



Invitation to Bid – Price Agreement

Title: **Hot Mix Asphalt and Warm Mix Asphalt**

ITB Number: **10-80500-20-16868**

Agency Requested Delivery: **As Requested**

Commodity Code(s): **74511**

**Return Bid to: New Mexico General Services Department
State Purchasing Division:**

Electronic bid submission:
<https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico>

Bids Due No Later Than:

Date: **November 19, 2020** Time: **2:00pm**

Late Submission of Bids Will Not Be Accepted.

Formal Sealed Bid Opening:

Place: <https://www.gotomeeting.com/>

To occur immediately following due date/time.

If you have questions regarding this ITB please contact:

Procurement Specialist: **Raelynn Lujan** Telephone No.: **(505) 827-0484** Email: **raelynn.lujan@state.nm.us**

Bidder MUST complete as applicable and sign the following in order for Bid to be valid (type or print clearly):

NM Vendor ID# (if applicable): _____	Remit Address: _____
Company Name: _____	_____
DBA (if applicable): _____	_____
Sales Email: _____	Sales Phone No.: _____
NM Gross Receipts Tax # (CRS): _____	Federal Tax ID#: _____

Payment terms: _____ (e.g., **Net 30**. Discount will not be considered in computing the low bid, see "Terms and Conditions")

F.O.B. Point must be Destination, unless otherwise indicated by the NM State Purchasing Agent

Contractor's Delivery: _____ (May be considered in the award)

The Terms and Conditions shall not be modified or supplemented.

Authorized Signature: _____	Print or type name: _____
Signatory Email: _____	Phone No.: _____

Important - In light of the COVID-19 developments, bids must be submitted via electronic submission. Bids will be received electronically through eProNM. Please see Bid Submission Instructions on page 2.

Bids are subject to the "Terms and Conditions," shown on the attached pages of this document, and any additional bidding instructions or requirements. NOTE: if you decide not to bid, do not return this document.

BIDS SUBMITTED ELECTRONICALLY VIA eProNM (Jaggaer): Bids will be time-stamped in the system when Bidder clicks "OK" after "Review and Submit." The bidder will receive a confirmation email of the submission for their records. Such electronic submissions will be considered sealed bids in conformance with statute.

If applicable, Bidder acknowledges receipt of the following amendments(s):

Amendment No. _____ Dated _____ Amendment No. _____ Dated _____

*It is your responsibility as a bidder to ensure your bid is correct and accurate. By bidding electronically, you acknowledge any and all amendments and it is your responsibility to ensure your bid corresponds with any amendments.

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Bidder Instructions for Invitation to Bid (ITB)

Viewing ITB:

1. Bidders can access active procurements at the following sites:
 - <https://www.generalservices.state.nm.us/statepurchasing/active-procurements.aspx>
 - <https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico>
2. Complete bid documents as required by the ITB Specifications, and submit any required documentation, supporting materials, certificates, etc. in addition to the bid documents.

Submitting Bids:

Bidders have one option to submit bids to the State Purchasing Division (SPD):

- Electronic submissions through eProNM at the following site:
<https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico>
- Bids will be time-stamped in the system when Bidder clicks “OK” after “Review and Submit.” The bidder will receive a confirmation email of the submission for their records. Such electronic submissions will be considered sealed bids in conformance with statute.
- Bids must be received by the due date and time listed on the front page of this ITB or as amended. Bids submitted electronically within 2 hours of the close time cannot be guaranteed to upload successfully.
- If an amendment is processed after you submit your bid, you must resubmit your bid in order for your bid to be considered fully submitted.

Bid Opening:

Sealed bids will be publicly opened online via GoToMeeting. Bids are subject to the “Terms and Conditions,” shown on the subsequent pages of this document, and any additional bidding instructions or requirements. NOTE: if you decide not to bid, do not return this ITB document.

Please join Bid Opening from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/332519117>

You can also dial in using your phone. (For supported devices, tap a one-touch number below to join instantly.)

United States: +1 (312) 757-3121

- One-touch: <tel:+13127573121,332519117#>

Access Code: **332-519-117**

Join from a video-conferencing room or system.

Dial in or type: 67.217.95.2 or inroomlink.goto.com

Meeting ID: **332 519 117**

Or dial directly: 332519117@67.217.95.2 or 67.217.95.2##332519117

New to GoToMeeting? Get the app now and be ready Bid Opening starts:

<https://global.gotomeeting.com/install/332519117>

Additional Bidder Information:

All resident businesses, contractors and veterans will have to obtain preference certificates from the NM Department of Taxation & Revenue. In order for the appropriate preference to be applied to any solicitation, there must be no federal funds involved, and bidder must submit a copy of their preference certificate with each solicitation. Applications are available for download at: <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>

Technical Online Bidding Questions:

(505) 795-1894 or (800) 233-1121 or by email GSD.SPDeProcurement@state.nm.us, or you can contact the buyer listed on the ITB front page.

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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 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 Contractor, 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 Contractor from the obligations and liabilities under this order.
 - b. Contractor 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.
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 Contractor'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 Contractor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Contractor 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. **Contractor 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 Contractor'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 Contractor as final and conclusive on all shipments not accompanied by a packing ticket.
 - b. The Contractor'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 Contractor fails to meet the provisions of this order and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The Contractor 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 Contractor, such causes include but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and

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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 Contractor 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 Contractor 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:** Contractor 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.

Important Bidding Information

All Bidders must notify the State Purchasing Agent or his/her designee if any employee(s) of the requesting agency or the office of the State Purchasing Agent have a financial interest in the Bidder. Financial interest is defined as:

- A. holding a position in a business as officer, director, trustee or partner or holding any position in management; or
- B. ownership of more than five percent interest in a business.

No financial interest **Yes financial interest**

If yes, specify the employee's name: _____ and financial interest: _____

Bid tabulations will be posted to our website approximately two (2) weeks after bid opening date. To access go to www.generalservices.state.nm.us/spd/, click on Active Bids and Proposals, Bid Tabulations.

Failure of Bidder to complete bidding documents, in accordance with all instructions provided, is cause for this office to reject their bid.

Brand names and numbers are for reference only; equivalents will be considered. If bidding "equivalent" bidders must be prepared to furnish "complete data" upon request, preferably with bid, to avoid delay in award.

Specifications on the bid are not to exclude any bidder or manufacture. Where a brand name or equal is indicated, it is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to restrict competition. "No substitute" specifications may be authorized ONLY if required to match existing equipment.

If any Bidder is of the opinion that the specifications as written preclude him from submitting a bid on this ITB, it is requested that his opinion be made known to the State Purchasing Agent or his/her designee, in writing, at least seven (7) days prior to the bid opening date.

Bidders must, upon request of the State Purchasing Agent or his/her designee, provide information and data to prove that the financial resources, production of service facilities, service reputation and experience are adequate to make satisfactory delivery of the materials and/or services. The State Purchasing Agent or his/her designee reserves the right to require a Bidder to furnish a Performance Bond prior to award, where the Bidder is unable to furnish the required information or data, or for other reasons which would insure proper performance by the Bidder.

Unless otherwise indicated in the bid specifications, samples of the items, when required, shall be free of expense to the State of New Mexico. Samples not destroyed or mutilated in testing will be returned upon request, at Bidders expense. Each sample must be labeled to clearly show the bid number and item number that it pertains to. Unsolicited bid samples or descriptive literature, which is submitted at the Bidder's risk, will not be returned.

Awards

Determination of Lowest Bidder – Following determination of product acceptability, if any is required, bids will be evaluated to determine which Bidder offers the lowest cost to the State in accordance with the specifications and terms & conditions set forth in the Invitation to Bid. The State Purchasing Agent reserves the right to award this Invitation to Bid in total; by groups of items; on the basis of individual items; any combination of these which could result in a multiple award; or as otherwise specified in bid specifications; whichever, in his/her judgment, best serves the interest of the State of New Mexico.

The New Mexico State Purchasing Agent or his/her designee reserves the right to accept and/or reject any and all bids, to waive technical irregularities, and to award to the Bidder whose bid is deemed to be in the best interest of the State of New Mexico.

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Special Notice – To preclude any possible errors and/or misinterpretations, bid prices must be affixed legibly in ink or typewritten. Corrections or changes must be signed or initialed by Bidder prior to the scheduled bid opening; failure to do so will be just cause for rejection of bid.

Bids may be withdrawn upon receipt of written request, prior to scheduled bid opening for the purpose of making any corrections and/or changes; such corrections must be properly identified and signed or initialed by Bidder. Resubmittal must be prior to scheduled bid opening for consideration.

After bid opening, no modifications on bid prices or other provisions of bid shall be permitted. A low Bidder alleging a material mistake of fact after bids have been opened may be permitted to withdraw the bid upon written request prior to award at the discretion of the State Purchasing Agent or his/her designee.

F.O.B. Destination – Means goods are to be delivered to the destination designated by the user which is the point at which the user accepts ownership or title of the goods. Laws of New Mexico specifically prohibit acceptance of ownership of goods in transit. Any exception to F.O.B. Destination may cause bid to be declared nonresponsive.

If you are an individual with a disability and you require accommodations such as a hearing interpreter to attend our bid openings, please contact State Purchasing (505) 827-0472 at least five (5) working days prior to the scheduled bid opening.

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: <https://www.bewellnm.com/>.

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.

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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 Contractor is unable to meet stated delivery the State Purchasing Agent must be notified.

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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Specifications:

The purpose of this Invitation to Bid (ITB) is to establish a Price Agreement for Hot Mix Asphalt and Warm Mix Asphalt for the New Mexico Department of Transportation (NMDOT). This Price Agreement includes materials, labor and equipment as per the specifications contained herein.

All work performed under this Price Agreement shall meet the specifications as set forth in this Invitation to Bid, and all applicable New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction, special provisions, standard drawings and supplemental specifications(current edition) (Section 423 Hot Mix Asphalt – Superpave (QLA and Non QLA) and Section 424 Warm Mix Asphalt). They are 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) 469-4983.

The Vendor shall perform with its own organization at least 40% of the work based on the total purchase order amount and comply with section 108.1 of the New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction, current edition.

Pursuant to the Contractor Prequalification Rule 18.27.5 NMAC, Vendors shall obtain prequalified status with the NMDOT as a condition to submitting a bid.

Vendors are required to ensure that the products used in conjunction with this Price Agreement have been submitted and approved through the NMDOT Product Evaluation Program prior to placement on a project. Any Questions regarding the NMDOT Product Evaluation Program shall be directed to Product Evaluation Coordinator at (505) 216-8777.

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 two (2) years.

Performance, Payment and Material Bonds:

Upon the issuance of a purchase order, the awarded Vendor(s) must provide a performance bond, payment and materials bond equal to 100% of the total purchase order. Said bonds must be provided to the requesting District Engineer or their designee prior to the commencement of work. Failure to comply shall result in the purchase order being issued to another awarded vendor and difference being charged back to the originally awarded Vendor(s).

The performance bond is to secure the NMDOT for losses and damages sustained by reason of default by Vendor. A payment bond is to guarantee that subcontractors and material suppliers on the project will be paid. The materials bond is to guarantee availability of equipment and acceptance of product.

Tax Note:

Price shall not include State Gross Receipts or Local Option Tax. Taxes shall be added to the purchase order and invoice at current rates as a separate item to be paid by NMDOT.

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Bidding Information:

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, 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, at 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 of New Mexico for goods and/or services provided. It is understood that the vendor providing said goods and/or services 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 price agreement include an amount sufficient to cover such costs. When bidding, enter the amounts for the respective bid item unit prices to a maximum of three (3) decimal places.

The Vendor shall be considered an independent Contractor and not an employee of the State of New Mexico. The NMDOT shall provide direction regarding the time and place of performance and compliance with rules and regulations required by this price agreement.

Bid Review:

NMDOT shall perform a bid analysis of all bids received for this Invitation to Bid that require the technical expertise of an engineer. This includes a determination of qualification in accordance with the technical standards and requirements of the specifications. The analysis and recommendation for award will be sent to the State Purchasing Division (SPD) for final determination and awarding.

Method of Award:

Method of award shall be to multiple Vendors and shall be based on location of plant and price by item for each location.

Bidders mixing plant must be located at the following:

Item #001: Within Dona Ana County

Item #002: Within Grant County

Item #003: Within Luna County

Item #004: Within Sierra County

Item #005: Within Socorro County

Deliveries for Animas and Lordsburg to be out of Luna County or Grant County.
(Responses to be added at end of Items list)

Deliveries for Hatch to be out of Dona Ana County or Sierra County.
Responses to be added at end of Items list)

Vendor must indicate where plant is located: _____

Responses to be added at end of Items list)

Location for pickup of hot mix material awarded shall be an NMDOT option.

Utilization of Vendors:

The following procedure for the utilization of Vendors shall be used on multiple award price agreements.

1. The selection of a Vendor from a multiple award price agreement to complete a project shall be based on the purchase order utilizing pricing contained within this price agreement.
2. The District Engineer or their designee shall evaluate the estimated quantities, unit costs, total costs per item, and total project costs for each awarded Vendor.
3. The Vendor selected to perform the work on the project shall be the Vendor providing services for the specific project estimate at the lowest overall cost to the NMDOT and able to meet all project delivery requirements including project schedule. A Vendor **not** offering the lowest cost to the NMDOT can be used for the specific project if the Vendor providing the lowest overall cost is unable to meet all project requirements as determined and documented by the District Engineer or their designee. Any changes to the original purchase order will require a modification form signed by the District Engineer or their designee. All supporting documentation shall be maintained in the project file.

Public Works minimum Wage Act:

This is a Public Works Price Agreement subject to the provisions of the Public Works Minimum Wage Act, Section 13-4-11 through 13-4-17, et. Seq. NMSA 1978 as amended. Minimum Wage Rates as determined and published by the New Mexico Department of Workforce Solutions (NMDWS), Santa Fe, New Mexico shall be in effect and utilized by the Vendor during the life of this Price Agreement.

If a Vendor or Subcontractor is willfully paying employees covered by the Public Works Minimum Wage Act, lower rates than required, the Vendor or subcontractor may lose their right to proceed with the work.

Price Agreement Order:

For projects over \$60,000.00 where a purchase order has been issued, a Wage Rate Decision number must be requested by the NMDOT. The Wage Rate Decision number can be obtained through the New Mexico Department of Work Force Solutions, Public Works Section. NMDOT must be registered through the Public Works website that can be accessed at:

<http://www.dws.state.nm.us/pwaa/LRDEmployer/Core/Login.ASPX>

The Vendor Agrees To:

- A. Provide competent supervision and skilled personnel to perform all work covered by this price agreement.
- B. Comply with all local, state, and federal laws governing safety, health and sanitation. The Vendor shall provide all safeguards, safety devices and protective equipment, and take any other needed actions necessary to protect the safety and health of employees on-the-job, 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 of New Mexico, its officers and employees, against liability, claims, damages, losses and/or expenses arising out of bodily injury to persons or damage to property caused by, or resulting from, Vendor's and/or its employees, own negligent act(s) or omission(s) while Vendor, and/or its employees, perform(s) or fails to perform its obligations and duties under the terms and conditions of this price agreement. This hold harmless and indemnification clause is subject to the

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immunities, provisions and limitations of the tort claims act (41-4-1, et seq., N.M.S.A. 1978 comp.) and section 56-7-1 N.M.S.A. 1978 comp. and any amendments thereto.

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 a 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. Comply with state laws and rules pertaining to worker's compensation insurance coverage for its employees. If the Vendor fails to comply with the Worker's Compensation Act and applicable rules when required to do so, the purchase order may be cancelled effective immediately.
- E. Be responsible for all cleanup work on the project site and at the equipment storage areas prior to the final inspection and acceptance.

Insurance Requirements:

The Vendor shall procure and maintain at the Vendor's expense, insurance of the kinds and in amounts herein provided. This insurance shall be provided by insurance companies authorized to do business in the State of New Mexico and shall cover all operations under the price agreement, whether performed by the Vendor, the Vendor's agents or employees or by Sub-Contractors. 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 Sub-Contractors therefrom.

(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)

- 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:
 - 1. Coverage for liability arising out of the operation of independent Contractors
 - 2. Completed operation coverage
 - 3. Attachment of the Broad Form Comprehensive General Liability Endorsement
- b. In the event that the use of explosives is a required part of the price agreement, the Vendor's insurance must include coverage for injury to or destruction of property arising out of blasting or explosion.

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- c. In the event that a form of work next to an existing building or structure is a required part of price agreement, the Vendor's insurance must include coverage for injury to or destruction of property arising out of:
1. The collapse of or structural injury to 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 building or structures or removal or rebuilding of structural supports thereof.
- d. Coverage must be included 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 Vendor (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:

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)

(B) **Worker's compensation insurance:** The Vendor shall also carry Worker's Compensation Insurance or otherwise fully comply with provisions of the New Mexico Workman's Compensation Act and Occupational Disease Disablement Law.

If the Vendor 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 price agreement.

(C) **Certificate of Insurance/Department as Additional Insured:** The Vendor being awarded this Price Agreement shall furnish evidence of Vendor's insurance coverage by a Certificate of Insurance. The Certificate of Insurance shall be required prior to the "Notice to Proceed" is issued.

The Vendor 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 Vendor, pursuant to Paragraph (A) 1 and (A) 2, of this subsection. The Certificate of Insurance shall state that the coverage provided under the policy is primary over any other valid and collectible insurance.

The Certificate of Insurance shall also indicate compliance with these specifications and shall certify that the coverage shall not be changed, cancelled or allowed to lapse without giving the NMDOT thirty (30) days

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written notice. Also, a Certificate of Insurance shall be furnished to the New Mexico Department of Transportation on renewal of a policy or policies as necessary during the terms of this price agreement.

The NMDOT shall not issue a notice to proceed until such 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 no way intended to define what constitutes adequate insurance coverage for individual Vendor. The NMDOT will recognize following form excess coverage (Umbrella) as meeting the requirements of Subsection (A) 1.a of this price agreement, should such insurance otherwise meet all requirements of such subsections.

(E) **Other Required Insurance:** The Vendor shall procure and maintain, when required by the NMDOT form and types of bailee insurance such as, but not limited to, builder's risk insurance, Vendor's equipment insurance, rigger's liability property insurance, etc. In an amount necessary to protect the NMDOT against claims, losses, and expenses arising from the damage, disappearance or destruction of property of others in the care, custody or control of the Vendor, including property of others being installed, erected or worked upon by the Vendor, his agents, or Sub-Contractors.

(F) **Railroad Insurance:** In the event that railroad property is affected by the subject price agreement, the Vendor, 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 Vendor will also obtain a Railroad Protective Liability Policy in the name of NRPC.

The limits of liability for 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

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 price agreement between the Bidder and the State of New Mexico and any Commission, Divisions, or Department thereof.

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Payments and Invoicing:

Within fifteen (15) days after the date the NMDOT receives written notice from the Vendor that payment is requested for services, construction or items of tangible personal property delivered on site and received, the NMDOT shall issue a written certification of complete or partial acceptance or rejection of the services, construction or items of tangible personal property. If the NMDOT 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 Vendor that payment is requested, provide to the Vendor a letter of exception explaining the defect or objection to the services, construction or delivered tangible personal property along with details of how the Vendor may proceed to provide remedial action. Upon certification by the NMDOT that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the Vendor 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 day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the purchase order to the Vendor at the rate of one and a half (1½) percent per month. For purchases funded by state or federal grants to local public bodies, if the public body has not received the funds from the federal or state funding agency, but has already certified that the services or items of tangible personal property have been received and accepted, payments shall be tendered to the Vendor within five (5) working days of receipt of funds from that funding agency.

Final payment shall be made within thirty (30) days after the work has been approved and accepted by the New Mexico Department of Transportation's Secretary of his/her duly authorized representative. The Vendor agrees to comply with state laws and rules pertaining to worker's compensation insurance coverage for its employees. If Vendor fails to comply with the workers' compensation act and applicable rules when required to do so the purchase order may be canceled effective immediately.

Escalation Clause:

In the event of a product cost increase, an escalation request will be submitted for review to the NMDOT on an individual basis. This measure is not intended to allow any increase in profit margin, but is solely intended to allow compensation for actual cost increases directly related to bid items.

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.

The NMDOT upon review of an escalation request may require additional supporting documentation prior to providing a written recommendation to the SPD. Final determination on the approval or disapproval of the escalation request will be made by SPD.

All quantities are to be measured by the District Engineer or their designee and shall be considered to be final and all payments for the same will be made on this basis.

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Quantities:

The approximate quantities for each item are estimated and are for bidding purposes only. Actual requirements will be as determined by the District Engineer or their designee and quantities may be increased or decreased as necessary to meet actual field requirements. The State of New Mexico does not guarantee any amount of work.

Vendor's plant must be in production at time of bid. Plant must have loading equipment capable of loading Belly Dump Trailers, Flow-Boy Trailers, 5 Yard and/or 10 Yard Dump Trucks, and other type of trailer not listed. The cost of loading shall be incidental to the delivery of the material.

Awarded vendors will be given between 48 hours to seven (7) days' notice of needed materials. Materials not supplied upon demand after this time will be purchased from next lowest vendor. If the next lowest vendor is unable to deliver within 7 days, material will be purchased on the open market, and lowest priced vendor will pay difference in price.

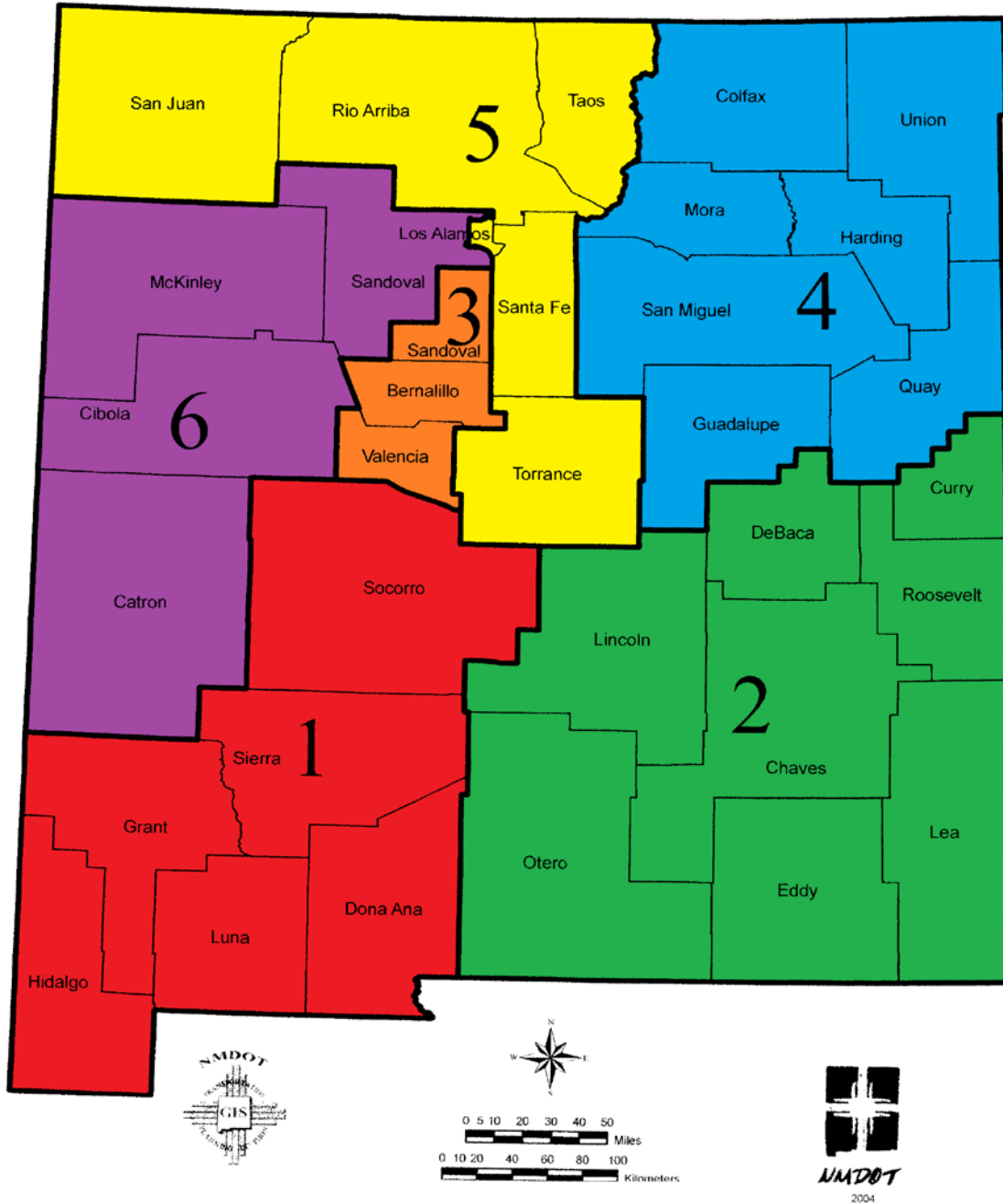
The Department reserves the right to cancel any order due to emergencies or bad weather conditions and will not incur any charges if this occurs.

Supplier and NMDOT personnel shall be in agreement in the acceptance of the maintained access road.

Questions concerning this Invitation to Bid shall be directed to Raelynn Lujan raelynn.lujan@state.nm.us before award after award contact Leandro Montoya Leandro.MontoyaIII@state.nm.us.

***** End of Specifications *****

NEW MEXICO DEPARTMENT OF TRANSPORTATION DISTRICTS



Materials
May 3, 2015

NOTICE TO SUPPLIERS

Monthly Asphalt Binder Price Adjustment Procedures

Adjustments will be made to the Bid Item Unit Price for asphalt binder if the asphalt binder price placed on the Project increases or decreases based on the New Mexico Asphalt Rack-Price Index (“price index”) per ton of asphalt binder. Historical price index data and the basis for the method of calculation for the price index is available at the hyperlink below:

http://dot.state.nm.us/content/dam/nmdot/Plans_Specs_Estimates/NMDOT_Aspphalt_Index.pdf

The increase or decrease is based on the price index corresponding to the month the asphalt binder was actually placed on this Project.

Bid Items subject to adjustment are: 403 Open Graded Friction Course (Non-QLA), 403-A Warm Mix Asphalt – Open Graded Friction Course (Non-QLA), 423 Hot Mix Asphalt – Superpave (QLA & Non-QLA) and 424 Warm Mix Asphalt (QLA & Non-QLA).

The Supplier shall submit applicable mix designs, including percentage of asphalt binder, for inclusion in the price adjustment for the Pay Items listed above in the Contract.

Monthly Adjustment:

The Progress Payment shall reflect the monetary monthly adjustment to the Contract for asphalt binder as determined by equation (1) or (2), as appropriate.

The variables applicable to the equations below are:

A – Monetary monthly adjustment to the Contract for asphalt binder.

B – Price per ton of asphalt binder corresponding to the month the binder was actually placed on the Project based on the price index.

C – Price per ton of asphalt binder at time of Bid Opening based on price index.

D – Tons of asphalt binder placed on the Project corresponding to the subject month.

For increasing prices (The monthly adjustment shall apply on those Contracts whose monthly fluctuations have a (B / C) ratio greater than 1.1). Use Equation (1).

Equation (1): $A = (B - (1.1 * C)) * D$

For decreasing prices (The monthly adjustment shall apply on those Contracts whose monthly fluctuations have a (B / C) ratio less than 0.9). Use Equation (2).

Equation (2): $A = (B - (0.9 * C)) * D$

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Items' Submission Instructions:

Submission process only - Contact the help line directly at: (505) 795-1894 or (800) 233-1121 or by email GSD.SPDeProcurement@state.nm.us, or you can contact the buyer listed on the ITB (this document) front page.

Items are located on our website: <https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico>

Online Submissions (Items' Page):

Use one of the two following options on eProNM to submit your prices for each item:

Option 1 (Import Bid):

1. Download the Excel spreadsheet;
2. Enter your bid prices into the Excel spreadsheet;
3. Upload the Excel spreadsheet into the website.

*Exporting the Items may leave out any item options (make, model, vehicle options, etc.). If you choose to fill out the Excel spreadsheet (Option 1), make sure you respond to the additional information in the comments section. After importing the spreadsheet make sure all items are complete and all necessary item options are complete.

Option 2 (Enter Bid):

1. Fill out the prices for items directly on the website (add comments if necessary).

If the item requires a % discount off, place the number in the unit price and reiterate the discount in the comments box of each item. E.g., "10% off list price"

NOTE: Bids submitted electronically must be received by the due date and time listed on the front page of this ITB or as amended. Electronic submissions via eProNM (<https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico>) submitted within 2 hours of the close time cannot be guaranteed to upload successfully.

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Items:

Items	Approx. Qty.	Unit	Article and Description	Price
001	4,000	Ton	Hot Mix picked up at Vendors Plant within Dona Ana County Vendor must indicate Plant Location: _____	\$ _____
002	4,000	Ton	Hot Mix picked up at Vendors Plant within Grant County Vendor must indicate Plant Location: _____	\$ _____
003	4,000	Ton	Hot Mix picked up at Vendors Plant within Luna County Vendor must indicate Plant Location: _____	\$ _____
004	4,000	Ton	Hot Mix picked up at Vendors Plant within Sierra County Vendor must indicate Plant Location: _____	\$ _____
005	4,000	Ton	Hot Mix picked up at Vendors Plant within Socorro County Vendor must indicate Plant Location: _____	\$ _____
006	4,000	Ton	Hot Mix Delivered to Anthony Patrol 4143	\$ _____
007	4,000	Ton	Hot Mix Delivered to Cliff Patrol 4144	\$ _____
008	4,000	Ton	Hot Mix Delivered to Silver City Patrol 4145	\$ _____
009	4,000	Ton	Hot Mix Delivered to Lordsburg Patrol 4147	\$ _____
010	4,000	Ton	Hot Mix Delivered to Animas Patrol 4148	\$ _____
011	4,000	Ton	Hot Mix Delivered to Deming Patrol 4149	\$ _____

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Items	Approx. Qty.	Unit	Article and Description	Price
012	4,000	Ton	Hot Mix Delivered to Las Cruces Patrol 4151	\$ _____
013	4,000	Ton	Hot Mix Delivered to Hatch Patrol 4152	\$ _____
014	4,000	Ton	Hot Mix Delivered to Williamsburg Patrol 4153	\$ _____
015	4,000	Ton	Hot Mix Delivered to Winston Patrol 4154	\$ _____
016	4,000	Ton	Hot Mix Delivered to Magdalena Patrol 4155	\$ _____
017	4,000	Ton	Hot Mix Delivered to Socorro Patrol 4157	\$ _____
			Deliveries for Animas and Lordsburg to be out of Luna County or Grant County. Vendor must indicate where plant is located: _____	
			Deliveries for Hatch to be out of Dona Ana County or Sierra County. Vendor must indicate where plant is located: _____	

***** 17 Items Total *****

NOTE TO BIDDERS:

All bids must be made completely independent of all other bids submitted. Where multiple bids are submitted by bidding entities owned by the same person or persons, those bids will be presumed to not be made independently of one another, and may be disqualified.