



State of New Mexico  
General Services Department  
Purchasing Division

Price Agreement Amendment

**Awarded Vendor**  
**2 Vendors**

**Telephone No. :**

Price Agreement Number: 70-805-16-15418

Price Agreement Amendment No.: Two

Term: January 26, 2017 – January 25, 2020

**Ship To:**  
**New Mexico Department of Transportation**  
**Various Locations**

Procurement Specialist: Raelynn Lujan *RL*

Telephone No.: (505) 827-0484

**Invoice:**  
**New Mexico Department of Transportation**  
**Various Locations**

Email: raelynn.lujan@state.nm.us

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

Title: **Plant Mix Bituminous Pavement District 2**

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 January 26, 2019 to January 25, 2020 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

*[Signature]*  
\_\_\_\_\_  
New Mexico State Purchasing Agent

Date: 12/12/2018

*nm*



State of New Mexico  
General Services Department  
Purchasing Division

Price Agreement Amendment

<b>Awarded Vendor</b> <b>2 Vendors</b>  <b>Telephone No. :</b>
---

Price Agreement Number: 70-805-16-15418

Price Agreement Amendment No.: ONE

Term: January 26, 2017 – January 25, 2019

<b>Ship To:</b> <b>New Mexico Department of Transportation</b> <b>Various Locations</b>
<b>Invoice:</b> <b>New Mexico Department of Transportation</b> <b>Various Locations</b>
<b>For questions regarding this Price Agreement please contact:</b> <b>Angela Martinez 505-827-5127</b>

Procurement Specialist: Yuliasuti Wulandari *yw*

Telephone No.: (505) 827-70485


Title: **Plant Mix Bituminous Pavement District 2**

**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 January 26, 2018 to January 25, 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: 12/12/17



# State of New Mexico General Services Department

## Price Agreement

**Awarded Vendor:**  
**2 Vendors (See Page 7)**

**Telephone No.:**

Price Agreement Number: 70-805-16-15418

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:  
**Angela Martinez 505-827-5127**

**Title: Plant Mix Bituminous Pavement District 2**

**Term: January 26, 2017-January 25, 2018**

**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

Date: 1/20/17

**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,

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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://insurenwnewmexico.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.



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**Awarded Vendors:**

(AA) 0000046036  
Constructors, Inc.  
3003 Boyd Drive  
Carlsbad, NM 88220  
575-941-3552

(AB) 0000090285  
GM Emulsion, LLC  
5935 Agua Fria  
Santa Fe, NM 87507  
505-471-9981

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To establish a Price Agreement for the New Mexico Department of Transportation (NMDOT) for the procurement of Plant Mix Bituminous Pavement:

1. Hot Mix/Cold Lay
2. Hot Mix, SP3 & SP4
3. OGFC with PAC 20
4. Hot Mix complete in place, compacted & finished
5. OGFC complete in place, compacted & finished

**Term of Agreement:**

The term of this agreement shall be for one (1) year from date of award with an option to extend for a period(s) of three (3) additional years, on year-by-year basis, by mutual agreement of both parties and the approval of the State Purchasing Agent at the same prices, terms and conditions. This agreement shall not exceed four (4) years.

This price agreement is applicable and available for use by New Mexico Department of Transportation, New Mexico State Agencies and New Mexico Local Public Bodies.

**Performance and Materials Bond:**

Prior to issuance of orders, the contractors will provide a Performance Bond and payment and materials bond securing labor and material equal to 100% of each order. Said Bonds are to be filed with the user agency's (District) purchasing office. Failure to obtain required Bond will result in the contract being cancelled.

The Bonds are to secure the Department for losses and damages sustained by reason of default by vendor of any condition herein, including but not limited to, failure of material to meet specifications, failure of material to perform satisfactorily upon mixing or application and failure to deliver on time.

**Bidding Information:**

The conditions and specifications set out in the Invitation to Bid are inseparable and indivisible. Any vendor, by submitting a bid, agrees to be bound by all such conditions and specifications. The vendor in his bid package shall return all conditions and specifications in the Invitation to Bid, and all other documents required to be submitted. 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, constitutes grounds for rejection of the entire bid.

**Specification For Hot Mix Material Are As Follows:**

PMBP shall meet all provisions of section 423 of the NMDOT Standard Specifications for Highway and Bridge Construction Current Edition. To purchase the current edition please contact Jared Moore, 505-827-5159 at the NMDOT General Office, 1120 Cerrillos Road, Santa Fe, New Mexico, 87505-1842.

Bituminous material for SP-3 & SP-4 shall be asphalt cement

PG 70-22

1 SP-4

2 SP-3

PMBP materials shall be furnished utilizing NMDOT approved Hot Mix Designs or new NMDOT approved designs by a commercial laboratory. In either case the designs shall be approved by the District Engineer or his designee.

Hot Mix Cold Lay shall be composed of a mixture of aggregate and bituminous material. Bituminous material shall be Asphalt Emulsions HFE-300. No caliche aggregate shall be used in Hot Mix Cold Lay Materials. All aggregates shall meet the materials requirements of Section 423. Mix designs shall be approved by the District Engineer or their designee and shall be supplied by the asphalt binder supplier. Emulsion shall be added at the rate of 2% to 6% of the residual asphalt by the total weight of the mix, as determined by the mix design. All mix designs shall be approved prior to use. Gradation for the Hot Mix/Cold Lay material is contained in Section 423.2.2.1. All materials that are suspect shall be tested for compliance to the specifications and all materials found to be out of specifications will be rejected and replaced by the Contractor with specification material at no additional cost to the Department. Hot Mix/Cold Lay shall be tested for gradation and asphalt content at the rate of one test per 500 tons with a minimum of once per order.

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OGFC shall comply with Section 403 NMDOT Standard Specifications for Highway and Bridge Construction Current Edition.

**Description:**

OGFC shall be composed of a mixture of aggregate and bituminous material. Bituminous material shall be PAC 20. The amount bituminous material to be used will be determined by the job mix formula designed by the District Lab within a range of 5.0 to 8.0 % by weight of total mix. One percent hydrated lime will be added by weight of aggregate. Open graded friction course gradation requirements shall meet NMDOT Standard Specifications for Highway and Bridge Construction, Current Edition Section 403.

TABLE 403.2.2:1, TYPE 1:

SIEVE SIZE	PERCENT PASSING
1/2 IN.	100%
3/8 IN.	90-100%
#4	25-55%
#10	0-12%
#40	0-8%
#200	0-4%

Hydrated lime and asphalt shall comply with Section 402 of NMDOT Standard Specifications for Highway and Bridge Construction Current Edition.

Material and construction shall conform to the NMDOT Standard specifications for Highway and Bridge Construction Current Edition.

Material testing shall conform to the tests and testing frequency established in Section 423, Section 403 or Section 402, which ever applies to the NMDOT Standard Specifications for Highway and Bridge Construction Current Edition.

Quantities are estimated and are for bidding purposes only. Quantities may be increased or decreased at the discretion of the District Engineer.

**Method of Award:**

**Vendors shall bid all or none of the 9 items for each area.**

Vendor is required to deliver material to said location by means of the shortest possible distance available.

Hot Mix material to be delivered to laydown machine by Vendor or subcontractor in end dumps. Material in belly-dumps may be allowed when laydown includes a windrow self-elevating device or as directed by the District Engineer or his designee. Transferring material from one delivery system to another shall not be allowed.

Contractor shall be capable of delivering a minimum of 80 tons per hour of hot mix to lay down machine.

Delivery rates for the above materials will be based on Regulated ACC & ICC Rates.

**Escalation Clause:**

In the event of a product cost increase, an escalation request will be reviewed by this office on an individual basis. 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. Current Item Price
3. Proposed New Price
4. Percentage of Increase
5. Mill/Supplier Notification of price increase indicating percentage of increase including reason for increase.

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This escalation policy will be terminated as soon as the market stabilizes. Should you have questions concerning this policy, please contact the State Purchasing Division.

**Hold Harmless Clause:**

Contractor 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 damages to property caused by or resulting from contractor's and/or its employees own negligent act(s) or omission(s) while Contractor, and/or its employees perform(s) or fails to perform its obligation 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 this agreement to create for the public or any other member thereof, a third party beneficiary or to authorize any one 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 any other claim(s) what so ever pursuant to the provisions of this agreement. The Contractor shall procure and maintain at contractor's expense insurance of the kinds and in the amounts herein provided. This insurance shall be provided by insurance companies authorized to do business in New Mexico and shall cover all operation under the contract, whether performed by the Contractor, the Contractor's agents or employees or by subs. All insurance provided shall remain in full force and effect for the entire period of the work, up to and including final acceptance, and the removal of all equipment and employees, agents and the subcontractors therefrom.

**Insurance Requirements:**

The Contractor shall procure and maintain at the Contractor's expense insurance of the kinds and in amounts herein provided. This insurance shall be provided by insurance companies authorized to do business in New Mexico and shall cover all operations under the contract, whether performed by the Contractor, the Contractor's Agents or Employees or by Subcontractors. All insurance provided shall remain in full force and effect for the entire period of the work, up to and including final acceptance, and the removal of all equipment, employees, agents and subcontractors therefrom.

**(A) Public Liability and Automobile Liability Insurance**

1. General liability: bodily injury liability and property damage liability insurance applicable in full to the subject project shall be provided in the following minimum amounts:

Bodily Injury Liability: \$1,000,000 each person; \$2,000,000 each occurrence (Annual Aggregate)

Property Damage Liability: \$2,000,000 each occurrence (Annual Aggregate)

- a. The policy to provide this insurance is to be written on a comprehensive general liability form or commercial general liability form which must include the following:
  1. Coverage for liability arising out of the operation of independent contractors
  2. Completed operation coverage
  3. Attachment of the broad form comprehensive general liability endorsement
- b. In the event that the use of explosives is a required part of the contract, the contractor's insurance must include coverage for injury to or destruction of property arising out of blasting or explosion.
- c. In the event that a form of work next to an existing building or structure is a required part of contract, the contractor's insurance must include coverage for injury to or destruction of property arising out of:
  1. The collapse of or structural injury o building or structures due to excavation, including burrowing, filling or backfilling in connection herewith, or to tunneling, cofferdam work or cassion work or to moving, shoring, underpinning, razing or demolition of building or structures or removal or rebuilding of structural supports thereof.

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- d. Coverage must be included for injury to or destruction of property arising out of injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property or any apparatus in connection therewith below the surface of the ground. If such injury or destruction is caused by or occurs during the use of mechanical equipment for the purpose of excavating, digging, or drilling, or to injury to or destruction of property at an time resulting there from.
  - 1. Automobile liability insurance coverage for the contractor (whether included in the policy providing general liability insurance or in a separate policy) must provide liability for the ownership, operation and maintenance of owned, non-owned, and hired cares. The limits of liability for automobile liability insurance shall be provided in the following amounts:

Bodily Injury Liability: \$1,000,000 each person; \$2,000,000 each occurrence (Annual Aggregate)  
Property Damage Liability: \$2,000,000 each occurrence (Annual Aggregate)

- (B) Worker's Compensation Insurance: The contractor shall also carry Worker's Compensation Insurance or otherwise fully comply with the provision of the New Mexico Workman's Compensation Act and Occupational Disease Disablement Law.

If the contractor is an "owner-operator" of such equipment, it is agreed that the State of New Mexico assumes no responsibility, financial or otherwise, for any injuries sustained by the "owner-operator" during the performance of said contract. **If the Contractor fails to comply with Worker's Compensation Act and applicable rules when required to do, the contract may be cancelled effectively immediately.**

- (C) Certificate of Insurance/Department as Additional Insured: The contractor being awarded the Price Agreement shall furnish evidence of contractor's insurance coverage by a certificate if insurance. The certificate of insurance shall be submitted prior to award of the Price Agreement.

The contractor shall have the New Mexico Department of Transportation named as an additional insured on the comprehensive general liability form or commercial general liability form furnished by the contractor pursuant to paragraph (A) 1 and (A) 2 of this subsection. The certificate of insurance shall state that the coverage provided under the policy is primary over any other valid and collectible insurance.

The certificate of insurance shall also indicate compliance with these specifications and shall certify that the coverage shall not be changed, cancelled or allowed to lapse without giving the Department thirty (30) days written notice. Also, a certificate of insurance shall be furnished to the Department on renewal of a policy or policies as necessary during the terms of this contract.

The Department shall not issue a notice to proceed until such time as the above requirements have been met.

- (D) Umbrella Coverage: The insurance limits cited in the above paragraphs are minimum limits. This specification is no way intended to define what constitutes adequate insurance coverage for individual contractor. The Department will recognize following form excess coverage (Umbrella) as meeting the requirements of subsection (A) 1.A of this contract, should such insurance otherwise meet all requirements of such subsections.
- (E) Other Required Insurance: The contractor shall procure and maintain, when required by the Department, from and types of Bailee Insurance such as, but not limited to, Builder's Risk Insurance, Contractor's Equipment Insurance, Rigger's Liability Property Insurance, etc. in an amount necessary to protect the Department against claims, losses, and expenses arising from the damage, disappearance or destruction of property of others in the care, custody or control of the contractor, including property of others being installed, erected or worked upon by the contractor, his agents, or subcontractors.
- (F) Railroad Insurance: In the event that railroad property is affected by the subject contract, the contractor, in addition to the above requirements, shall be required to furnish a railroad protective liability policy in the name

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of the railroad company involved. In addition, on those rails that are used by the National Railroad Passenger Corporation (NRPC), the contractor will also obtain a railroad protective liability policy in the name of NRPC.

The limits of liability for the railroad protective liability policy (or policies) must be negotiated with the railroad company on a hazard and risk basis. In no event will the limits exceed the following:

Bodily Injury Liability, Property Damage Liability: \$2,000,000 each occurrence

Liability and Physical Damage to Property: \$6,000,000 Aggregate

The limits of liability stated above apply to the coverage's as set forth in the railroad protective liability endorsement form, subject to the terms, conditions, and exclusions found in the form.

The policy must afford coverage as provided in the standard railroad protective liability endorsement (AASHTO Form).

The conditions listed in the above paragraphs are an integral part of this bid and shall be the conditions regulating performance of any contract between the bidder and the State of New Mexico and an Commission, Divisions, or Department thereof.

**Payment Provisions:**

Within fifteen (15) days after the date the Department receives written notice from the Contractor 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 (30) days after the date of receipt of written notice from the Contractor that payment is requested, provide to the Contractor a letter of exception explaining the defect or objection to the services, construction or delivered tangible personal property along with details of how the Contractor may proceed to provide remedial action. Upon certification by the Department that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the Contractor within thirty (30) 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 (30<sup>th</sup>) 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 Contractor at the rate of one and a half (1½) percent per month. For purchases funded by state or federal grants to local public bodies, if 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 Contractor within five (5) working days of receipt of funds from that funding agency.

Final payment shall be made within thirty (30) days after the work has been approved and accepted by the Department's secretary or his/her duly authorized representative. The Contractor agrees to comply with state laws and rules pertaining to worker's compensation insurance coverage for its employees. If Contractor fails to comply, the worker's compensation act and applicable rules when required to do so, the contract may be cancelled effective immediately.

**Public Works Minimum Wage Act:**

This is a Public Works contract subject to the provisions of the Public Works Minimum Wage Act, Section 13-4-11 through 13-4-17, et. Seq. NMSA 1978 as amended. Minimum wage rates as determined and published by the New Mexico Department of Workforce Solutions, Santa Fe, New Mexico shall be in effect and utilized by the vendor during the life of this price agreement.

You are hereby advised that wherever differences exist between the minimum wage rates shown under wage decisions of the New Mexico Department of Workforce Solutions, Santa Fe, New Mexico and those shown under U.S. Department of Labor current Wage Decision Numbers, No. NM 030002-NM030003 and any modifications thereto noted in the contract assembly, the higher wage rates shall govern.

If a Contractor or Subcontractor is willfully paying his laborers, mechanics, or operators less than the rates required by the agreement for the work the laborers, mechanics, and operators are performing, the contractor or subcontractor may lose his right to proceed with the work.

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**Contract Order:**

At time of every task order issued for projects over \$60,000.00, a Wage Rate Decision number must be requested by end user of the user Agency. The Wage Rate Decision number can be obtained by contacting Work Force Solutions at [www.dws.state.nm.us/new/Labor\\_Relations/publicworks.html](http://www.dws.state.nm.us/new/Labor_Relations/publicworks.html). Wage Rates must be attached to each contract order issued.

**Tax Note:**

Price shall not include State Gross Receipts or Local Option Tax. Tax shall be added at time of invoice at current rates as a separate item to be paid by users. The price quoted herein represents 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, federal tax, permits, licenses, and other items necessary to complete the work provided. The prices quoted in this contract include an amount sufficient to cover such costs.

No person shall act as a contractor without a license issued by the Construction Industries Division classified to cover the type of work to be undertaken. No bid on a contract shall be submitted unless the contractor has a valid license issued by the Construction Industries Division to bid and perform the type of work to be undertaken as per section 60-13-12, NMSA 1978.

Vendor is requested to indicate Federal Tax ID Number, NM Gross receipts Number or Social Security Number:

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The contractor shall be considered an independent contractor and not an employee of the State of New Mexico. However, directions as to the time and place of performance and compliance with rules and regulation may be required by the using agency.

Contractor License No. \_\_\_\_\_

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Item	Approx. Qty.	Unit	Article and Description	Unit Price
001	5,000	Ton	Hot Mix/Cold Lay, Loaded in Highway Dept. Trucks FOB: Vendors plant. Roswell Area	AA)\$95.00 AB)\$110.00
002	5,000	Ton	Hot Mix (0-5,000 Tons) Loaded in Highway Dept. Trucks FOB: Vendors plant. Roswell Area	AA)\$90.00 AB)\$110.00
003	5,000	Ton	Hot Mix (Over 5,000 Tons) Loaded in Highway Dept. Trucks FOB: Vendors plant. Roswell Area	AA)\$87.00 AB)\$110.00
004	5,000	Ton	OGFC with AC 20 Loaded in Highway Dept. Trucks FOB: Vendors plant. Roswell Area	AA)\$100.00 AB)\$135.00
005	5,000	Mile	Hauling of material FOB: Vendors plant. Roswell Area	AA)\$0.45 AB)\$0.32
006	5,000	Ton	OGFC in Place (includes asphalt paver, roller and all required labor to finish in the Roswell area	AA)\$110.00 AB)\$165.00
007	5,000	Ton	0-5,000 tons Hot Mix in Place (includes asphalt paver, roller and all required labor to finish in the Roswell area	AA)\$105.00 AB)\$135.00
008	5,000	Ton	5,000+ tons Hot Mix in Place (includes asphalt paver, roller and all required labor to finish in the Roswell area	AA)\$100.00 AB)\$130.00
009	5,000	Mile	Mobilization of paver and roller in the Roswell area	AA)\$20.00 AB)\$25.00
010	5,000	Ton	Hot Mix/Cold Lay, Loaded in Highway Dept. Trucks FOB: Vendors plant. Vaughn Area	AA)\$115.00 AB)\$100.00
011	5,000	Ton	Hot Mix (0-5,000 Tons) Loaded in Highway Dept. Trucks FOB: Vendors plant. Vaughn Area	AA)\$110.00 AB)\$95.00
012	5,000	Ton	Hot Mix (Over 5,000 Tons) Loaded in Highway Dept. Trucks FOB: Vendors plant. Vaughn Area	AA)\$107.00 AB)\$93.00
013	5,000	Ton	OGFC with AC 20 Loaded in Highway Dept. Trucks FOB: Vendors plant. Vaughn Area	AA)\$115.00 AB)\$110.00
014	5,000	Mile	Hauling of material FOB: Vendors plant. Vaughn Area	AA)\$0.45 AB)\$0.32



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Item	Approx. Qty.	Unit	Article and Description	Unit Price
015	5,000	Ton	OGFC in Place (includes asphalt paver, roller and all required labor to finish in the Vaughn area	AA)\$129.00 AB)\$150.00
016	5,000	Ton	0-5,000 tons Hot Mix in Place (includes asphalt paver, roller and all required labor to finish in the Vaughn area	AA)\$119.00 AB)\$125.00
017	5,000	Ton	5,000+ tons Hot Mix in Place (includes asphalt paver, roller and all required labor to finish in the Vaughn area	AA)\$115.00 AB)\$120.00
018	1	Mile	Mobilization of paver and roller in the Vaughn area	AA)\$20.00 AB)\$25.00

\*\*\*18 Items Total \*\*\*