



State of New Mexico
General Services Department
Purchasing Division

Contract Amendment

Awarded Vendor
0000047546
Culligan of Cebola County
PO Box 2904
1051 Elkins RD
Mila, NM 87021
Email: betterwater@culliganmilan.com
Telephone No.: 505-287-8104

Contract Number: 71-805-16-15376

Contract Amendment No.: One

Term: February 1, 2017 thru January 31, 2019

Ship to:
NMDOT – District 6
Acomita Rest Area
20 Miles East of Grants, NM

Procurement Specialist: Sandra Lujan

Telephone No.: 505-827-0242

Email: sandrar.lujan@state.nm.us

Invoice:
NMDOT
PO Box 1149
Santa Fe, NM 87504

For questions regarding this Contract please contact:
Dolores Baca 505-827-3209

Title: *Water Softener System Maintenance, Repairs, and Replacement Parts*

This amendment is to be attached to the respective Contract and become a part thereof.

In accordance with Contract provisions, and by mutual agreement of all parties, this Contract is extended from February 1, 2018 to January 31, 2019 at the same price, terms and conditions.

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

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 01/17/2018



**State of New Mexico
General Services Department**

Contract

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0000047546
Culligan of Cibola County
PO Box 2904
1051 Elkins Rd
Milan, NM 87021
Email: betterwater@culliganmilan.com
Telephone No.: 505-287-8104


Contract Number: 71-805-16-15376

Payment Terms: Net 30

F.O.B.: Destination

Delivery: As Requested by User

Ship To:
NMDOT – District 6
Acomita Rest Area
20 Miles East of Grants, NM

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Title: *Water Softener System Maintenance, Repairs and Replacement Parts*

Term: February 1, 2017 thru January 31, 2018

This Contract is made subject to the “terms and conditions” shown on the reverse side of this page, and as indicated in this Contract.

Accepted for the State of New Mexico



1/26/2017

New Mexico State Purchasing Agent

Purchasing Division: 1100 St. Francis Drive, Santa Fe, NM 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472

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Date:

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.

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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, 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 13-1-199 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. **Items:** 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 the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the contracting agency.

18. **Submission of Bid:** 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 bid 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 ensure 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.

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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, the State Purchasing Division, the Department of Finance and Administration, the Office of the State Auditor and, for Information Technology contracts, the 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. **Subcontracts:** 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://www.insurenewmexico.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/Pay_Equity.aspx

Contract

Article I – Statement of Work

Contractor to provide requirements as indicated in specifications.

Article II – Term

The term of this Contract will be as indicated in specifications.

Article III – Termination

The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach. Termination of this Contract, however, shall not affect any outstanding orders. This provision is not exclusive and shall not waive other rights and remedies afforded either party in the event of breach of contract or default. In such instances the contract may be cancelled effective immediately.

Article IV – Amendment

This Contract may be amended by mutual agreement of the New Mexico State Purchasing Agent and the Contractor upon written notice by either party to the other. An amendment to this Contract 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. Amendments affecting price adjustments and/or extension of contract's expiration date are not allowed unless specifically provided for in bid and contract documents.

Article V – Price Schedule

Price(s) as listed are firm.

Article VI – Indemnity 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 damage to properties caused by, or resulting from, Contractor's, and/or its employees, own negligent act or omission while Contractor, and/or its employees, perform 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 (NMSA 1978 § 41-4-1, et seq. 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 in the public or any 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(s) to person(s), damage(s) to property(ies) and/or any other claim(s) whatsoever pursuant to the provisions of this agreement.

Vendor shall provide all insurance necessary to employees on the work site, including but not limited to Worker's Compensation.

Article VII – Contractor Agreement

Contractor agrees to:

- A. Furnish all equipment, material, labor and tools, required to perform the work specified.
- B. Provide competent supervision and skilled personnel to perform all work in progress.
- C. Comply with all local, state, and federal laws governing safety, health and sanitation. The Contractor shall provide all safeguards, safety devices and protective equipment, and take any other needed actions necessary to protect the life and health of employees on the job and the safety of the public, and to protect the property of the State of New Mexico in connection with the performance of the work covered by this Contract.
- D. Provide workers adequate insurance, including but not limited to Worker's Compensation.
- E. Make necessary arrangements for storage of his/her tools and/or equipment. The state agency will not be responsible for any lost or stolen property.
- F. Be responsible for all cleanup work on the project site and at the equipment storage area(s) prior to final inspection and acceptance.
- G. Comply with all applicable codes for this type of work.
- H. Be held liable for any damages which occur because of his/her negligence or that of his/her employees.

Contractor License Number (if applicable) _____

Classification _____

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To establish a Contract for the New Mexico Department of Transportation for monthly maintenance checks and occasional repairs to two (2) water softening systems, located at the Acomita Rest Area, twenty (20) miles east of Grants, NM (District 6). This Price Agreement may also be utilized to purchase new water softening equipment as needed for the maintenance of NMDOT Rest Areas.

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

Method of Award:

Any interested vendors must be a Culligan Dealer, in order to provide compatible components and parts to existing systems and provide factory authorized service. The two water softening systems at the Acomita Rest Area are Culligan Hi Flo-3, 2900 series with one CSM filter on each unit. New equipment shall be Culligan current production model at time of request. Award will be made for service of the Acomita Rest Area and discount off retail pricing of new equipment.

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 damage to property caused by, or resulting from, contractor's and/or its employees own negligent acts or omissions while contractor, and/or its employees, perform 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 (Section 41-4-1, et. Seq., NMSA 1978 comp. and Section 57-7-1NMSA comp.) and any amendments thereto. It is specifically agreed between parties executing this agreement that it is not intended by any of the provisions of the agreement to create the public or any member thereof a third party beneficiary or to authorize anyone not a party to the agreement to maintain a suit for wrongful death, bodily and/or personal injury to persons, damage to properties and/or any other claims whatsoever pursuant to the provisions of this agreement.

Tax Note:

Prices shall not include gross receipt or local option tax. Tax shall be added to the invoice at current rates as a separate item to be paid by users.

The price represented herein, represents the total compensation to be paid by the State to the Contractor for goods and services provided. It is understood that the Contractor providing said goods and/or services to the State is responsible for payment of all costs of labor, equipment, tools, material, federal tax, permits, licenses, fees and any other items necessary to complete the work provided. The price quoted in this contract shall include and amount sufficient to cover these costs.

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**Ship to: NMDOT – District 6
Acomita Rest Area
20 Miles East of Grants, NM**

**Invoice to: NMDOT
PO Box 1149
Santa Fe, NM 87504**

Item	Approx Qty.	Unit	Article and Description	Unit Price
001		Month	Service check for two (2) water softening units to include any training on required maintenance. Check entire system, test module water, test product water as needed.	<u>\$ 85.00</u>
002		Hour	Hourly rate for repairs required over and above monthly service call.	<u>\$ 85.00</u>
003		Hour	Hourly rate, per man, for installation of new equipment.	<u>\$ 85.00</u>
004		%	Discount from retail price list for repair parts.	<u>10%</u>
005		%	Discount from retail price list for new equipment.	<u>10%</u>
006		Mile	Round trip mileage charge to Acomita Rest Area for repairs other than preventative Maintenance.	<u>\$ 20.00</u>

*****6 Items Total*****

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