



State of New Mexico
General Services Department
Purchasing Division

Price Agreement Amendment

Awarded Vendor:
4 Vendors

Telephone No.: _____

Price Agreement Number: 70-805-16-15117

Price Agreement Amendment No.: Three

Term: November 17, 2016 - November 16, 2019

Ship To:
New Mexico Department of Transportation
Various Locations

Procurement Specialist: Yuliasuti Wulandari *yw*

Telephone No.: (505) 827-0485

Invoice:
New Mexico Department of Transportation
Various Locations

E-mail: Yuliasuti.Wulandari@state.nm.us

For questions regarding this Price Agreement please contact:
Angela Martinez 505-827-5127

Title: Hot Mix Asphalt and Warm Mix Asphalt

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from November 17, 2018 to November 16, 2019 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 9/14/18



State of New Mexico
General Services Department
Purchasing Division

Price Agreement Amendment

Awarded Vendor:
4 Vendors

Telephone No.: _____

Price Agreement Number: 70-805-16-15117


Price Agreement Amendment No.: Two

Term: November 17, 2016-November 16, 2018

Ship To:
New Mexico Department of Transportation
Various Locations

Invoice:
New Mexico Department of Transportation
Various Locations

For questions regarding this Price Agreement please contact:
Angela Martinez 505-827-5127

Procurement Specialist: Eric Sanchez 

Telephone No.: (505) 827-0554

Title: **Hot Mix Asphalt and Warm Mix Asphalt**

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from November 17, 2017 to November 16, 2018 at the same price, terms and conditions.

The provisions of the Price Agreement shall remain in full force and effect, except as modified by this amendment.

Accepted for the State of New Mexico


New Mexico State Purchasing Agent

Date: 11/7/17



State of New Mexico
General Services Department
Purchasing Division

Price Agreement Amendment

Awarded Vendor:
0000129215
GCC Sun City Materials, LLC
1 McKelligon Canyon Road
El Paso, TX 79930-2634

Telephone No.: 915-565-4681

Price Agreement Number: 70-805-16-15117


Price Agreement Amendment No.: One

Term: November 17, 2016-November 16, 2017

Ship To:
New Mexico Department of Transportation
Various Locations

Invoice:
New Mexico Department of Transportation
Various Locations

For questions regarding this Price Agreement please contact:
Angela Martinez 505-827-5127

Procurement Specialist: Eric Sanchez 

Telephone No.: (505) 827-0554

Title: Hot Mix Asphalt and Warm Mix Asphalt

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

This amendment is issued to reflect the following effective immediately:

**Change vendor (AC) Cemex to Vendor (AE) GCC Sun City Materials: Vendor number 0000129215
1 McKelligon Canyon Road El Paso, TX 79930-2634. Vendor AE bought out vendor AC.**

The provisions of the Price Agreement shall remain in full force and effect, except as modified by this amendment.

Accepted for the State of New Mexico


New Mexico State Purchasing Agent

Date: 3/15/17



State of New Mexico General Services Department

Price Agreement

Awarded Vendor:
4 Vendors (See page 7)

Telephone No.:

Price Agreement Number: 70-805-16-15117

Payment Terms: Net 30

F.O.B.: Destination

Delivery: As Requested

Ship To:
New Mexico Department of Transportation
Various Locations

Procurement Specialist: Eric Sanchez

Telephone No.: 505-827-0554

Invoice:
New Mexico Department of Transportation
Various Locations

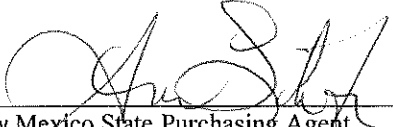
For questions regarding this contract please contact:
James Ortega 505-827-5135

Title: Hot Mix Asphalt and Warm Mix Asphalt

Term: November 17, 2016-November 16, 2017

This Price Agreement is made subject to the "terms and conditions" shown on the reverse side of this page, and as indicated in this Price Agreement.

Accepted for the State of New Mexico



New Mexico State Purchasing Agent
Purchasing Division, 1100 St. Francis Drive, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472
LM:es

Date: 11-10-16

Terms and Conditions
(Unless otherwise specified)

1. **General:** When the State Purchasing Agent or his/her designee issues a purchase document in response to the Vendor's bid, a binding contract is created.
2. **Variation in Quantity:** No variation in the quantity of any item called for by this order will be accepted unless such variation has been caused by conditions of loading, shipping, packing or allowances in manufacturing process and then only to the extent, if any, specified in this order.
3. **Assignment:**
 - a. Neither the order, nor any interest therein, nor any claim thereunder, shall be assigned or transferred by the Vendor, except as set forth in Subparagraph 3b or as expressly authorized in writing by the State Purchasing Agent or his/her designee. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this order.
 - b. Vendor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the State as to goods, services, and materials purchased in connection with this bid are hereby assigned to the State.
4. **State Furnished Property:** State furnished property shall be returned to the State upon request in the same condition as received except for ordinary wear, tear and modifications ordered hereunder.
5. **Discounts:** Prompt payment discounts will not be considered in computing the low bid. Discounts for payment within twenty (20) days will be considered after the award of the contract. Discounted time will be computed from the date of receipt of the merchandise invoice, whichever is later.
6. **Inspection:** Final inspection and acceptance will be made at the destination. Supplies rejected at the destination for nonconformance with specifications shall be removed at the Vendor's risk and expense, promptly after notice of rejection.
7. **Inspection of Plant:** The State Purchasing Agent or his/her designee may inspect, at any reasonable time, the part of the Contractor's, or any subcontractor's plant or place of business, which is related to the performance of this contract.
8. **Commercial Warranty:** The Vendor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Vendor gives for such to any customer for such supplies or services. The rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other clause of this order. Vendor agrees not to disclaim warranties of fitness for a particular purpose of merchantability.
9. **Taxes:** The unit price shall exclude all state taxes.
10. **Packing, Shipping and Invoicing:**
 - a. The State's purchasing document number and the Vendor's name, user's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The user's count will be accepted by the Vendor as final and conclusive on all shipments not accompanied by a packing ticket.
 - b. The Vendor's invoice shall be submitted duly certified and shall contain the following information: order number, description of supplies or services, quantities, unit price and extended totals. Separate invoices shall be rendered for each and every complete shipment.
 - c. Invoices must be submitted to the using agency and NOT the State Purchasing Agent.
11. **Default:** The State reserves the right to cancel all or any part of this order without cost to the State, if the Vendor fails to meet the provisions of this order and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the State due to the Vendor's default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor,

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: 70-805-16-15117

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such causes include but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights of the State provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this order.

12. Non-Collusion: In signing this bid the Vendor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or his/her designee.

13. Nondiscrimination: Vendor doing business with the State of New Mexico must be in compliance with the Federal Civil Rights Act of 1964 and Title VII of the Act (Rev. 1979) and the Americans with Disabilities Act of 1990 (Public Law 101-336).

14. The Procurement Code: Sections 13-1-28 through 13-1-99 NMSA 1978, imposes civil and criminal penalties for its violation. In addition the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

15. All bid items are to be NEW and of most current production, unless otherwise specified.

16. Payment for Purchases: Except as otherwise agreed to: late payment charges may be assessed against the user state agency in the amount and under the conditions set forth in Section 13-1-158 NMSA 1978.

17. Workers' Compensation: The Contractor agrees to comply with state laws and rules pertaining to Workers' Compensation benefits for its employees. If the Contractor fails to comply with Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the contracting agency.

18. Bids must be submitted in a sealed envelope with the bid number and opening date clearly indicated on the bottom left hand side of the front of the envelope. Failure to label bid envelope will necessitate the premature opening of the bid in order to identify the bid number.

19. Contractor Personnel: Personnel proposed in the Contractor's written proposal to the Procuring Agency are considered material to any work performed under this Price Agreement. Once a Purchase Order or contract has been executed, no changes of personnel will be made by the Contractor without prior written consent of the Procuring Agency. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience, and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The Procuring Agency shall retain the right to request the removal of any of the Contractor's personnel at any time.

20. Subcontracting: The Contractor shall not subcontract any portion of the Price Agreement without the prior written approval of the Procuring Agency. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Price Agreement, nor shall any subcontracting obligate payment from the Agency.

21. Records and Audit: The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature, and cost of services rendered during this Price Agreement's term and effect, and retain them for a period of three (3) years from the date of final payment under this Price Agreement. The records shall be subject to inspection by the Agency, State Purchasing Division, Department of Finance and Administration, and for Information Technology contracts, State Chief Information Officer. The Agency shall have the right to audit billings, both before and after payment. Payment for services under this Price Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

22. The foregoing requirements for Contractor Personnel, Subcontracting, and Audit shall be inserted into all subcontracts from the prime contractor to the subcontractor.

New Mexico Employees Health Coverage

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agrees to maintain for the term of the contract, health insurance for its New Mexico Employees and offer that health insurance to its New Mexico Employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceeds \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of its New Mexico Employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all of its New Mexico Employees of the availability of State publicly financed health care coverage programs by providing each of its New Mexico Employees with, as a minimum, the following web site link to additional information: <http://insurenemexico.state.nm.us/>.

D. For purposes of this Paragraph, the following terms have the following meanings:

- (1) "New Mexico Employee" means any resident of the State of New Mexico employed by Contractor who performs the majority of the employee's work for Contractor within the State of New Mexico, regardless of the location of Contractor's office or offices; and
- (2) "offer" means to make available, without unreasonable restriction, enrollment in one or more health coverage plans and to actively seek and encourage participation in order to achieve the goals of Executive Order 2007-049. This could include State publicly financed public health coverage programs such as *Insure New Mexico!*

New Mexico Pay Equity Initiative

Contractor agrees, if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees, contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts that are up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report it self.

Two (2) copies of the Pay Equity Worksheet shall be submitted prior to Award by the prospective Awarded Vendor.

The PE10-249 and PE250 worksheet is available at the following website:
<http://www.generalservices.state.nm.us/statepurchasing/GuidesProcedures.aspx>

Department Price Agreement

Article I – Statement of Work

Under the terms and conditions of this Price Agreement, the using agency may issue orders for items and/or services described herein.

The terms and conditions of this Price Agreement shall form a part of each order issued hereunder.

The items and/or services to be ordered shall be listed under Article IX – Price Schedule. All orders issued hereunder will bear both an order number and this Price Agreement number. It is understood that no guarantee or warranty is made or implied by either the New Mexico State Purchasing Agent or the user that any order for any definite quantity will be issued under this Price Agreement. The Contractor is required to accept the order and furnish the items and/or services in accordance with the articles contained hereunder for the quantity of each order issued.

Article II –Term

The term of this Price Agreement for issuance of orders shall be as indicated in specifications.

Article III –Specifications

Items and/or services furnished hereunder shall conform to the requirements of specifications and/or drawings applicable to items listed under Article IX - Price Schedule. Orders issued against this schedule will show the applicable price agreement item(s), number(s), and price(s); however they may not describe the item(s) fully.

Article IV – Shipping and Billing Instructions

Contractor shall ship in accordance with the instructions of this form. Shipment shall be made only against specific orders which the user may place with the contractor during the term indicated in Article II – Term. The Contractor shall enclose a packing list with each shipment listing the order number, price agreement number and the commercial parts number (if any) for each item. Delivery shall be made as indicated on page 1. If vendor is unable to meet stated delivery the State Purchasing Agent must be notified.

Article V - Termination

This Price Agreement may be terminated by either signing party upon written notice to the other at least thirty (30) days in advance of the date of termination. Notice of termination of the price agreement shall not affect any outstanding orders.

Article VI – Amendment

This Price Agreement may be amended by mutual agreement of the New Mexico State Purchasing Agent or his/her designee and the Contractor upon written notice by either party to the other. An amendment to this Price Agreement shall not affect any outstanding orders issued prior to the effective date of the amendment as mutually agreed upon, and as published by the New Mexico State Purchasing Agent or his/her designee. Amendments affecting price adjustments and/or the extension of a price agreement expiration date are not allowed unless specifically provided for in the bid and price agreement specifications.

Article VII – Issuance of Orders

Only written signed orders are valid under this Price Agreement.

Article VIII – Packing (if applicable)

Packing shall be in conformance with standard commercial practices.

Article IX – Price Schedule

Prices as listed in the price schedule hereto attached are firm.

Awarded Vendors:

(AA) 0000048188
A-1 Quality Redi Mix, Inc.
PO Box 591
Socorro, NM 87801
575-835-2417

(AB) 0000047213
Bartoo Sand & Gravel Inc.
PO Box 3769 654 Hwy. 181
Truth or Consequences, NM 87901
575-894-7181

(AC) 0000083581
Cemex
181 Westgate
Las Cruces, NM 88005
575-524-8691

(AD) 0000051282
Southwest Concrete & Paving Inc.
PO Box 2278
Silver City, NM 88062
575-388-1505

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: 70-805-16-15117

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Purpose:

To establish a Price Agreement for Hot Mix Asphalt and Warm Mix Asphalt for the New Mexico Department of Transportation; hereinafter referred to as "Department".

This Price Agreement is applicable and available for use by the NMDOT, New Mexico State agencies, and New Mexico local public bodies.

Terms and Conditions:

The term of this agreement shall be for one (1) year from date of award with the option to extend for a period (s) of one (1) additional years, by mutual agreement of all parties and approval of the New Mexico State Purchasing Director at the same price, terms and conditions. This agreement shall not exceed four (4) years.

Bidding Information:

Hot Mix Asphalt and Warm Mix Asphalt shall be in accordance with Section 423 Hot Mix Asphalt – Superpave (QLA and Non QLA) and Section 424 Warm Mix Asphalt of the New Mexico Department of Transportation (NMDOT) Standard Specifications for Highway and Bridge Construction, current edition.

The Department's Standard Specifications book is available at
<http://www.dot.state.nm.us/en/Standards.html>.

Vendor's plant must be in production at time of bid. Plant must have loading equipment capable of loading Belly Dump Trailers, Flow-Boy Trailers, 5 Yard and/or 10 Yard Dump Trucks, and other type of trailer not listed. The cost of loading shall be incidental to the delivery of the material.

Method of Award:

Method of award shall be based on location of plant and price by item for each location.

Bidders mixing plant must be located at the following:

Item #001: Within Dona Ana County

Item #002: Within Grant County

Item #003: Within Luna County

Item #004: Within Sierra County

Item #005: Within Socorro County

Deliveries for Animas and Lordsburg to be out of Luna County or Grant County.

Deliveries for Hatch to be out of Dona Ana County or Sierra County.

Vendor must indicate where plant is located:

Location for pick up of hot mix material awarded shall be an NMDOT option.

Awarded vendors will be given between 48 hours to seven (7) days notice of needed materials. Materials not supplied upon demand after this time will be purchased from secondary vendor. If secondary vendor is unable to deliver within 7 days, material will be purchased on the open market, and primary supplier will pay difference in price.

The Department reserves the right to cancel any order due to emergencies or bad weather conditions and will not incur any charges if this occurs.

Primary and Secondary sources:

The low bidder will be designated as the "Primary" source, the next low bidder as the "Secondary" source, then the next low bidder, etc. If the "Primary" source fails to perform any condition of this agreement, including but not limited to, failure to provide material that meets specifications, the department, acting through the engineer, reserves the right to obtain the material from Secondary source and the other vendors as listed. If the Primary source gives written assurances that the deficiencies have been corrected the engineer shall, within a reasonable time, order from the Primary source, allowing reasonable time for the Secondary source to complete current orders and operations. The State and the Department, its agents and employees shall not be liable to the vendor in any way for any damages of any nature whatsoever resulting from the election to obtain material or work from the Secondary sources.

Supplier and NMDOT personnel shall be in agreement in the acceptance of the maintained access road.

Quantities given are estimated for bidding purposes only. NMDOT reserves the right to place periodic orders totaling significantly less or slightly more according to its needs.

Tax Note:

The prices quoted herein represent the total compensation to be paid by the state for goods and/or services provided. It is understood that the party providing said goods and/or services to the state is responsible for payment of all costs of labor, equipment, tools, materials, including asphalt and hydrated lime, federal tax, permits, licenses, fees and any other items necessary to complete the work provided. The prices quoted in this contract include an amount sufficient to cover such costs. Price shall not include State Gross Receipts or local option tax. Tax shall be added to invoice at current rates as a separate item to be paid by user.

The conditions and specifications set out in the invitation to bid are inseparable and indivisible. Any supplier, by submitting a bid, agrees to be bound by all such conditions or specifications. All conditions and specifications in the invitation to bid and all other documents required to be submitted, shall be returned by the supplier in his bid package. Failure to do so or any attempt to vary or change the conditions or specifications of the invitation to bid, shall at the discretion of the state, constitute grounds for rejection of the entire bid. The state will not accept any added stipulation by the vendor.

Hold Harmless Clause:

Supplier shall indemnify and hold harmless the state, its officers, and employees, against liability, claims, damages, losses, or expenses arising out of bodily injury to persons or damage to property caused by, or resulting from, supplier's and/or its employees, own negligent act(s) or omission(s) while supplier, and/or its employees perform(s) or fails to perform its obligations and duties under the terms and conditions of this agreement. This save harmless and indemnification clause is subject to the immunities, provisions, and limitations of the TORT CLAIMS ACT (41-4-1, ET SEQ., N.M.S.A. 1978 COMP.) AND SECTION 56-7-1 N.M.S.A. 1978 COMP. and any amendments thereto.

It is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of the agreement to create the public or any member hereof a third party beneficiary or to authorize anyone not a party to the agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies) and/or other claim(s) whatsoever pursuant to the provisions of this agreement.

Payment Provisions:

Within fifteen days after the date the department receives written notice from the Supplier that payment is requested for services, construction, or items of tangible personal property delivered on site and received, the department shall issue a written certification of complete or partial acceptance or rejection of the services, construction, or items of tangible personal property. If the Department finds that the services, construction, or items of tangible personal property are not acceptable, it shall, within thirty days after the date of receipt of written notice from the Supplier that payment is requested, provide to the Supplier, a letter of exception explaining the defect or objection to the services, construction, or delivered tangible personal property along with the details of how the supplier may proceed to provide remedial action. Upon certification by the Department that the services, construction, or delivered tangible personal property have been received and accepted, payment shall be tendered to the Supplier within thirty days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Supplier at the rate of 1 and 1/2 percent per month. For purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the federal or state funding agency, but has already certified that the services or items of tangible personal property have been received and accepted, payments shall be tendered to the Supplier within five working days of receipt of funds from that funding agency. Final payment shall be made within thirty days after the work has been approved and accepted by the Department's Secretary or his duly authorized representative.

The Supplier agrees to comply with state laws and rules pertaining to worker's compensation insurance coverage for its employees. If Supplier fails to comply with the Worker's Compensation Act and applicable rules when required to do so, the contract may be cancelled effective immediately.

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #: 70-805-16-15117

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Escalation/Reduction Clause:

In the event of a product cost increase, an escalation request will be reviewed by State Purchasing Division on an individual basis. Please be aware this measure is not intended to allow any increase in profit margin, only to compensate for an actual cost increase. Effective dates for increase will not be any sooner than fifteen days from the date the written request is received by this office. To facilitate prompt consideration, all requests for price increase must include all information listed below:

1. Contract Item Number
2. Item number
3. Current item price
4. Proposed new price
5. Mill/supplier notification of price increase indicating percentage of increase

Price decreases as well as increases shall apply. If vendor's prices are reduced for any reason, users shall receive the benefit of such reductions. Price increases will not be retroactive to orders already in house or on back orders. Orders will be filled at the price in effect on the date of receipt of the order by the vendor.

The above contract conditions and the New Mexico Department of Transportation specifications contained herein are to become a part of any contract awarded by the State.

NOTICE TO SUPPLIERS

Monthly Asphalt Binder Price Adjustment Procedures

Adjustments will be made to the Bid Item Unit Price for asphalt binder if the asphalt binder price placed on the Project increases or decreases based on the New Mexico Asphalt Rack-Price Index (“price index”) per ton of asphalt binder. Historical price index data and the basis for the method of calculation for the price index is available at the hyperlink below:

[http://dot.state.nm.us/content/dam/nmdot/Plans Specs Estimates/NMDOT Asphalt Index.pdf](http://dot.state.nm.us/content/dam/nmdot/Plans_Specs_Estimates/NMDOT_Aspphalt_Index.pdf)

The increase or decrease is based on the price index corresponding to the month the asphalt binder was actually placed on this Project.

Bid Items subject to adjustment are: 403 Open Graded Friction Course (Non-QLA), 403-A Warm Mix Asphalt – Open Graded Friction Course (Non-QLA), 423 Hot Mix Asphalt – Superpave (QLA & Non-QLA) and 424 Warm Mix Asphalt (QLA & Non-QLA).

The Supplier shall submit applicable mix designs, including percentage of asphalt binder, for inclusion in the price adjustment for the Pay Items listed above in the Contract.

Monthly Adjustment:

The Progress Payment shall reflect the monetary monthly adjustment to the Contract for asphalt binder as determined by equation (1) or (2), as appropriate.

The variables applicable to the equations below are:

A – Monetary monthly adjustment to the Contract for asphalt binder.

B – Price per ton of asphalt binder corresponding to the month the binder was actually placed on the Project based on the price index.

C – Price per ton of asphalt binder at time of Bid Opening based on price index.

D – Tons of asphalt binder placed on the Project corresponding to the subject month.

For increasing prices (The monthly adjustment shall apply on those Contracts whose monthly fluctuations have a (B / C) ratio greater than 1.1). Use Equation (1).

Equation (1): $A = (B - (1.1 * C)) * D$

For decreasing prices (The monthly adjustment shall apply on those Contracts whose monthly fluctuations have a (B / C) ratio less than 0.9). Use Equation (2).

Equation (2): $A = (B - (0.9 * C)) * D$

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General Services Department
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The Department reserves the right to cancel any order due to emergencies or bad weather conditions and will not incur any charges if this occurs.

Primary and Secondary sources:

The low bidder will be designated as the "Primary" source, the next low bidder as the "Secondary" source, then the next low bidder, etc. If the "Primary" source fails to perform any condition of this agreement, including but not limited to, failure to provide material that meets specifications, the department, acting through the engineer, reserves the right to obtain the material from Secondary source and the other vendors as listed. If the Primary source gives written assurances that the deficiencies have been corrected the engineer shall, within a reasonable time, order from the Primary source, allowing reasonable time for the Secondary source to complete current orders and operations. The State and the Department, its agents and employees shall not be liable to the vendor in any way for any damages of any nature whatsoever resulting from the election to obtain material or work from the Secondary sources.

Supplier and NMDOT personnel shall be in agreement in the acceptance of the maintained access road.

Quantities given are estimated for bidding purposes only. NMDOT reserves the right to place periodic orders totaling significantly less or slightly more according to its needs.

Tax Note:

The prices quoted herein represent the total compensation to be paid by the state for goods and/or services provided. It is understood that the party providing said goods and/or services to the state is responsible for payment of all costs of labor, equipment, tools, materials, including asphalt and hydrated lime, federal tax, permits, licenses, fees and any other items necessary to complete the work provided. The prices quoted in this

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contract include an amount sufficient to cover such costs. Price shall not include State Gross Receipts or local option tax. Tax shall be added to invoice at current rates as a separate item to be paid by user.

The conditions and specifications set out in the invitation to bid are inseparable and indivisible. Any supplier, by submitting a bid, agrees to be bound by all such conditions or specifications. All conditions and specifications in the invitation to bid and all other documents required to be submitted, shall be returned by the supplier in his bid package. Failure to do so or any attempt to vary or change the conditions or specifications of the invitation to bid, shall at the discretion of the state, constitute grounds for rejection of the entire bid. The state will not accept any added stipulation by the vendor.

Hold Harmless Clause:

Supplier shall indemnify and hold harmless the state, its officers, and employees, against liability, claims, damages, losses, or expenses arising out of bodily injury to persons or damage to property caused by, or resulting from, supplier's and/or its employees, own negligent act(s) or omission(s) while supplier, and/or its employees perform(s) or fails to perform its obligations and duties under the terms and conditions of this agreement. This save harmless and indemnification clause is subject to the immunities, provisions, and limitations of the TORT CLAIMS ACT (41-4-1, ET SEQ., N.M.S.A. 1978 COMP.) AND SECTION 56-7-1 N.M.S.A. 1978 COMP. and any amendments thereto.

It is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of the agreement to create the public or any member hereof a third party beneficiary or to authorize anyone not a party to the agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies) and/or other claim(s) whatsoever pursuant to the provisions of this agreement.

Payment Provisions:

Within fifteen days after the date the department receives written notice from the Supplier that payment is requested for services, construction, or items of tangible personal property delivered on site and received, the department shall issue a written certification of complete or partial acceptance or rejection of the services, construction, or items of tangible personal property. If the Department finds that the services, construction, or items of tangible personal property are not acceptable, it shall, within thirty days after the date of receipt of written notice from the Supplier that payment is requested, provide to the Supplier, a letter of exception explaining the defect or objection to the services, construction, or delivered tangible personal property along with the details of how the supplier may proceed to provide remedial action. Upon certification by the Department that the services, construction, or delivered tangible personal property have been received and accepted, payment shall be tendered to the Supplier within thirty days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Supplier at the rate of 1 and 1/2 percent per month. For purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the federal or state funding agency, but has already certified that the

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services or items of tangible personal property have been received and accepted, payments shall be tendered to the Supplier within five working days of receipt of funds from that funding agency. Final payment shall be made within thirty days after the work has been approved and accepted by the Department's Secretary or his duly authorized representative.

The Supplier agrees to comply with state laws and rules pertaining to worker's compensation insurance coverage for its employees. If Supplier fails to comply with the Worker's Compensation Act and applicable rules when required to do so, the contract may be cancelled effective immediately.

Escalation/Reduction Clause:

In the event of a product cost increase, an escalation request will be reviewed by State Purchasing Division on an individual basis. Please be aware this measure is not intended to allow any increase in profit margin, only to compensate for an actual cost increase. Effective dates for increase will not be any sooner than fifteen days from the date the written request is received by this office. To facilitate prompt consideration, all requests for price increase must include all information listed below:

1. Contract Item Number
2. Item number
3. Current item price
4. Proposed new price
5. Mill/supplier notification of price increase indicating percentage of increase

Price decreases as well as increases shall apply. If vendor's prices are reduced for any reason, users shall receive the benefit of such reductions. Price increases will not be retroactive to orders already in house or on back orders. Orders will be filled at the price in effect on the date of receipt of the order by the vendor.

The above contract conditions and the New Mexico Department of Transportation specifications contained herein are to become a part of any contract awarded by the State.

NOTICE TO SUPPLIERS

Monthly Asphalt Binder Price Adjustment Procedures

Adjustments will be made to the Bid Item Unit Price for asphalt binder if the asphalt binder price placed on the Project increases or decreases based on the New Mexico Asphalt Rack-Price Index (“price index”) per ton of asphalt binder. Historical price index data and the basis for the method of calculation for the price index is available at the hyperlink below:

[http://dot.state.nm.us/content/dam/nmdot/Plans Specs Estimates/NMDOT Asphalt Index.pdf](http://dot.state.nm.us/content/dam/nmdot/Plans_Specs_Estimates/NMDOT_Aspphalt_Index.pdf)

The increase or decrease is based on the price index corresponding to the month the asphalt binder was actually placed on this Project.

Bid Items subject to adjustment are: 403 Open Graded Friction Course (Non-QLA), 403-A Warm Mix Asphalt – Open Graded Friction Course (Non-QLA), 423 Hot Mix Asphalt – Superpave (QLA & Non-QLA) and 424 Warm Mix Asphalt (QLA & Non-QLA).

The Supplier shall submit applicable mix designs, including percentage of asphalt binder, for inclusion in the price adjustment for the Pay Items listed above in the Contract.

Monthly Adjustment:

The Progress Payment shall reflect the monetary monthly adjustment to the Contract for asphalt binder as determined by equation (1) or (2), as appropriate.

The variables applicable to the equations below are:

A – Monetary monthly adjustment to the Contract for asphalt binder.

B – Price per ton of asphalt binder corresponding to the month the binder was actually placed on the Project based on the price index.

C – Price per ton of asphalt binder at time of Bid Opening based on price index.

D – Tons of asphalt binder placed on the Project corresponding to the subject month.

For increasing prices (The monthly adjustment shall apply on those Contracts whose monthly fluctuations have a (B / C) ratio greater than 1.1). Use Equation (1).

Equation (1): $A = (B - (1.1 * C)) * D$

For decreasing prices (The monthly adjustment shall apply on those Contracts whose monthly fluctuations have a (B / C) ratio less than 0.9). Use Equation (2).

Equation (2): $A = (B - (0.9 * C)) * D$

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Items	Approx. Qty.	Unit	Article and Description	Unit Price
001	4,000	Ton	Hot Mix picked up at Vendors Plant within Dona Ana County Vendor to indicate Plant Location: 14795 Las Alturas (Vado)	AC) \$45.00
002	4,000	Ton	Hot Mix picked up at Vendors Plant within Grant County Vendor to indicate Plant Location: Hwy. 180 E MP 146.5	AD) \$78.00
003	4,000	Ton	Hot Mix picked up at Vendors Plant within Luna County Vendor to indicate Plant Location: Hwy. 180 E MP 146.5	AD) \$78.00
004	4,000	Ton	Hot Mix picked up at Vendors Plant within Sierra County Vendor to indicate Plant Location: 654 Hwy. 181- T or C NM 87901	AB) \$69.50
005	4,000	Ton	Hot Mix picked up at Vendors Plant within Socorro County Vendor to indicate Plant Location: State Road 1- Socorro Co.	AA) \$77.50
006	4,000	Ton	Hot Mix Delivered to Anthony Patrol 4143	AC) \$50.00
011	4,000	Ton	Hot Mix Delivered to Deming Patrol 4149	AC) \$63.00
012	4,000	Ton	Hot Mix Delivered to Las Cruces Patrol 4151	AB) \$89.00 Secondary AC) \$56.25 Primary
013	4,000	Ton	Hot Mix Delivered to Hatch Patrol 4152	AB) \$77.50 Secondary AC) \$63.00 Primary
014	4,000	Ton	Hot Mix Delivered to Williamsburg Patrol 4153	AB) \$72.50 Secondary AC) \$66.00 Primary
15	4,000	Ton	Hot Mix Delivered to Winston Patrol 4154	AB) \$89.00
16	4,000	Ton	Hot Mix Delivered to Magdalena Patrol 4155	AA) \$82.00
17	4,000	Ton	Hot Mix Delivered to Socorro Patrol 4157	AA) \$78.00 Primary AB) \$89.00 Secondary

*** 17 Items Total ***