



State of New Mexico General Services Department

Price Agreement

Awarded Vendor:
2 Vendors – Please see page 6

Telephone No.:

Price Agreement Number: 90-805-19-16751

Payment Terms: See page 6 for details

F.O.B.: Destination

Delivery: See page 6 for details

Ship To:
New Mexico Department of Transportation
Various Locations

Procurement Specialist: Raelynn Lujan

Telephone No.: (505) 827-0484

Email: raelynn.lujan@state.nm.us

Invoice:
New Mexico Department of Transportation
Various Locations

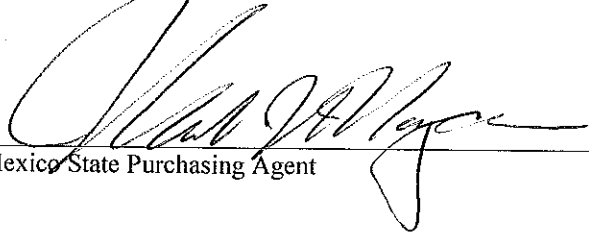
For questions regarding this contract please contact:
James Ortega: (505) 629-8884

Title: Road Profiling

Term: May 21, 2019 – May 20, 2020

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

Accepted for the State of New Mexico


New Mexico State Purchasing Agent

Date: 5/20/2019

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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.

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Awarded Vendors:

(AA) 0000126464

Dynatest North America Inc
11415 Old Roswell Road, Suite 100
Alpharetta, GA 30009
(678) 781-1799 x 231
dci@dynatest.com

Payment Term: 30 days after delivery
FOB: Destination
Delivery: 90 days after receipt of order

(AB) 0000135474

Surface Systems & Instruments, Inc.
P.O. Box 790
Larkspur, CA 94977
(415) 383-0570
support@smoothroad.com
info@smoothroad.com

Payment Term: Net 30
FOB: Destination
Delivery: 30 days after receipt of order

Specifications:

The purpose of this Invitation to Bid (ITB) is to secure competitive bids for a Road Profiler from qualified bidders and to establish a price agreement with the New Mexico Department of Transportation (NMDOT) that is applicable in accordance with the State Procurement Code of New Mexico.

Term:

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, on a year-by-year basis, 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 four (4) years.

Vendor Requirements:

All items and equipment listed as standard in manufacturer's literature shall be provided.

Successful vendor should be an authorized dealer and be a physically established dealership with parts and service facilities in New Mexico, with O.E.M. certified mechanics qualified to repair and service all aspects of engine and powertrain components.

When unit(s) are delivered, the bidder shall provide to the New Mexico Department of Transportation:

1. One (1) technical manual (DVD or flash drive if available)
2. One (1) parts book (DVD or flash drive if available)
3. One (1) operator's manual with each unit delivered
4. Documents of Title, (Due upon payment to vendor)
5. Certificates of Origin, (Due upon payment to vendor)
6. Warranty and Guarantee Certificates, (Due upon payment to vendor)
7. Certifications specified in the contract

Minimum Requirements

Profiling System:

This specification describes a high speed profiling system to be mounted to a one half (1/2) ton or larger capacity vehicle supplied by NMDOT. NMDOT is responsible to ensure that the vehicle supplied is of sufficient capacity and dimensions to allow for safe operations of the unit.

Data Collection:

Inertial profiling system with laser and accelerometer-established inertial reference and high resolution optical encoder sensor or GPS based distance measurement. Rated to meet or exceed Class I requirements of ASTM Standard E950 as well as AASHTO M328, R054, R056 and R057 (www.transportation.org). The Profiling System will be capable of collecting data at highway speeds up to seventy (70) MPH.

Data Sampling Interval:

Unit must allow for variable sampling intervals as low as one (1) inch for all collection speeds.

Distance Measurement:

Will use an optical encoder based distance measurement system with a longitudinal distance accurate of at least one tenth (0.1) of a percent.

Height Measurement:

Unit will acquire vertical measurements with the use of non-contact laser range finders that will not be affected by pavement texture, color, reflectivity or ambient lighting.

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Electronics System:

Manufacturer's standard that will provide a pedestal mount in-vehicle docking station for operator interface.

Software:

Manufacturer's standard providing a calibration routine for distance, proprietary accelerometer static calibration, bounce test, and laser height verification.

Mounting:

Unit shall allow for mounting to front or rear of the testing vehicle and will include all required hardware.

Operation:

Unit will be a one person operation and all functions will be performed from inside of the testing vehicle.

Delivery:

Deliver FOB to dealer's place of business within the state of New Mexico. In the event that there are no dealers or manufacturing facilities located in New Mexico then delivery will be determined by the NMDOT.

Method of Award:

Award will be made to the lowest responsible bidder meeting or exceeding specifications, terms and conditions. The NMDOT reserves the right to award to multiple vendors per item, whichever, in his/her judgment, best serves the interest of NMDOT

Vendors may bid up to three models for each item and are encouraged to do, so long as they meet the minimum specification. The New Mexico Department of Transportation does not set a limit for exceeding the minimum specifications and welcomes multiple models with different capabilities.

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:

Price shall not include state gross receipts tax or local option tax. Such tax or taxes shall be added at time of invoicing at current rate, and shown as a separate item to be paid by user.

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Prior to payment, Contractor shall supply Certificates of Compliance to NMDOT (District 3) Maintenance Assistant District Engineer or Designee.

All services and material shall be subject to inspection for acceptance by authorized NMDOT personnel.

Qualified Bidders:

Bids may be accepted from manufacturers and/or factory authorized dealers who are able and willing to provide responsive service to the ordering agency during the warranty period and the extended warranty period if required. Bidders must be in a position to offer the lowest cost/highest effectiveness, completely assembled units meeting or exceeding the minimum specifications contained herein.

Intent of Specifications:

The specifications are intended to describe equipment for use by the ordering agency, which will operate efficiently and safely. The design specifications incorporated herein are intended to describe such unit, and to set forth minimal performance parameters required by the State of New Mexico. The State reserves the right to accept minor variances in product design and/or operation offered by bidders if such acceptance is determined to be in the best interest of the State.

Inspection of Work:

Representatives of the NMDOT shall have access, at any reasonable time, to the bidder's and manufacturer's facilities for the purposes of inspection during periods of manufacture or assembly of the items to be ordered hereunder. The costs associated with such inspection trips shall be borne by the State and/or NMDOT

Delivery Terms:

Above noted equipment shall be delivered within ninety (90) working days of bidder's receipt of order. If the above noted equipment is to be installed on a separate unit supplied by the user agency, then it shall be delivered within one hundred and ninety (90) working days of bidder's receipt of said unit. In the event of failure of the bidder to deliver in accordance with this requirement, the bidder shall be liable to NMDOT and/or the State for late delivery penalties in the amount of \$25.00 per unit per day.

Documented strikes, national emergencies, or acts of God are the only justification for delay in delivery. Acts of God are defined as unusual, sudden, and unexpected manifestations of the forces of nature, the effect(s) of which could not have been prevented by reasonable human foresight, pains, and care.

At the option of the State Purchasing Agent, the user agency may invoke the Default Provisions of this contract contained in the General Conditions and Instructions to Bidders in addition to any liquidated damages as outlined above.

Guarantees and Warranties:

Unit(s) furnished hereunder shall be fully warranted (bumper to bumper) on all parts and labor for a minimum of two (2) years. All power train components shall be fully warranted for at least five (5) years and /or twenty five hundred (2,500) hours. In the event that a factory standard warranty exceeds our stipulated warranty, the factory standard warranty shall prevail.

Warranty information shall be submitted along with vendor's bid.

No deductible shall apply during the warranty period.

It is understood that unit(s) offered in response to this request for bids will be of new design. In the event that unforeseen operational problems occur because of new design, the manufacturer shall warrant that it will retrofit at no cost to NMDOT any improvements developed to correct problems of repeated or early failure in meeting acceptable performance standards for a period of one (1) year from date of delivery.

Servicing:

Unit(s) ordered under this agreement shall be completely serviced and ready for operation upon delivery.

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Warranty Repairs:

While the unit(s) provided hereunder are under warranty, all repairs shall be completed within ten (10) working days after receipt of unit(s). This period may be extended at the user's option and such extension shall be documented in writing. In the event of failure to perform repairs within ten (10) working days and failure to receive approval for time extension, the bidder shall provide a like unit until repairs are completed. All repairs shall be performed at the bidder's place of business or other facility of his/her choice. Delivery of unit(s) for repair and all costs associated therewith shall be the user's responsibility.

Parts Availability:

All replacement parts/components required by the ordering agency for repairs of unit(s) shall be provided within ten (10) working days during the warranty period. This period may only be extended at the user's option.

In the event of failure to provide parts/components within the stipulated time or receipt of user/owner concurrence for extending this time, the bidder shall provide the replacement parts/components at no cost to the user/owner.

Training:

The bidder will be responsible for providing a minimum of four (4) hours of service and operator training or as may otherwise be required under this specification. Training session format(s), length(s), and location(s) will be mutually agreed to between the seller and purchaser.

Payment or Acceptance Not Conclusive:

No payment made under this agreement shall be conclusive evidence of the performance of the contract, either wholly or in part, and that no payment made for the delivery of the items in whole or in part shall be construed as an acceptance of defective work or improper materials, nor relieve the bidder from corrections of the defects. The final acceptance shall not be binding upon NMDOT or the State, nor conclusive, should it subsequently develop the bidder had furnished inferior items or had departed from the specifications and/or the terms of the agreement. Should such conditions become evident, NMDOT shall have the right, notwithstanding final acceptance and payment, to cause the item(s) to be properly furnished in accordance with the specifications (and drawings, if any) at the cost and expense of the bidder.

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Awarded Items:

Items	Article and Description	(1)	(2)
	Make Offered	Dynatest	
	Model Offered	RSP MKIV	

Item	Approx. Qty.	Article and Description	Unit Price (1)	Unit Price (2)	(2) Comments
1	1	Base Price per Profiler Unit	\$ 49,127.00	\$ 51,785.50	Quoted price is the same for CS9100 mid-mount system (recommended) or CS9300 front/rear mounted system.
2	1	Wide Footprint Laser	\$ 17,303.00	\$ 9,385.60	Quoted price includes two lasers for a dual wheel track profiling system
3	1	Low Resolution ≈ five (5) foot accuracy GPS receiver	\$ 6,602.00	\$ 2,950.00	Please pick only 1 GPS option (P1.3, P1.4 OR P1.5)
4	1	Medium Resolution ≈ two (2) foot accuracy GPS receiver	\$ 6,602.00	\$ 3,900.00	This is the recommended GPS option. Please pick only 1 GPS option (P1.3, P1.4 OR P1.5)
5	1	High Resolution ≈ one (1) inch accuracy GPS receiver	\$ 6,802.00	\$ 13,450.00	This GPS is for surveying applications and is not recommended for standard road profiling systems. Please pick only 1 GPS option (P1.3, P1.4 OR P1.5). Quoted price is for embedded rover GPS only. RTK or better accuracy requires compatible base station with RINEX output (not supplied).
6	1	Printer	\$ 200.00	\$ 350.00	Portable 8.5"x11" sheet feed printer is quoted. For 4" thermal printer in rugged suitcase enclosure, add \$950.00
7	1	Camera System with Dashboard Mounted Screen	\$ 3,144.00	\$ 3,850.00	
8	1	Percentage of discount for attachments/options not listed above	%	0.00%	Quoted prices are net of discounts

*** 8 Items Total ***