| Remittance Address (if different from ordering address): P.O. Box 620 | City: Huntington | State: UT | Zip Code: 84528 |
| Type: XX Corporation ☐ Partnership ☐ Proprietorship ☐ Government | Company Contact Person: Guy Black | | |
| Telephone Number (include area code): (435) 687-2494 | Fax Number (include area code): (435) 687-9721 | | |
| Company's Internet Web Address: nielsonconstruction.com | Email Address: nielsons@etv.net | | |
| Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered) | Days Required for Delivery After Receipt of Order (see attached for any required minimums) | | |

The following documents are included in this solicitation: Solicitation forms, instructions and general provisions, and specifications. Please review all documents carefully before completing.

The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes X No_____. If no, enter where produced, etc._____

| | |
|---|---|
| Offeror's Authorized Representative's Signature: Wayne L. Nielson | Date: 9-26-03 |
| Type or Print Name: Wayne L. Nielson | Position or Title: President |

# ATTACHMENT A: STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.

2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.

4. **RECORDS ADMINISTRATION:** The CONTRACTOR shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the CONTRACTOR for costs authorized by this contract. These records shall be retained by the CONTRACTOR for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The CONTRACTOR agrees to allow STATE and Federal auditors, and STATE Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

5. **CONFLICT OF INTEREST:** CONTRACTOR represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.

6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The CONTRACTOR shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the STATE to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the CONTRACTOR by the STATE. The CONTRACTOR shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE shall not be deemed to be employees or agents of the CONTRACTOR.

7. **INDEMNITY CLAUSE:** The CONTRACTOR agrees to indemnify, save harmless, and release the STATE OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the CONTRACTOR'S officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.

8. **EQUAL OPPORTUNITY CLAUSE:** The CONTRACTOR agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the CONTRACTOR agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

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

10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the parties hereto, and attached to the original signed copy of the contract.

11. **DEBARMENT:** The CONTRACTOR certifies 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.

12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

13. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.

14. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

15. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, as to distribution of copies, and Contractor gives the STATE express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

(Revision date: Apr 24, 2002)

**SECTION 02724P**

**DESLICKING GRIT**
**Type I and II**

# PART 1 GENERAL

## 1.1 SECTION INCLUDES

A. Supply and deliver abrasive material Type I and II for use as deslicking grit.

## 1.2 REFERENCES

A. AASHTO T 11: Materials Finer than 75 $\mu$m (no. 200) Sieve in Mineral Aggregates by Washing.

B. AASHTO T 19: Unit Weight and Voids in Aggregate.

C. AASHTO T 27: Sieve Analysis of Fine and Coarse Aggregates.

D. AASHTO T 89: Determining the Liquid Limit of Soils.

E. AASHTO T 90: Determining the Plastic Limit and Plasticity Index of Soils.

F. AASHTO T 255: Total Moisture Content of Aggregate by Drying

G. UDOT 9-938: Sand Equivalency Test

## 1.3 SUBMITTALS

A. Ten days before delivery begins, submit a written report on the following:
   1. Aggregate suitability.
   2. Name of supplier and source.
   3. Gradation including single values for each sieve size based on the dry weight of the aggregate.

B. For each shipment, supply bill of lading showing:
   1. Type and grade of material
   2. Destination
   3. Consignee's name
   4. Date of Shipment
   5. Truck identification
   6. Net weight in inch-pound units
   7. Bill of lading number
   8. Manufacturer

## 1.4 QUALITY ASSURANCE

A. Remove defective products and replace with acceptable products at no additional cost to the DEPARTMENT.

## 1.5 ACCEPTANCE

A. Department takes random sample from delivered stockpiles.

B. Acceptance is based on test results.
   1. Conduct one random moisture test within each stockpile after delivery.

C. Price Adjustments – Deleterious Substances
   1. Pay factors for deleterious substance when tested are indicated in Table 1.
   2. This applies only if Department does not order correction or removal of any or all of the material represented by the tests.

**Table 1**

| Deleterious Substances | | |
|---|---|---|
| **Material** | **Max. Percent (by weight)** | **Pay Factor** |
| Other Substances | Greater than 2.0 | 0.50 |

D. Reduce pay quantity by correcting for moisture content using the following formula:

Pay Weight = $\underline{W-(W*M)}$

W= Weight of material delivered determined from weight tickets.
M= Percent moisture determined from samples taken after delivery.

# PART 2 PRODUCTS

## 2.1 AGGREGATES

A. Deslicking grit meets properties listed in Table 2.

**Table 2**

| Deslicking Grit Properties | | |
|---|---|---|
| Dry Rodded Unit Weight | Not less than 40 lb/ft$^3$ | AASHTO T 19 |
| Dry Rodded Unit Weight | Not greater than 125 lb/ft$^3$ | AASHTO T 19 |
| Material Passing No. 40 Sieve | Non plastic | AASHTO T 90/T 89 |
| Moisture Content | Less than 4% by weight | AASHTO T 255 |
| Dry Weight Values | Within bands shown in Table 3 | |
| Deleterious Materials | Less than 2% by weight | Visual Inspection |
| Gradation Limits | Table 3 | AASHTO T 11<br>AASHTO T 27 |

**Table 3**

| Sieve Size | Dry Rodded Unit Weight | | | |
|---|---|---|---|---|
| | **40-60 lb/ft$^3$** | **60-80 lb/ft$^3$** | **80-100 lb/ft$^3$** | **100-125 lb/ft$^3$** |
| **½"** | 100 | 100 | 100 | 100 |
| **3/8"** | 85-100 | 90-100 | 100 | 100 |
| **1/4"** | ------ | ------ | 80-100 | 95-100 |
| **#4** | 60-100 | 60-100 | 45-100 | 45-100 |
| **#8** | 15-75 | 15-75 | 30-80 | 30-80 |
| **#200** | 0-10 | 1-10 | 0-15 | 0-15 |

B. Sand equivalency is the only variation between types I and II.

**Table 4**

| Grit Type | Sand Equivalency |
|---|---|
| Type I | 80 or greater |
| Type II | 60 or greater |

## 2.2 SOURCE QUALITY CONTROL

A. Deslicking Grit: Comply with AASHTO T 27.
   1. Select samples randomly.
   2. Determine the suitability of the aggregate source.
   3. Document the following.
      a. Date of test analysis.
      b. Sieve Analysis.
      c. Organic impurities.

B. If tests indicate materials do not meet specified requirements, change material source and retest at no additional cost to DEPARTMENT.

## PART 3 EXECUTION

### 3.1 DELIVERY

A. Delivery: Deliver to locations listed on the bid schedule between 8:00 AM and 4:00 PM, Monday through Thursday. Notify station supervisor twenty-four hours prior to delivery. Unload material where directed by DEPARTMENT.

1. Delivery Method One: Deliver using end dump trucks only. No Trailers.
2. Delivery Method Two: Deliver using end dump trucks, end dump trucks with pups, or end dump trailers.
3. Delivery Method Three: Deliver using end dumps, end dumps with pups, end dump trailers, side dumps, or belly dumps.
4. Delivery Method Four: Load state trucks F.O.B. at supplier's production facility, stockpile, railhead, or other designated location. Supplier specifies point of delivery in writing if other than normal place of business.

B. Stockpiles: The method for stockpiling deslicking grit is specified for each station. The method will be one of the following:

1. Method 1: Stockpile by butting loads - Build stockpiles at designated locations. Supplier uses end dumps, end dumps and pups, or belly dumps to haul material. Butt end dump loads one against the other in such a manner as to occupy as small a total stockpile area as possible. If the supplier elects to use belly dumps or pups, he supplies equipment to keep the stockpile pushed up to cover an area no larger than a stockpile area produced by an end dump. If DEPARTMENT is not satisfied with the stockpiling, supplier reshapes the stockpile to an acceptable configuration. If UDOT personnel reshape the stockpile, the cost of reshaping is deducted from the contract.
2. Method 2: Stockpile by supplier furnished loader - Build stockpiles at designated locations. Supplier uses end dumps, end dumps and pups, or belly dumps. Supplier places each load and load is "bucked up" using a supplier-furnished loader and operator. Stockpiles occupy as little space as possible and are bucked up to a uniform 10-foot height. If DEPARTMENT is not satisfied with the stockpiling, supplier reshapes the stockpile to an acceptable configuration. If UDOT personnel reshape stockpile, reshaping cost is deducted from the contract.
3. Method 3: Stockpile by state forces shaping pile - Build stockpile at designated locations. Supplier uses end dumps, end dumps and pups, or belly dumps. State forces shape stockpile at no cost to the supplier.

END OF SECTION

**Initial Publication - August 14, 2003**
**Revised Department testing and stockpiling - September 2, 2003**

## ATTACHMENT C: ITEMIZED PRICE LIST

| DESCRIPTION | DELIVER TO | METHOD | UNIT PRICE |
|---|---|---|---|
| Deslicking Grit | SR 6 MP 200 | 1<br>End dumps only | $ 12.85/cu yd |
| Deslicking Grit | Station 4432<br>225 East Main<br>Green River | 3 | $ 14.50/cu yd |
| Deslicking Grit | Station 4433<br>SR 10 MP 48.4<br>Huntington | 3 | $ 11.85/cu yd |
| Deslicking Grit | Station 4433<br>SR 10 MP 33 | 3 | $ 11.50/cu yd |
| Deslicking Grit | Station 4434<br>SR 6 MP 248<br>Wellington | 3 | $ 12.25/cu yd |
| Deslicking Grit | Station 4434<br>SR 10 MP 61<br>Hiawatha | 3 | $ 11.50/cu yd |
| Deslicking Grit | Station 4434<br>SR 10 MP 68<br>Price | 3 | $ 12.50/cu yd |
| Deslicking Grit | Station 4434<br>SR 6 MP 179<br>Woodside | 3 | $ 13.95/cu yd |
| Deslicking Grit | Station 4435<br>SR 6 MP 217.2<br>Colton | 3 | $ 12.45/cu yd |
| Deslicking Grit | Station 4435<br>SR 96 MP 6<br>Scofield | 3 | $ 13.35/cu yd |
| Deslicking Grit | Station 4435<br>SR 6 MP 231<br>Castle Gate | 3 | $ 12.50/cu yd |

## ATTACHMENT C: ITEMIZED PRICE LIST

| DESCRIPTION | DELIVER TO | METHOD | UNIT PRICE |
|---|---|---|---|
| Deslicking Grit | Station 4436<br>SR 10 MP 13<br>Emery | 3 | $ 11.00/cu yd |
| Deslicking Grit | Station 4436<br>I 70 MP 120.6<br>Secret Mesa | 3 | $ 13.35/cu yd |
| Deslicking Grit | Station 4436<br>I 70 MP 108.2<br>Salt Wash | 3 | $ 14.00/cu yd |
| ~~PICK UP @ PLANT~~ | | | ~~$ 8.95/cu yd~~ |

delete item R.F.

Company didn't bid item #59

## ATTACHMENT D: SPECIAL TERMS AND CONDITIONS

1. **CONTRACT PURCHASE**: This is a requirements contract to provide the State with Deslicking Grit, for a period of three (3) years.

2. **CONTRACT ACCEPTANCE**: At the time the bid form is signed by the offeror, the signature of that offeror will be used as a legally binding signature, if awarded the contract. When signed by the Division of Purchasing and General Services and a Utah Department of Transportation representative and assigned a contract number, this document will become a legally binding contract with the offeror for the contract period specified.

3. **CONTRACT INCLUSION**: The bid document, its terms and conditions as well as any counter offers which are accepted/acceptable to the State, shall be incorporated into and by reference become a part of this contract.

4. **QUANTITIES OR AMOUNT ESTIMATES**: This is a requirements contract with the State. Estimated contract amounts/quantities are for bidding purposes only and are not to be construed as a guarantee to purchase any amount.

5. **PRICING**: The Contractor agrees the freight costs of this material shall be included in the unit bid price.

6. **WAGES**: The Contractor shall be responsible for all applicable company wages in accordance with the federal, state, and local laws and ordinances.

7. **LICENSING**: The Contractor agrees to secure and maintain all necessary licenses, permits and bonds that may be required by the State or local authorities to perform said services.

8. **INVOICING**: THE CONTRACT NUMBER AND ORDER NUMBER MUST APPEAR ON ALL INVOICES, BILL OF LADING, PACKAGES AND ALL CORRESPONDENCE RELATING TO EACH ORDER AND DELIVERY.

   The Contractor shall submit invoices to the Utah Department of Transportation. The State will remit payment by mail. The State reserves the right to adjust incorrect invoices.

9. **NON-ASSIGNMENT** : The Contractor shall not sublet, assign or transfer any part of this contract without prior written approval from the Procurement Supervisor or the Procurement Manager of the Utah Department of Transportation. The provision of monies due under this contract shall not be assignable without prior written approval from the Procurement Supervisor or the Procurement Manager of the Utah Department of Transportation.

## ATTACHMENT D: SPECIAL TERMS AND CONDITIONS

10. **NON-COMPETE CLAUSE**: The Contractor represents its officers and employees are free to contract with the State and are not subject to restrictions by the terms of their present or past employment including, but not limited to an agreement not to compete for a period of time unless disclosure has been made. A Contractor must disclose to the State any possible conflicts, in writing, before the contract is signed and the State will evaluate whether to continue with contract execution. The State may elect to terminate a contract immediately with a Contractor who is subsequently determined to be subject to such restrictions without liability to the State. If the State elects to terminate a contract for this reason, the State will supersede paragraph #12 in Attachment A - Standard Terms and Conditions and will not provide the specified notice to the Contractor.

11. **DELIVERY**: The Contractor is required to contact the Utah Department of Transportation, Maintenance Engineer, at least twenty-four hours prior to delivery.

    Material is to be delivered and stockpiles at the designated stations no later than October 20, 2003. The unit bid price shall include all materials needed to provide a finished product. The Contractor shall make arrangements for delivery with the local Station Supervisor to obtain clearance to the stockpile areas, coordinate daily delivery of weight tickets, and coordinate load counts. It will be necessary for either the Station Supervisor or a designated agent to sign the delivery receipt. Deliveries will be accepted only during normal working hours/days.

    The Contractor shall have proper authority from the Public Service Commission to haul this material. Any delivery exceeding maximum legal load shall be referred to the proper enforcement agency with the State paying the legal limit amount only.

12. **CERTIFIED WEIGHT TICKETS**: The Contractor shall provide certified weight tickets to determine the amount of material. Certified weight tickets are imprinted automatically by the weight scale or as approved by the UDOT Engineer. Each weight ticket shall show the date, destination, size gravel and Contractor's name in addition to the imprinted weights.

13. **CONDITIONS OF NON-COMPLIANCE**: Upon delivery, if the material is out of specification, the Contractor shall replace the material within ten (10) days of notification of non-compliance. If the material is not replaced within ten (10) days, the State will obtain material from the next low responsive, responsible bidder. The costs in excess of the Contractor's bid price shall be the responsibility of the Contractor.

## ATTACHMENT D: SPECIAL TERMS AND CONDITIONS

14. **STOCKPILE METHOD**: Stockpiles shall be built at designated locations. Supplier may use end dumps, pups or belly dumps. Each load will be placed and "bucked up" by a supplier furnished loader and operator. Stockpiles will be built to occupy as little space as possible and "bucked up" to a uniform 10 foot height. If, for any reason, the Engineer is not satisfied with the stockpiling, the supplier will be responsible to reshape the stockpile to an acceptable configuration. If UDOT personnel are forced to reshape the stockpile, the cost of reshaping will be deducted from the contract.

15. **PERFORMANCE BOND**: Upon notification of award of the contract, the Contractor shall provide a performance payment bond or cashier's check amounting to fifteen percent (15%) of the bid amount guaranteeing performance, product and payment.

16. **FUEL SURCHARGE**: A surcharge of 3% may be added to each haul if OPIS Rack rate exceeds $.98 per gallon for #2 diesel.