



State of New Mexico
General Services Department
Purchasing Division

Price Agreement Amendment

Awarded Vendor
2 Vendors

Price Agreement Number: 70-805-17-15673

Price Agreement Amendment No.: Two

Term: April 18, 2017 – April 17, 2020

Ship To:
New Mexico Department of Transportation
Various Locations

Procurement Specialist: Raelynn Lujan

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) 570-7940

Title: Volcanic Cinders District 4

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 April 18, 2019 to April 17, 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

Date: 04/18/2019

Director, New Mexico State Purchasing Division

Handwritten initials: MM



State of New Mexico
General Services Department
Purchasing Division

Price Agreement Amendment

Awarded Vendor:
2 Vendors

Telephone No.: _____

Price Agreement Number: 70-805-17-15673


Price Agreement Amendment No.: One

Term: April 18, 2017-April 17, 2019

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

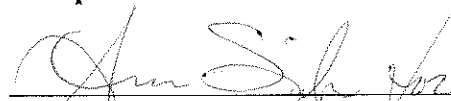
Title: **Volcanic Cinders District 4**

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 April 18, 2018 to April 17, 2019 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: 3/5/18



State of New Mexico General Services Department

Price Agreement

Awarded Vendor:
2 Vendors (see page 7)

Telephone No.:


Price Agreement Number: 70-805-17-15673

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: **Volcanic Cinders District 4**

Term: **April 18, 2017-April 17, 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: 4/13/17

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:

(AB) 0000047525
BTU Block & Concrete, Inc.
PO Box 578
Raton, NM 87740
575-445-2373

(AC) 0000052204
Olivas Trucking Co.
PO Box 504
Mora, NM 87732
505-350-9749

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Purpose:

To establish a price agreement for the purchase of Cinder Material for snow and ice control to be delivered throughout the District Four areas: FOB: designated patrol yards.

Orders must be delivered within seven (7) days per patrol after receipt of order by priorities as determined by the New Mexico Department of Transportation District Engineer or his designee.

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.

Term:

The terms of this agreement shall be for one (1) year from date of award with the option to extend for period(s) of three (3) additional years, on a year-by-year basis, 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.

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.

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.

Deliveries must be done between the hours of 7:00 am and 3:00 pm Monday thru Friday unless otherwise directed by the District Engineer or his designee.

Vendors shall be required to notify respective patrol yards of times and dates of deliveries.

Deliveries to be done only with end dump trucks.

The seven (7) calendar day delivery time per patrol may be waived only for extenuating circumstances by the District Engineer or his designee.

Payment to vendor shall be made when all orders are delivered and complete to the designated patrol yard.

The NMDOT reserves the right to go to another source, if deliveries are not in compliance with the contract.

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Basis of payment to be by the tonnage weighed on certified scales provided by the vendor. Vendor shall provide copy of net weight ticket with each load. NMDOT shall have the right to verify any or all loads. NMDOT cost of weigh-in shall be included in the bid price.

Cinder material specifications:

<u>SIEVE SIZE</u>	<u>% PASSING</u>
½ IN	100
3/8 IN	70-100
# (number) 200	0-16

Moisture content 2.5% (percent) maximum by weight:

All cinders shall be relatively dry (maximum of two and one half percent 2 ½% maximum moisture multiplied by the net weight deducted from inspection from the net weight of the load). Cinders will be subject to inspections, testing and acceptance or rejection by personnel of the NMDOT. Price reductions will be applied according to the following example:

Moisture Content: 2.5% (percent) maximum content allowed

Example: Test result = 2.7% (percent); thus, 2.7% (percent) – 2.5% (percent) = 0.2% (percent) excess moisture. This excess moisture content will be deducted from the delivered weight.

Example: Delivered weight = 23.60; thus 23.60 tons x .02% (percent) – 0.05 tons.
Corrected weight = 23.60 tons – 0.05 tons = 23.55 tons

All quantities, amounts and locations are estimated and may be changed to meet the actual field conditions and as per budget availability.

Method of award:

This Price Agreement is established as source of convenience of the New Mexico Department of Transportation (NMDOT). Multiple awards will be made to serve the best interest of the NMDOT. Award shall be made to the lowest bidder(s) item per item for each area. It is the responsibility of the user agency to utilize this Price Agreement to the best interest of the State of New Mexico.

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

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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. Its 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 anyone not a party to the agreement to maintain a suit(s) for wrongful death(s) bodily and/or personal injury(ies) to persons(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.

Payment Provisions:

Within fifteen 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 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 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 contractor at the rate of 1-1/2 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 contractor 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 contractor agrees to comply with state laws and rules pertaining to workers' compensation insurance coverage for its employees. If contractor fails to comply with the workers' compensation act and applicable rules when required to do so, the contract may be canceled effectively immediately.

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Items	Approx. Qty.	Unit	Article and Description	Unit Price
001	2,000	Ton	Volcanic Cinders - Santa Rosa, New Mexico	AB)\$28.62 AC)\$30.71
002	2,000	Ton	Volcanic Cinders - Tucumcari, New Mexico	AB)\$29.38 AC)\$24.00
003	2,000	Ton	Volcanic Cinders - Ragland, New Mexico	AB)\$33.23 AC)\$29.00
004	2,000	Ton	Volcanic Cinders - San Jon, New Mexico	AB)\$29.23 AC)\$24.00
005	2,000	Ton	Volcanic Cinders - Nara Visa, New Mexico	AB)\$23.54 AC)\$21.00
006	2,000	Ton	Volcanic Cinders - Trementina, New Mexico	AB)\$25.31 AC)\$21.00
007	2,000	Ton	Volcanic Cinders - Clayton, New Mexico	AB)\$14.69 AC)\$13.00
008	2,000	Ton	Volcanic Cinders - Des Moines, New Mexico	AB)\$11.04 AC)\$13.00
009	2,000	Ton	Volcanic Cinders - Raton, New Mexico	AB)\$14.50 AC)\$15.86
010	2,000	Ton	Volcanic Cinders - Eagle Nest, New Mexico	AB)\$23.62 AC)\$23.66
011	2,000	Ton	Volcanic Cinders - Springer, New Mexico	AB)\$16.38 AC)\$17.00
012	2,000	Ton	Volcanic Cinders - Roy, New Mexico	AB)\$17.69 AC)\$18.00
013	2,000	Ton	Volcanic Cinders - Rowe, New Mexico	AB)\$17.17 AC)\$22.00
014	2,000	Ton	Volcanic Cinders - Las Vegas, New Mexico	AB)\$19.23 AC)\$24.93

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015	2,000	Ton	Volcanic Cinders - La Cueva, New Mexico	AB)\$19.02 AC)\$26.00
016	2,000	Ton	Volcanic Cinders - Wagon Mound, New Mexico	AB)\$16.49 AC)\$20.00

*** 16 Items Total ***