Subject: Blanket Purchase Agreement (BPA) with KBK Dust Control Services, Inc. for the Purchase and Application of Soil Stabilization Product

Department: Public Works

Contact: Dennis Schmidt
Phone: 530.538.7681

Meeting Date Requested: May 21, 2019

Regular Agenda ☐ Consent Agenda ☒

Department Summary: (Information provided in this section will be included on the agenda. Attach explanatory memorandum and other background as necessary).

The Department of Public Works issued an Invitation for Bids (IFB) on April 23, 2019 on Public Purchase to establish a new three-year BPA for the purchase and application of a soil stabilization product to be applied to County owned gravel roads. This application of soil stabilization has helped reduce the washboard and formation of potholes on the more heavily traveled and steeper gravel roads.

The IFB closed on May 7, 2019 at 10:00 am. Three bids were received by the County, and the lowest responsible bidder is KBK Dust Control Services, Inc. of Fresno at $137 per ton. The County estimates needing approximately 950 tons per year.

The Department recommends entering into a BPA with KBK Dust Control Services, Inc. for the purchase and application of a soil stabilization product for selected County maintained gravel roads throughout Butte County. The term of the agreement is three years, not-to-exceed $390,000.

Fiscal Impact:

The costs for the purchase and application of the soil stabilization products are included in the Road Fund budget. There is no impact to the General Fund.

Personnel Impact:

Does not apply.

Action Requested:

Approve BPA and authorize the Chair to sign.

Administrative Office Review: Andy Pickett, Deputy Chief Administrative Officer

Revised: April, 2019
County of Butte
Blanket Purchase Agreement No. PW
2019 Soil Stabilization Product Purchase and Application

This Requirements Type Blanket Purchase Agreement (BPA) is made by and between the Butte County Public Works Department, 7 County Center Drive, Oroville, CA 95965, hereinafter referred to as “County”, and KBK Dust Control Services, Inc. PO BOX 5239, Fresno California, 93755, hereinafter referred to as “Contractor.” This BPA is effective upon date last executed by County.

This BPA is subject to the provisions contained in the following attachments, which are made a part of this BPA. Should there be any conflicts between this BPA and the attachments that are incorporated herein, precedence shall first be given to the provisions of this BPA followed by the attachments, in descending order, as indicated below:

BPA – Terms and Conditions
Attachment I – Standard Insurance Requirements
Attachment II – Scope of Services

BPA – TERMS AND CONDITIONS

1.0 DEFINITIONS

1.1 The term requirements type BPA shall mean that the County shall make its best efforts to purchase all its requirements for the products or services specified in this BPA from the Contractor during the term of this BPA; however, the County does not guarantee that any minimum level of releases will be made against this BPA.

1.2 The term release shall mean a written order by an authorized releaser for products or services specified in this BPA to be provided by the Contractor.

1.3 The term authorized releaser shall mean a County employee or representative who has been authorized by the County to make releases against this BPA. Authorized releasers are designated in the text of this BPA or subsequent written changes to this BPA.

1.4 The phrase term of this BPA shall mean the period of time when authorized releasers can make releases against this BPA.

2.0 PRODUCTS OR SERVICES PROVIDED

Based upon the receipt of a written release or releases from an authorized releaser, the Contractor shall provide to the County, the products or services listed below at the prices indicated on Attachment II, Scope of Services, during the term of this BPA:

Product or Services to be Provided:

Soil Stabilization Product Purchase and Application

3.0 TERM

The term of this BPA shall begin on date last executed by County and shall end three years thereafter, unless terminated in accordance with the terminations provisions outlined below.

4.0 TERMINATION

4.1 Either party to this BPA may terminate this agreement without recourse upon providing ninety (90) days written notice to the other party.

4.2 Should either party commit a material breach of the terms of this BPA, the injured party may terminate this agreement for default by submitting a “Show Cause Notice” ten days in advance of the anticipated termination date. The party that allegedly committed the breach may submit a written response to the “Show Cause Notice” within ten days to state its argument that a material breach of the terms of this BPA were not committed. The injured party shall evaluate the response, if any, and make a final determination relative to the termination for default.
4.3 In either event, the County shall pay, in the due course of business, for all acceptable products or services received in response to releases made by authorized releasers prior to the termination date.

5.0 PRICES
The prices indicated in Attachment II Scope of Services are firm fixed prices for the entire term of this BPA. No changes in price, quantity or merchandise will be recognized by the County without written notice of acceptance by the County prior to the services performed.

6.0 DELIVERY
Products or services that become deliverable due to a release placed against this BPA shall be delivered to the County by the Contractor per the schedule in the Attachment II Scope of Services.

7.0 FIRST RIGHT OF REFUSAL
Upon exercise of release against this BPA during a Countywide emergency or disaster event, Contractor shall reserve stock indicated for a period of 24 hours unless release is cancelled by County. The products and/or services shall be reserved and if necessary provided to the County as requested based on the products and/or services listed in Attachment II, Scope of Services, at prices listed during the term of this BPA.

8.0 TAXES
Unless otherwise definitely specified, the prices herein do not include California Sales and Use Tax or County Sales and Use Tax. The County is exempted from payment of Federal Excise Tax. No Federal tax shall be included in the price.

9.0 RELEASES
The following employees or representatives of the County are authorized to make releases against this BPA:

<table>
<thead>
<tr>
<th>Name</th>
<th>Department</th>
<th>Telephone No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dennis Schmidt</td>
<td>Public Works</td>
<td>530-538-7681</td>
</tr>
<tr>
<td>Radley Ott</td>
<td>Public Works</td>
<td>530-538-7681</td>
</tr>
<tr>
<td>Brett Cambra</td>
<td>Public Works</td>
<td>530-712-5766</td>
</tr>
</tbody>
</table>

10.0 TRANSPORTATION
All shipments shall be FOB destination. No charge will be allowed for packing, boxing or cartage, except when specified in this BPA. Title to the materials and supplies purchased hereunder shall pass to the County at the FOB point, subject to the right of the County to reject upon inspection. All transportation and delivery charges must be prepaid in full to destination, and shall not be added to the invoice for payment by the County. Merchandise will not be accepted if shipped COD.

11.0 COPYRIGHTED OR PATENTED MATERIALS
The Contractor shall hold the County, its officers, agents, servants and employees, harmless from liability of any nature or kind because of use of any copyrighted, or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used under this BPA, and agrees to defend, at its own expense, any and all actions brought against the County or the Contractor because of the unauthorized use of such articles.

12.0 INDEMNIFICATION
Contractor agrees to accept responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the County, its officers, agents and employees from and against any and all actions, claims, damages, disabilities or expenses that may be asserted by any person or entity, including Contractor, to the extent arising out of or in connection with the negligent acts or omissions or willful misconduct in the performance by the Contractor hereunder, whether or not there is concurrent negligence on the part of the County, but excluding liability due to the active negligence or willful misconduct of the County. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the Contractor or its agents under worker's compensation acts, disability benefit acts, or other
employee benefits acts. Contractor shall be liable to County for any loss of or damage to County property arising out of or in connection with Contractor’s negligence or willful misconduct.

13.0 FORCE MAJEURE
The Contractor will not be held liable for failure or delay in the fulfillment of conditions of agreement or purchase order if hindered or prevented by fire, strikes or natural disaster.

14.0 PAYMENT
Payment terms are net 30 days. Upon submission of itemized invoices, payment shall be made at the prices stipulated herein for services and/or supplies delivered and accepted, less deductions, if any, as herein provided. Payment on partial deliveries may be made whenever amount due so warrants or when requested by the Contractor and approved by the County. In connection with any cash discount specified on this BPA, time will be computed from the date of complete delivery of released supplies and/or services as specified, or from the date correct invoices are received by the County, if the later date is later than the date of delivery. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the County warrant or check.

15.0 SAFETY STANDARDS
All equipment, material or labor shall meet the required standards of the latest revisions of OSHA and CAL OSHA.

SAFETY/ENVIRONMENT
Contractors and Subcontractors shall comply fully with all state, local and where applicable, federal laws, regulations, standards, policies and procedures including but not limited to, safety policies established by and derived from OSHA for the storage and handling of hazardous materials, safety and accident prevention. Contractors shall participate fully in County’s safety program when workers are on the job site and conduct inspections to determine that safe working conditions and equipment exist for its employees and the employees of its Subcontractors and suppliers and for the adequacy of and required use of all safety equipment by such persons.

Contractor shall comply with the Butte County Construction “Code of Safe Practices” and job specific “Safety Work Plans” when deemed necessary by County Safety Officer.

To implement the foregoing, the County may, in advance of and pending Notice of Default, take any immediate steps it considers necessary to address a violation of this section by Contractor or Subcontractor including, but not limited to, the following:

- Issuing written safety warnings;
- Notifying Contractor’s insurer of any safety concerns;
- Cure, at Contractor’s expense, any unsafe conditions;
- Stop the work of Contractor and eject Contractor, its employees, Subcontractors and suppliers from the job site;
- Report the violation to an appropriate governmental agency;
- Require Contractor to provide satisfactory evidence of a cure of the safety violation and reasonable assurance as determined by County that recurrence has been mitigated.

16.0 INDEPENDENT CONTRACTOR
Contractor is an independent contractor, working under his/her own supervision and direction and is not a representative or employee of County. Contractor agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this BPA.

17.0 AVAILABILITY OF FUNDS
Payments for all services provided pursuant to this agreement are contingent upon the availability of County, State and matching Federal funds if applicable. Upon notification that funds are no longer available for this BPA, the County may elect to terminate this contract upon notification to the Contractor. In such occurrence, the County is not obligated to provide alternate sources of funding to continue this contract. The County will reimburse approved services provided by the
Contractor prior to notification, after notification and unless authorized by the County no additional services may be provided or will be reimbursed.

18.0 INSURANCE REQUIREMENTS
Contractor shall procure and maintain for the duration of this BPA, insurance against claims for injuries to persons or damages to property which may arise from, or be in connection with, the performance of the work by Contractor, Contractor’s agents, representatives, employees and subcontractors. At the very least, Contractor shall maintain the insurance coverages, limits of coverage, and other insurance requirements as described in Attachment I to this BPA. By executing this BPA, Contractor acknowledges this obligation and accepts responsibility to fulfill insurance requirements wholly and completely, and further accepts the termination of this contract without any form of payment, if insurance compliance is not met in its entirety.

19.0 COMPLIANCE WITH LAWS
Contractor shall comply with all Federal, State and local laws, rules and regulations including, without limitation, any nondiscrimination laws.

20.0 NOTICES
All invoices, notices, claims, correspondence, reports, and/or statements authorized or required by this BPA shall be addressed as follows:

County: County of Butte
Public Works Department
7 County Center Drive
Oroville, CA 95965
Phone: 530-538-7681
Fax: 530-538-7171

Contractor: KBK Dust Control Service, Inc.
PO BOX 5239
Fresno, CA 93755
Phone: 559-233-3144
Fax: 559-233-7384
Email: keith@bkboils.com

21.0 APPLICABLE LAW AND FORUM
This BPA shall be construed and interpreted according to California law and any action to enforce the terms of this BPA for the breach thereof shall be brought and tried in the County of Butte.

This BPA and its exhibits, if any, represent the entire undertaking between the parties.

COUNTY

________________________
Steve Lambert, Chair
Board of Supervisors

________________________
Keith Blades, President
KBK Dust Control Services, Inc.

CONTRACTOR

REVIEWED FOR FISCAL CONTROL,
SUBJECT TO BUDGETARY APPROPRIATION

________________________
By ______________________

REVIEWED AS TO FORM

________________________
By ______________________

SUBJECT TO BUDGETARY APPROPRIATION

________________________
By ______________________

BRUCE S. ALPERT
Butte County Counsel

________________________
By ______________________
ATTACHMENT I
INSURANCE REQUIREMENTS FOR MOST CONTRACTS
Not for Professional Services or Construction Contracts

*Please provide a copy of Attachment II to your insurance agent.

Contractor shall procure and maintain for the duration of this contract, insurance against claims for injuries to persons or damages to property that may arise from or be in connection with the performance of the work hereunder by Contractor, Contractor's agents, representatives, employees and subcontractors. Before the commencement of work Contractor shall submit Certificates of Insurance and Endorsements evidencing that Contractor has obtained the following forms of coverage:

A. MINIMUM SCOPE AND LIMITS OF INSURANCE - Coverage shall be at least as broad as:

1) **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2) **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, covering hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage.

3) **Workers’ Compensation Insurance:** As required by the State of California, with Statutory Limits and Employer’s Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury and disease. (*Not required if Contractor provides written verification he or she has no employees.*)

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

B. OTHER INSURANCE PROVISIONS - The insurance policies are to contain, or be endorsed to contain, the following provisions:

1) The County of Butte, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage can be provided in the form of an endorsement to Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38 and CG 20 37 forms if later revisions used).

2) For any claims related to this contract, Contractors insurance coverage shall be primary insurance coverage at least as broad as ISO Form CG 20 01 04 13 as respects the County, its officers, officials, employees and volunteers. Any
insurance or self-insurance maintained by the County, its officers, officials, employees and volunteers shall be excess of Contractor’s insurance and shall not contribute with it.

3) Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

C. WAIVER OF SUBROGATION: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the County for all work performed by the Contractor, its employees, agents and subcontractors.

D. SELF-INSURED RETENTIONS: Self-insured retentions must be declared to and approved by the County. The County may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.

E. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the County.

F. VERIFICATION OF COVERAGE: Contractor shall furnish County with original certificates of insurance including all required amendatory endorsements (or copies of the applicable policy language affecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

G. SPECIAL RISKS OR CIRCUMSTANCES: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

H. SUBCONTRACTORS: Contractor shall include all subcontractors as insured under its policies or require all subcontractors to be insured under their own policies. If subcontractors are insured under their own policies, they shall be subject to all the requirements stated herein, including providing the County certificates of insurance and endorsements before beginning work under this contract.
ATTACHMENT II

SCOPE OF SERVICES

Unless otherwise indicated herein, the Contractor shall furnish all labor, materials, transportation, mobilization, demobilization, supervision and management, and pay all taxes required to complete the services described below.

This is a Scope of Work for a Blanket Purchase Agreement (“BPA”). Refer to the terms and conditions of the agreement for particular details. To summarize, a BPA is a contract vehicle that allows the County to request (via “Releases”) the services described below at various times or various quantities. More specifically for this Scope, the County may request material be provided and applied to more roads than what is provided below in “Work Release No.1”. Per the terms of the Contract, the prices provided in the bid applies to all materials and services requested in this Contract, regardless of quantity.

Contractor Responsibility:

Under County direction, the Contractor shall provide the soil stabilization product “Dust-Off” on County-maintained roadways to minimize potholes, wash boarding, rutting and provide dust suppression.

A reference to a specific brand or trade name establishes a quality standard and is not intended to limit competition. You may use a product that is equal to or better than the specified brand or trade name if authorized.

Submit a substitution request with the bid documents. Substitution materials will not be accepted after bids are due and such bids will be considered non-responsive.

Include substantiating data with the substitution request that proves that substitution:

1. Causes no delay
2. Is of equal or better quality and suitability

Contractor shall apply soil stabilization product Dust-Off on County-maintained roadways at a combined application rate of .50 gallons per square yard by most efficient means. The combined application rate shall be split and applied over the course of two consecutive days, unless otherwise directed by the County. Application width shall not exceed 20 feet on County-maintained roadways.

Contractor shall coordinate working dates with the County Superintendent. The County works a 9/80 shift, Monday through Friday from 6:30 AM to 4:00 PM with every other Friday off. County intends to begin application of soil stabilization product to the roads listed in Work Release No. 1 in the spring of 2019. In addition to the roads listed in Work Release No. 1, the County reserves the right to add additional roads as needed up to a maximum of 10 miles.

Work Release No. 1:

Contractor shall provide soil stabilization product Dust-Off or equivalent and apply it on the following roadways at the listed dimensions:

<table>
<thead>
<tr>
<th>DISTRICTS</th>
<th>ROAD NAME</th>
<th>LENGTH</th>
<th>WIDTH</th>
</tr>
</thead>
<tbody>
<tr>
<td>DIST. 1</td>
<td>HELLTOWN RD.</td>
<td>1.1 MILES</td>
<td>16'</td>
</tr>
<tr>
<td>DIST. 1</td>
<td>JORDAN HILL Rd.</td>
<td>1.8 MILES</td>
<td>18'-20'</td>
</tr>
<tr>
<td>DIST. 2</td>
<td>MUD CREEK RD.</td>
<td>1.3 MILES</td>
<td>15'</td>
</tr>
<tr>
<td>DIST. 2</td>
<td>GARLAND RD.</td>
<td>1.7 MILES</td>
<td>18'</td>
</tr>
</tbody>
</table>
### County Responsibility:

County will prepare the roadway before the spreading services are performed.

County will provide traffic control for all spreading services.

The County’s Road Superintendent will be responsible for coordination and scheduling of work activities.

### Contractor Compensation:

Contractor shall be compensated Per Section 14.0- PAYMENT in the BPA Terms and Conditions at a not to exceed contract price of $390,000.

Payment is:
1. Full compensation for all work involved in each bid item shown by the unit of measure shown for that bid item shown below.
2. For the price bid for each bid item shown below or as changed by change order with a specified price adjustment.

Payment shall be made at the contract price as shown, and no other compensation will be made. Such price shall include any and all labor, equipment, transportation, fees, taxes, storage required, royalties and costs arising from patents, trademarks, and copyrights involved in completing the work. The County does not pay for your loss, damage, repair, or extra costs of whatever character arising from or relating to the work that is a direct or indirect result of the Contractor’s choice of construction methods, materials, equipment, or manpower, unless specifically mandated by the Contract.

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Unit of Measure</th>
<th>Unit Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dust-Off</td>
<td>Tons</td>
<td>$137.00</td>
</tr>
</tbody>
</table>

Upon completion of the delivery and application of soil stabilization product, Contractor shall submit a detailed invoice with copies of applicable backup documentation verifying the volumes and quantities applied. Invoices shall be broken down by road name, tonnage applied and hours.

The unit weight of product is assumed to weigh 11 pounds per gallon (specific gravity of 1.32).