



State of New Mexico General Services Department

Price Agreement

Awarded Vendor:

0000097623

Border Construction Specialties

3825 Commercial St. NE.

Albuquerque, NM 87107

Telephone No.: (505) 246-9848

Price Agreement Number: **90-805-18-16722**

Payment Terms: **Net 30**

F.O.B.: **Destination**

Delivery: **As Requested**

Ship To:

New Mexico Department of Transportation

District Six

1919 Pinon Drive

Milan, NM 87021

Procurement Specialist: **Yuliasuti Wulandari** *yw*

Telephone No.: **(505) 827-0485**

Email: **Yuliasuti.Wulandari@state.nm.us**

Invoice:

Same as Ship To address

**For questions regarding this contract please contact:
Angela Martinez (505) 570-7940**

Title: Bridge Repair Materials

Term: February 15, 2019 thru February 14, 2020

This Price Agreement is made subject to the "terms and conditions" as indicated on subsequent pages.

Accepted for the State of New Mexico

Acting Director, State Purchasing Division

Date: 2/14/19

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

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, such causes include but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government,

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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 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 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. **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.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!*

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.

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Article V - 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 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 or 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.

Specifications:

The New Mexico Department of Transportation District Six (Department) wishes to establish a Price Agreement for Bridge Repair Materials. This Price Agreement is for **Materials** only.

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

Important Note:

All material supplied under this Agreement shall be as specified in the NMDOT Standard Specifications Current Edition, in particular, but not limited to, sections 533, 535, 561, 562, and 563 and shall have been approved through the NMDOT Product Evaluation Program. The sealing elements (glands or joints) shall be furnished in the lengths ordered by the NMDOT, no splicing will be allowed. Steel rails or extrusions may be furnished in stock lengths and fabricated or spliced by the NMDOT to fit the location.

The Department's Standard Specifications is available on the NMDOT website, at the following link: <http://dot.state.nm.us/content/nmdot/en/Standards.html> and they are available for purchase at the General Office Financial Control Section (505) 827-5159.

The apparent silence of any specification as to any details or the omission from it of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and that only material of first quality and correct type, size and design are being used. All workmanship shall be made upon the basis of this statement.

All specifications are a minimum. The use of a brand name is for the purpose of describing the standard of quality, performance and a characteristic desired and is not to limit or restrict competition.

Bidding Information:

The vendor is to indicate their Federal Tax ID number, New Mexico gross receipts number or social security number _____.

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/or specifications. All conditions and specifications in the Invitation to Bid shall be included by the vendor in their bid package. Failure to do so or any attempt to vary or change the conditions or specifications of the Invitation to Bid shall, at the discretion of the State Purchasing Division, constitute grounds for rejection of the entire bid.

Vendors who are bidding shall promptly notify the State Purchasing Division of any ambiguity, inconsistency or error which they may discover upon examination of the bidding documents. The State Purchasing Division shall have the right to reject any or all bids, and in particular to a bid not accompanied by the data required by this bidding document, or a bid which in anyway is incomplete or irregular.

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The prices quoted herein represent the total compensation to be paid by the State of New Mexico for goods provided. It is understood that the party providing said goods to The State of New Mexico is responsible for payment of all costs of labor, equipment, tools, materials, federal taxes, permits, licenses, fees, and any other items necessary to complete the work provided. The prices quoted in this Invitation to Bid include an amount sufficient to cover such costs.

The vendor shall be considered an independent vendor and not an employee of the State of New Mexico. The NMDOT shall provide direction regarding the performance required by this Price Agreement.

Method of Award:

Pursuant to the Procurement Code, Sections 13-1-153 and 13-1-154, the State reserves the right to issue multiple awards to obtain the items listed. Multiple awards are recommended to ensure availability and timely delivery.

Escalation Clause:

In the event of a product cost increase, an escalation request will be reviewed by this office (NMDOT) annually and approved by State Purchasing Division 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 (15) 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. Price Agreement 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 justification for increase.

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 properties 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 Price 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 56-7-1, NMSA 1978 Comp.) and any amendments thereto.

It is specifically agreed between the parties executing this Price Agreement that it is not intended by any of the provisions of any part of the Price Agreement to create for the public or any member hereof, a third party beneficiary or to authorize anyone not a party to the Price Agreement to maintain a suit for wrongful death bodily and/or personal injury to persons, damage to properties and/or other claims whatsoever pursuant to the provisions of this Price Agreement.

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 the details of how the Contractor may proceed to provide remedial action. Upon certification by the Department that the services, construction, or delivered tangible personal property have been received and accepted, payment shall be tendered to the 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 (30th) 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 one half percent (1-1/2%) per month. Final payment shall be made within thirty (30) 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 Worker's Compensation Insurance coverage for its employees. If Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so, the Price Agreement may be cancelled effective immediately.

Tax Note:

Prices 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 the user.

Shipping Note:

Prepay freight and add to invoice as a separate item.

Purchase and Delivery:

The NMDOT District Six reserves the right to purchase goods from any of the awarded Vendors based on the needs of the Department. The Department will determine and use the Price Agreement goods which best serve the Department's needs, based on cost, delivery time, schedule of work and quality of materials. All decisions by the Department will be final.

The quantities are estimates and are for bidding purposes only. The actual requirements will be determined by the District Engineer or their designee, and the quantities may be increased or decreased as necessary to meet actual requirements or needs. The Department does not guarantee any amount of work.

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Item	Approx. Qty.	Unit	Article and Description	Unit Price
001	300	Each	"Watson Bowman ACME Wabo Silicone Seal" or approved equal. Two (2) part polymer sealant packaged in standard 25.36 ounce dual cartridges for use as a bridge deck joint sealant on horizontal surfaces. (50.72 ounces per unit)	\$74.29 Price is for 300 ea cartridges per addendum
002	1,000	Each	Nosing units, including all necessary primers for the product finished. Wabocrete II or equal	\$136.43 Price is for 50 units 0.6 cu/ft per addendum
003	1,000	LF – Linear Foot	Backer rod, hard, 1 inch	\$0.27
004	400	LF – Linear Foot	Backer rod, hard, 2 inch	\$0.82
005	300	LF – Linear Foot	Backer rod, hard, 3 inch	\$1.40
006	300	LF – Linear Foot	Backer rod, hard, 4 inch	\$21.42
007	1000	LF – Linear Foot	Backer rod, soft, 3 inch	\$11.31
008	300	LF – Linear Foot	Backer rod, soft, 4 inch	\$21.42
009	100	Each	Sealing equipment (gland) for item 8 including all necessary adhesives and/or primers for products finished. (NMDOT shall specify lengths)	\$36.00 Price is for WBA SE 400 Strip Seal Gland
010	50	LF – Linear Foot	Inflatable joint seal (system) for 2 inch gap, as manufactured by Watson Bowman Acme, Profile Seal, Jeene, Type W or equal, with all the required adhesives and/or primers for the product furnished. (NMDOT will specify order lengths)	\$66.29
011	50	LF – Linear Foot	Inflatable joint seal (system) for 3 inch gap, as manufactured by Watson Bowman Acme, Profile Seal, Jeene, Type W or equal, with all the required adhesives and/or primers for the product furnished. (NMDOT will specify order lengths)	\$104.86

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Item	Approx. Qty.	Unit	Article and Description	Unit Price
012	50	LF – Linear Foot	Inflatable joint seal (system) for 4 inch gap, as manufactured by Watson Bowman Acme, Profile Seal, Jeene, Type W or equal, with all the required adhesives and/or primers for the product furnished. (NMDOT will specify order lengths)	\$147.71
013	50	LF – Linear Foot	Silicoflex Model #SF225 as manufactured by R.J. Watson or approved equal, with all required adhesive and/or primers. (NMDOT to specify order lengths)	\$24.29
014	50	LF – Linear Foot	Silicoflex Model #SF400 as manufactured by R.J. Watson or approved equal, with all required adhesive and/or primers. (NMDOT to specify order lengths)	\$34.29
015	50	Unit	Bridge Seal, Unitex, Healer Sealer (10 gallon/unit)	\$295.93
016	1000	Bag	Five Star Highway Patch or equal (50 Pound Bags)	\$26.66 896 Bags per truckload Price is for truckload
017	1000	Bag	Gravel, Pea, 3/8 inch, 50 lb. Bag	\$5.13 56 Bags per pallet
018	100	Each	Static nozzles for silicone seal	\$14.00
019	200	Bag	Multi-purpose, high strength, non-shrink epoxy patching mortar-Unitex Pro-Poxy 2500 or equal	\$366.50 Product listed is not a bag product it is a 3 Component Unit. Price is for 2.0 cu/ft unit 200 units

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Item	Approx. Qty.	Unit	Article and Description	Unit Price
020	500	Bag	Blasting abrasive-Grade 20-40 Abrasives Inc. Black Magic or equal	\$13.00 75# Bags 40 per pallet
021	1	%	Discount from manufacturer price list on all other bridge material not otherwise listed, plus applicable freight	0%

*** 21 Items Total ***