



State of New Mexico General Services Department

Price Agreement

Awarded Vendor:
2 Vendors

Telephone No.: _____

Price Agreement Number: 90-805-18-16732

Payment Terms: Net 30

F.O.B.: Destination

Delivery: See page 6 for details

Procurement Specialist: Raelynn Lujan

Telephone No.: (505) 827-0484

Email: raelynn.lujan@state.nm.us

Ship To:
New Mexico Department of Transportation -District Six
1919 Pinon Dr.
Milan, NM 87021-2160

Invoice:
New Mexico Department of Transportation -District Six
1919 Pinon Dr.
P.O. Box 2160
Milan, NM 87021-2160

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

Title: **High Performance Asphalt Patch Material District 6**

Term: **February 13, 2019 to February 12, 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: 2/11/2019

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State of New Mexico
General Services Department
Purchasing Division
Price Agreement #:90-805-18-16732

Page-2

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,

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #:90-805-18-16732

Page-3

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.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!*

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.

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #:90-805-18-16732

Page-5

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 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.

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #:90-805-18-16732

Page-6

VENDORS:

(AA) 0000045365
Brasier Asphalt, Inc
PO Box 19095
Albuquerque, NM 87119
(505) 873-1322
Sandy.Brasier@braiserasphalt.com

Delivery: As Requested

(AB) 0000050893
Pavement Sealants & Supply Inc
PO Box 9703
Albuquerque, NM 87119
(505) 264-2577
Steve@pavementsealants.net

Delivery: As Requested FOB Destination

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #:90-805-18-16732

Page-7

Specifications:

To establish a price agreement for Asphalt Concrete Patch Material for the New Mexico Department of Transportation District Six.

Term of Agreement: The term of this Price Agreement shall be for one (1) year from date of award with the option to extend for a period (s) 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 Price Agreement shall not exceed two (2) years

Bidding Information: The conditions and specifications set out in the Invitation for Bid are inseparable and indivisible. Any vendor, by submitting a bid, agrees to be bound by all such conditions and specifications. All conditions and specifications in the invitation to bid, and all other documents required to be submitted, shall be submitted 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, in the discretion of the State of New Mexico, constitute grounds for rejection of the entire bid.

The prices quoted herein represent the total compensation to be paid by the State for goods and/or services provided including any and all labor, equipment, tools, materials, taxes, permits, licenses or other costs necessary to complete the service or goods provided.

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

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

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

Method of Award: Method of award may be to multiple vendors statewide on an item by item basis.

This price agreement may be awarded to one (1) or more vendors, but not to exceed three (3) vendors per item.

Escalation Clause: In the event of a product cost increase, an escalation request will be reviewed by NMDOT and the State Purchasing Division on an individual basis. Please be aware this measure is not intended to allow any increase in profit margin, only to compensate for an actual cost increase. Price decreases as well as increases shall apply. If vendor's prices are reduced for any reason, users shall receive the benefit of such reductions. Price increases will not be retroactive to orders already in house or backorders.

Effective dates for an increase will not be any sooner than fifteen (15) days from the date the written request is received by the State Purchasing Division. To facilitate prompt consideration, all requests for price increase must include all information listed below:

1. Current item price
2. Proposed new price
3. Percentage of increase
4. Mill/supplier notification of price increase indicating percentage of increase
5. Vendor is requested to indicate Federal Tax ID number, NM Gross Receipts number or Social Security number
6. Price Agreement number
7. Business/Contractor contact person and contact information

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #:90-805-18-16732

Orders will be filled at the price in effect on the date of receipt of the order by the vendor. Any Questions concerning this Price Agreement or request for escalation shall be submitted in writing to Michael Neely, Procurement Supervisor by e-mail at: michael.neely@state.nm.us.

Minimum Requirements:

High Performance Permanent Cold Patch Material Description:

This material shall be a high performance permanent cold mix patching material for the use in asphalt and concrete. Material shall remain pliable in the bag and bulk and workable for a minimum of one (1) year even if stored outside at ambient temperatures. It shall be composed of laboratory approved mineral aggregates and modified bituminous liquid blend capable of coating wet aggregates (up to 4% moisture) without stripping and have stripping resistance of retained coating of not less than 95%. The permanent asphalt repair shall be uniform, remain flexible and cohesive to -15° F and be capable of retaining adhesive qualities in wet applications. The patching materials shall be able to repair asphalt, concrete, surface treated roads and shall not require removal and replacement if ever the pavement is overlaid. This material shall be mixed in a hot mix plant; no mixing in a pugmill is permitted. The high performance pavement patching material will be capable of storage in an uncovered outdoor stockpile for a minimum of twelve (12) months.

All Season Mix:

Material is made for all four seasons. Material has a winter mix (450 viscosity), spring/fall mix (700 viscosity) and a summer mix (850 viscosity) for all climates and temperatures throughout the year. Material can be produced at any viscosity. NMDOT shall recommend what viscosity they desire in their particular location.

Material:

A) Aggregate

The aggregate shall consist of 100% crushed stone or a laboratory approved equivalent under ASTM C-136. Aggregate must have a minimum of two (2) fractured faces. All aggregate is to be from approved sources, and representative samples of required aggregate shall be from the plant site and laboratory tested. Sampling and testing methods shall be in accordance with accepted local practice.

Gradation analysis is to comply with all local requirements. Recommended gradation analysis is as follows:

Screen Size	Percentage Passing (%)
3/8	100
No. 4	20-85
No. 8	2-30
No. 16	0-10
No. 50	0-6
No. 200	0-2

All aggregate percentages are based on the total weight of aggregate.

ASTM C-88 Soundness Loss:	Max 12%
ASTM C-131 Los Angles Abrasion:	Max 40%
ASTM C-117 -200 Sieve (by wash):	Max 2%
ASTM C-127, 128 Specific Gravity:	Max 2.55-2.75%
ASTM C-123 Soft Aggregates	Max 3%

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #:90-805-18-16732

Page-9

Aggregate acceptance:

Aggregate compatibility approved must be obtained from the quality control facility prior to material mixing at any hot mix plant.

B) Bituminous Material

The modified bituminous liquid will meet the following requirements:

ASTM D-1310 Flashpoint (TOC):	200° F (94°C) Min.
ASTM D-5 Penetration:	200 ° F Minimum
ASTM D-113 Ductility at 39° F (4° C)	0.4 In/Min 100 min
ASTM D-2042 Solubility in Tricloroethylene:	99% Minimum

Testing Requirements:

Note: Three separate tests

ASTM D-2172 Extraction Max: 4.5-7%

ASTM D-1664 Coating and Stripping Test for both wet and dry.

Aggregate must retain coating greater than 95% bituminous material.

Boiling test- 50 grams in put into 400 ml. of distilled water in a beaker and boiled for 3 minutes and stirred at one revolution per second. Material must retain coating in excess of 95%.

Liquid blend shall be shipped from authorized blending terminal locations. Liquid shall be blended at terminal under supervision of authorized quality control personnel. No additives, modifiers, or extra ingredients are to be introduced into the liquid blend at any time after shipment from terminal. **A copy of bill of lading and material certification shall accompany every shipment.** Liquid blend shall be shipped in insulated tankers to maintain oil temperature during transportation.

Plant Mix:

The cold mix shall consist of aggregates meeting material as specified in section A) Aggregate, and the bituminous liquid blend meeting material specified in section B) Bituminous material as indicated in the proposed job mix formula. Bituminous material shall be accepted at the supplier's source and at the plant site on the basis of a supplier material certification.

The preferred mixing ration shall be 5.5% liquid blend or 110 lbs. per finished ton (2000 lbs.) of mixed material.

Continuous on-site testing will determine exact final mixing ration which will be identified in the final job mix formula. All aggregate percentages are based on the total weight of the aggregate. The bituminous liquid blend content is based on the total weight of the mix.

The job mix information shall provide:

- Aggregate gradation band and aggregate type
- Bituminous material-amount and type including any additives used
- Temperature ranges for material preparation

Packaging Empty Bags:

The bags must be plastic or poly type with minimum thickness of 5 mils and capable of holding 50 pounds of finished high performance cold mix. The bag must be sealed on each side and bottom with top or fill side open and capable of being heat sealed to complete the packaging.

The empty bag must have clearly identifying markings and labeling in English and Spanish.

1. Product Name
2. Company Name

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #:90-805-18-16732

Page-10

3. Weight per bag
4. Installation
5. Instructions or pictorial on back of bag
6. Visual Label-Mix

Pallets:

The pallets must be 48 inches in length by 40 inches width and have four way entries to field side unloading. The pallet must be capable of containing a minimum of 56 bags or 2800 pounds.

Palletizing:

The palletizing must meet the following requirements to meet shipping, handling and storage of product.

The palletized packaging must have a 48 inch by 40 inch cardboard pallet liner that is placed on the bottom of the pallet to prevent the bags from being damaged when unloading occurs.

The palletized packaging must be completely wrapped on the outside with a poly type stretch or shrink wrap material. The palletized packaging must have an ultraviolet cover to protect the packaging from product bleed through and bag deterioration.

Manufactured Preparation and Operation:

Hot Mix Production

The mixture is to be produced through a conventional hot asphalt plant only under the direct supervision of a qualified representative and furnished product will not exceed 180° F. The bituminous liquid blend shall not be heated above 200° F. The final mixture must be tested in accordance with on-site quality control requirements.

Pugmill Production

Mixture through a cold manufacturing process (Pugmill) will not be accepted.

Stockpile Inspection

Prior to production, the stockpile site is to be inspected by the NMDOT for any contaminant such as dirt, sand or debris that may affect the quality of the high performance cold patch. The stockpile area should be a hard surface, preferably paved with concrete, or a bituminous surface.

Environmental Toxicity Testing

The modified bituminous cold patch must have an independent test conducted by a certified laboratory as to toxicology results in a static acute bio assay procedure for hazardous materials, which determines effect of runoff in waterways, lakes, ponds and groundwater.

Specification Sampling

A one-quart sample of the liquid blend will be retained at the asphalt depot prior to shipping. On delivery of the tank truck, an additional one-quart sample will be taken by the representative and is to be retained by the customer/producer for a period of one year, or until the stockpile is depleted.

Quality Control

On each load, the quality control technician will prepare a quality control report. All phases of production of the plant operation and material testing on each 150 tons of production will be prepared and entered accordingly in each category. Site tests will be completed which include spot test, strip resistance, coating observation and roll test.

A copy of bill of lading and material certification shall accompany every shipment marked with the purchase order number on any and all paperwork pertaining to each shipment.

All materials furnished under this price agreement must appear on the current NMDOT revised approved materials list on file at the NMDOT General Office and shall have been approved by the NMDOT Materials Lab and NMDOT Product Evaluation Committee. **A copy of the letter or Certification of Approval from the NMDOT shall accompany all bids.**

Performance Guarantee

The high performance cold mix material, when applied according to the proper directions to deteriorated concrete or bituminous pavement surfaces, must be guaranteed by the producer to permanently adhere to the repaired area for the life of the repair or until surrounding pavement area fails. Producer must replace actual volumes at no additional charge for any material that should ever ravel or release from repaired area.

Vendors are required to ensure that the products used in conjunction with this Agreement have been submitted and approved through the NMDOT Product Evaluation Program. Any Questions regarding the NMDOT Product Evaluation Program shall be directed to Product Evaluation Coordinator, Jessica Lopez, jessicam.lopez@state.nm.us

Quantities are estimates only. Exact quantities shall be determined by the District Engineer or designee.

All specifications are a minimum. Any reference herein to a particular make of model is not intended to be restrictive, but to set forth an acceptable level of quality and design.

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.

Insurance Requirements: The Contractor shall procure and maintain at the Contractors 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 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 there from.

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)

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #:90-805-18-16732

Page-12

- (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:
- Coverage for liability arising out of the operations of independent contractors
 - Completed operation coverage
 - 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 the contract, the Contractor's insurance must include coverage for injury to or destruction of property arising out of:
- The collapse of or structural injury to a building or structures due to excavation, including burrowing, filling or backfilling in connection therewith, or to tunneling, cofferdam work or caisson work or to moving, shoring, underpinning, razing or demolition of a building or structures or removal or rebuilding of structural supports thereof.
- (d) Coverage must include 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 any time resulting there from.
2. 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 cars. The limits of liability for automobile liability insurance shall be provided in the following amounts:

B. Worker's Compensation Insurance:

The Contractor shall also carry Worker's Compensation Insurance or otherwise fully comply with the provisions 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.

C. Certification of insurance/department additional insured:

The Contractor(s) being awarded the Price Agreement shall furnish evidence of the Contractor's insurance coverage by a certificate of 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 this subsection. The certificate of insurance shall be furnished to the Department upon renewal of a policy or policies as necessary during the term of this price agreement. The Department shall not issue a notice to proceed until such a 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 in no way intended to define what constitutes adequate insurance coverage for an individual contractor. The Department will recognize the following form of excess coverage (umbrella) as meeting the requirements of this contract, should such insurance otherwise meet all requirements of these subsections.

E. Other required insurance:

The Contractor shall procure and maintain, when required by the Department, form and types of Bailee 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 car, custody or control of the Contractor, including property of others being installed, erected or worded upon by the Contractor, his agents or Subcontractors.

State of New Mexico
General Services Department
Purchasing Division
Price Agreement #:90-805-18-16732

Page-13

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 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 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 annual aggregate 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 the performance of any contract between the bidder and the state of New Mexico and any Commission, Divisions or Department thereof.

Tax Note: Price shall not include State gross receipts or local option tax. Tax shall be added at the time of invoice at current rates as a separate item to be paid by the user.

The Contractor Agrees To:

- A. Provide competent supervision and skilled personnel to carry on all work in progress.
- B. 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, safety and health of employees on the job and the safety of the public, and to protect property in connection with the performance of the work covered by the Price Agreement.
- C. 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 act(s) or omission(s) while contractor and/or its employees perform(s) 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 (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 the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Price Agreement to maintain 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) whatsoever pursuant to the provisions of this Price Agreement.
- D. A potential contractor or the Contractor agrees to comply with State laws 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 requested to do so, the contract may be cancelled effective immediately.
- E. When applicable, to be responsible for all cleanup work on the project site and at the equipment storage areas prior to the final inspection and acceptance.

Purchase and Delivery: The NMDOT District Six reserves the right to purchase goods and/or services from any of the awarded contractors based on the needs of the Department. The Department will determine and use the Price Agreement item which best serves 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 NMDOT is under no obligation to purchase asphalt concrete patch material from the Contractor that is not required for the completion of the project. The quantities are estimates and are

State of New Mexico
 General Services Department
 Purchasing Division
 Price Agreement #:90-805-18-16732

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

Invoice to:

NMDOT-District Six
 1919 Pinon Dr.
 P.O. Box 2160
 Milan, NM 87021-2160

Ship to:

NMDOT-District Six
 1919 Pinon Dr.
 Milan, NM 87021-2160

Items:

Item	Approx. Qty.	Unit	Article and Description	(AA) Price	(AF) Price
001	1,000	Bag	Asphalt High Performance Cold Patch Material In Fifty (50) Pound Bags	\$15.00	\$11.17 Per Bag
002	1,000	Tons	Asphalt, High Performance Cold Patch Material	\$168.00	\$180.77 Per Ton

*** 2 Items Total ***