

Pricing Agreement#201601032-F(S)

New Mexico State University Pricing Agreement for Goods and/or Services

This agreement effective this 25th day of October 2016 is entered into between the Regents of New Mexico State University, hereinafter referred to as “NMSU”, and **Argyle Welding Supply**, hereinafter referred to as “Contractor”.

1. SERVICES AND/OR GOODS TO BE PROVIDED: Contractor shall provide the good(s) and/or service(s), as defined in this agreement, on an “as ordered” basis. No funds are obligated under this Pricing Agreement. Funds are obligated by purchase orders on an “as needed” basis. Contractor shall receive separate individual Purchase Orders for each individual requests. NMSU makes no guarantee as to the volume of goods which may be purchased under this Agreement. Prices are fixed for the first year of a Pricing Agreement. Thereafter, in the event of a product cost increase an escalation request will be reviewed by NMSU. Escalation requests are only to compensate for an actual cost increase and will not be considered for an increase in profit margin. Contractor shall notify NMSU if a cost decrease occurs and will adjust pricing accordingly. NMSU shall review the request by Contractor for price escalation and determine whether or not to accept such a request. Such requests must be made at least ninety (90) days prior to the expiration of the current contract term.

2. PRICING AGREEMENT DOCUMENTS: The Agreement shall be comprised of this agreement document, its attachments and all document referenced herein. As applicable, the Agreement shall also include all Requests for Proposal or bid documents, including Contractor’s response, Referenced Specifications and/or Scope of Work, Special Conditions, Technical Specifications, Purchase Order Terms and Conditions, and all negotiation records, which are incorporated herein and made a part of the Agreement. In instances where there exists a conflict between any of the Pricing Agreement described above, this Agreement plus attachments hereto, negotiation records, NMSU’s solicitation documents, and Contractor’s response to the solicitation, in that order, shall control the interpretation of the parties’ respective rights and obligations.

New Mexico State University Bid Number: 201601032-F
Contractors Proposal Dated: 6/29/16 Submitted by: Mark N. Lowther
Other: _____

3. TERM: The period of performance for this Pricing Agreement shall commence **10/25/2016** and upon mutual consent be renewed for up to **3** additional years, not to exceed a total of **4** years.

4. COST AND PAYMENT: Contractor shall be paid for goods/services rendered satisfactorily per the negotiated fees and schedules incorporated hereto. All payment will be arrears. Payment shall be made per request upon receipt of a detailed invoice. The invoice submitted shall note the purchase order number and must be delivered to the Accounts Payable Department at the address noted on Purchase Order.

5. TAXES: NMSU is exempt from paying taxes on the acquisition of tangible personal property. Should any equipment provided or services rendered fall within a taxation category requiring New Mexico Gross Receipts Tax, as defined by the State of New Mexico Taxation and Revenue Department, Contractor shall be responsible for paying those taxes. Charges for any taxes shall be a separate line on all invoices.

6. REPORTING: Contractor shall have available to NMSU detailed records/reports documenting that Contractor is extending the agreed upon pricing for good(s) and/or service(s) requested by NMSU Departments. Contractors that repeatedly fail to extend the established agreed upon pricing may be given termination notice in accordance with Termination Clause (Section 13 of this agreement).

7. AUDIT: NMSU reserves the right to audit Contractor's records associated with this contract at any time during the contract period and for a period of up to three years following the expiration or termination of the agreement. Such audit may be conducted by NMSU personnel or a third party under contract with NMSU. NMSU shall give Contractor reasonable notice prior to the conduct of any audit and upon receiving the notice from NMSU, Contractor agrees to fully cooperate with the auditors. If Contractor subcontracts any portion of its obligation to another party, Contractor shall guarantee NMSU's access to books and records of such party.

8. AMENDMENTS: This Pricing Agreement shall not be altered, changed, or amended except by written instrument signed by both parties.

9. ASSIGNMENTS: Contractor shall not assign nor delegate specific duties as part of this Pricing Agreement nor transfer any interest nor assign any claims for money due or to become due under this Pricing Agreement without the written consent of NMSU.

10. PROCUREMENT UNDER EXISTING CONTRACTS: In accordance with NMSA 13-1-129, Contractor is hereby notified that other governmental entities within the State of New Mexico, or as otherwise allowed by their respective governing directives, may contract for services with Contractor. Contractual engagements accomplished under this provision shall be solely between Contractor and the contracting entity with no obligation by the Regents of New Mexico State University.

11. NON-APPROPRIATION: NMSU's obligation to make payment under the terms of this Pricing Agreement is contingent upon its appropriation of sufficient funds to make those payments. If NMSU does not appropriate funds for the continuation of this procurement, this procurement will terminate upon written notice of that effect to Contractor. NMSU determination that sufficient funds have not been appropriated is firm, binding and not subject to review.

12. PROCUREMENT CODE: The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

13. TERMINATION: Either party may terminate this contract as follows:

A. Termination by Contractor

- (1.) Contractor may terminate this contract only if NMSU fails to comply with any provisions of this contract and after receiving notice of the noncompliance NMSU fails to cure the noncompliance within (10) ten days, or
- (2.) By written mutual agreement between Contractor and NMSU.

B. Termination by NMSU

(1.) For Cause:

- a. The occurrence of either one of the following events will justify termination for cause: Contractor's persistent failure to perform the work in accordance with the Contract Documents (including but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment) or Contractor's violation in any substantial way of any provisions of this contract.
- b. If either one of the events identified in above paragraph occur NMSU may, after giving Contractor (and the surety, if any) ten days written notice, terminate the service of Contractor, exclude Contractor from site, and take possession of the work. Contractor shall be paid for project cost incurred up to the date of termination but shall not be paid for loss of profits resulting from such termination.
- c. Where Contractor's services have been so terminated by NMSU, the termination will not affect any rights or remedies of NMSU against contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by NMSU will not release Contractor from liability.

(2) For Convenience:

- a. Upon ten days written notice to contractor, NMSU may, without cause and without prejudice to any other right or remedy of NMSU, elect to terminate the contract. In such case, Contractor shall be paid (without duplication of any items):
- b. for completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination,
- c. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the contract document in connection with uncompleted work.
- d. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

14. INDEMNIFICATION: Contractor shall be responsible for damage to persons or property that occurs as a result of his fault or negligence, or that of any of his employees, agents or subcontractors. He shall save and hold harmless NMSU against any and all loss, cost, damage, claims, expense or liability in connection with the performance of the contract. Any equipment or facilities damaged by Contractors' operation shall be repaired and/or restored to their original condition at Contractor's expense. Contractor shall at all times keep in force liability limits as outlined in Attachment A of this agreement. Failure to maintain current coverage in the amounts stated may result in termination of this agreement.

15. INDEPENDENT CONTRACTOR: Contractor is an independent contractor performing services for NMSU. Contractor shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of NMSU as a result of this procurement.

16. DEBARMENT OR SUSPENSION: A business (contractor, subcontractor or supplier) that has either been debarred or suspended pursuant to the requirements of 13-1-177 through 13-1-180, and 13-4-11 through 13-4-17 NMSA 1978 as amended, shall not be permitted to do business with NMSU and shall not be considered for award of the contract during the period for which it is debarred or suspended with NMSU

17. CONFLICT OF INTEREST: By signing this agreement, Contractor certifies that no relationship exists between Contractor and NMSU that interferes with fair competition or is a conflict of interest; and no relationship exists between such propose and another person or firm that constitutes a conflict of interest that is adverse to NMSU.

18. GOVERNING LAW: This Agreement will be interpreted and governed by the laws of the State of New Mexico.

19. OTHER APPLICABLE LAWS: Any other provisions required to be included in a contract of this type by any applicable and valid executive order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.

20. FEDERAL PURCHASES: If purchases are from a Federal Contract/Grant. The Federal Acquisition Regulations (FARS) apply and may be viewed at purchasing.nmsu.edu.

21. SEVERABILITY: If any provision of the resultant pricing agreement is found invalid or unenforceable, the remainder of the resultant sales agreement will be enforced to the maximum extent permissible and the legality and enforceability of the other provisions of the resultant agreement will not be affected.

22. NON-DISCLOSURE: Vendor shall not disclose any information relating to students, and employees of NMSU other than such information that may be authorized by the individual student or employee. Vendor agrees to indemnify and hold harmless NMSU from any damages, claims, liabilities, and costs including reasonable attorney fees in the event any unauthorized release of such information occurs.

NEW MEXICO STATE UNIVERSITY

BY: _____
For the Regents of NMSU

Bill Hartz

Date: 10/25/16

Bill Hartz

Director of Procurement Service.

John Kuckens Buyer II NMSU

CONTRACTOR:

BY: Argyle Supply

Date: 8/31/2016

Printed Name: Tim Jackson

Title: Sales Manager

Business/Order Contact Information:

Name: Tim Jackson

E-mail: Tim.Jackson@argyleSupply.com

Phone: 575-522-2356

Fax: 522-1245

Website: ArgyleSupply.com

Contractor's Liability Insurance

The contractor shall purchase and maintain statutory limits of Worker's Compensation, Public Liability and Automobile Liability as approved by the Regents at the time of signing of the contract. The Regents shall be listed as a loss payee and/or additional insured.

Worker's Compensation, Public Liability and Automobile Liability shall include at least the following coverage:

WORKER'S COMPENSATION INSURANCE:

The contractor shall procure and shall maintain during the life of this contract Worker's Compensation insurance as required by applicable State law for all Contractor's employees to be engaged at the site of the project under this project and in case of any such work sublet, the Contractor shall require the subcontractor or sub subcontractor similarly to provide Worker's Compensation Insurance for all the subcontractor's or sub subcontractor's Workers which are covered under the Contractor's Worker's Compensation insurance. In case any class of employee engaged in work on the project under this contract is not protected under a Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor or sub subcontractor to provide Employer's Insurance in an amount of not less than \$500,000.

CONTRACTOR'S PUBLIC LIABILITY INSURANCE:

The contractor shall maintain liability insurance coverage "equal to the maximum liability amounts set forth in the New Mexico Tort Claims Act Section 41-4-1 et.seq. NMSA 1978". The insurance must remain in force for the life of the contract including all contract extensions or renewals. The limits effective July 1, 2008 (ref: Section 41-4-19) are:

\$400,000 per person/\$750,000 per occurrence plus \$300,000 for medical and \$200,000 for a total minimum liability of \$1,000,000 per occurrence. (ref: Section 41-4-28).

CONTRACTORS VEHICLE LIABILITY INSURANCE:

The Contractor shall procure and shall maintain during the life of this contract Vehicle Liability Insurance coverage "equal to the maximum liability amounts set forth in the New Mexico Tort Claims Act Section 41-4-1 et.seq. NMSA 1978". The insurance must remain in force for the life of the contract including all contract extensions and renewals. The limits effective July 1, 1992 are:

Bodily Injury	\$750,000 Each Occurrence
Property Damage	\$200,000 Each Occurrence

20-4-8 Fertilizer (Ton)	25 Tons		/Ton		
21-0-0 Fertilizer (Ton)	10 Tons		/Ton		
0-0-50 Fertilizer (Ton)	3 Tons		/Ton		
20-20-20 Fertilizer (25# Bag)	70 Bags		/Bag		
Round Up (Gal)	100 Gallons		/Gal		
Speed Zone (Gal)	15 Gallons		/Gal		
Perennial Rye Grass Seed (Lbs)	8000 Lbs		/Lb		
Princess 77 Bermuda Grass Seed (Lbs)	150 Lbs		/Lb		
ER70S-3 33# Mig Wire (Roll)	10 Rolls	WEM03533	8.29/Roll	30%	56.60
E6010 1/8" Welding Rod (50# Box)	5 Boxes	NW60101810	150.50		105.35
E6011 1/8" Welding Rod (50# Box)	1 Box	NW60111810	133.50		93.45
4-1/2" x 7/8" 40 Grit Flap Wheel Garryson (Ea)	50 Ea	FLZ4500F	8.22		5.75
4-1/2" x 5/8-11 40 Grit Flap Wheel Garryson (Ea)	25 Ea	FLZ4500FH	9.98		6.98
4-1/2" x 7/8" 60 Grit Flap Wheel Garryson (Ea)	25 Ea	FLZ4505F	8.57		5.99
4-1/2" x 5/8-11 60 Grit Flap Wheel Garryson (Ea)	25 Ea	FLZ4505FH	9.98		6.98
4-1/2" x 7/8" 80 Grit Flap Wheel Garryson (Ea)	25 Ea	FLZ4510F	8.75		6.13
4-1/2" x 5/8-11 80 Grit Flap Wheel Garryson (Ea)	25 Ea	FLZ4510FH	9.98		6.98
4-1/2" x 7/8" x 1/8" Type 27 Grinding Wheel Radnor (Ea)	25 Ea	FLA0736	3.00		2.10
4-1/2" x 5/8-11 x 1/8" Type 27 Grinding Wheel Radnor (Ea)	25 Ea	FLA0736H	4.60		3.22
4-1/2" x 7/8" x 1/4" Type 27 Grinding Wheel Radnor (Ea)	100 Ea	FLA1236	2.76		1.93
4-1/2" 5/8-11 x 1/4" Type 27 Grinding Wheel Radnor (Ea)	25 Ea	FLA1236H	4.56		3.19
4-1/2" x 7/8" x 040" Cut-Off Wheel Flexovit (Ea)	200 Ea	FLA0481	3.84		2.69
4-1/2" x 7/8" x 1/16" Cut-Off Wheel Flexovit (Ea)	50 Ea	FLA0575	3.63		2.54
Item Description	2011 Average Usage	Manufacturer Part #	List Price	% Discount	Final Price
14" x 1" x 1/8" Cut-Off Wheel Flexovit (Ea)	50 Ea	FLF5521	10.62	30%	7.44
1/8" Drill Bit 135° HSS Black (Ea)	25 Ea	CHX90-1/8	1.50		1.10
5/32" Drill Bit 135° HSS Black (Ea)	25 Ea	CHX90-5/32	2.05		1.45

Argyle

3/16" Drill Bit 135° HSS Black (Ea)	25 Ea	CHXG0-3/16	2.08 /Ea	30%	1.46
7/32" Drill Bit 135° HSS Black (Ea)	25 Ea	CHXG0-7/32	2.89 /Ea		2.07
1/4" Drill Bit 135° HSS Black (Ea)	25 Ea	CHXG0-1/4	2.98 /Ea		2.09
5/16" Drill Bit 135° HSS Black (Ea)	25 Ea	CHXG0-5/16	4.53 /Ea		3.17
3/8" Drill Bit 135° HSS Black (Ea)	25 Ea	CHXG0-3/8	6.55 /Ea		4.59
7/16" Drill Bit 135° HSS Black (Ea)	25 Ea	CHXG0-7/16	10.59 /Ea		7.42
1/2" Drill Bit 135° HSS Black (Ea)	25 Ea	CHXG0-1/2	11.23 /Ea		7.86
Tru-Soft Com-Pac Pellets with Rust Inhibitors (50 # Bag)	400 Bags	KJCA31	/Bag		
Percentage discount for items not listed but available through your company					

Roofing

Wet/Dry Roofing Cement (5 Gal)	500 Gal		/5Gal		
4" Fiberglass Webbing (Membrane)(Roll)	30 Rolls		/Roll		
6" Fiberglass Webbing (Membrane)(Roll)	10 Rolls		/Roll		
Ply Sheet Felt Paper(Roll)(15/30)	30 Rolls		/Roll		
Rolled Roofing 90 Weight(Roll)	60 Rolls		/Rolls		
Tar (Keg) Type 4	48 Kegs		/Keg		
4 x 4 Flashing (Ft)	500 Ft		/Ft		
4 x 2 Flashing (Ft)	200 Ft		/Ft		
1" Roofing Nails (50# Box)	2 Boxes		/ Bx		
1-1/2" Roofing Nails (50# Box)	2 Boxes		/Bx		
1-1/2" Concrete Nails (50# Box)	2 Boxes		/Bx		
Fiberglass Base Sheet (Roll)	30 Rolls		/Roll		
Percentage discount for items not listed but available through your company					

Safety

Item Description	2011 Average Usage	Manufacturer Part #	List Price	% Discount	Final Price
Cowhide Leather Driver Glove	50 Pairs	T11400	4.95/Pair	30%	3.47

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Small (Pair)					
Cowhide Leather Driver Glove Medium (Pair)	50 Pairs	T11420M	11.50 /Pair	30%	8.05
Cowhide Leather Driver Glove Large (Pair)	50 Pairs	T11420L	11.50 /Pair		8.05
Cowhide Leather Driver Glove XL (Pair)	50 Pairs	T11420XL	11.50 /Pair		8.05
Clear Safety Glasses	50 Pairs	S2580S	2.90/Pair		2.03
Smoke Safety Glasses	50 Pairs	SB432OD	4.65/Pair		3.26
Ear Plugs (100/Box Corded)	10 Box	Max-30/3301130	34.30 /Bx		24.01
Cotton/Polyester Gen. Purp. Brown Jersey Gloves (Pair)	25 Pairs	101-1200	1.11 /Pair		.78
Caution Tape (3" x 1000')(Ea)	100 Ea	272-71-1001	12.50/Ea		8.75
15 Mil Green Nitrile Glove Small (Pair)	25 Pairs	012-37-155	2.16 /Pair		1.52
15 Mil Green Nitrile Glove Medium (Pair)	25 Pairs	012-37-155-7	2.16 /Pair		1.52
15 Mil Green Nitrile Glove Large (Pair)	25 Pairs	012-37-155-8	2.16 /Pair		1.52
15 Mil Green Nitrile Glove XL (Pair)	25 Pairs	012-37-155-9	2.16 /Pair		1.52
Ansell HyFlex Coated Glove 7 (Pair)	25 Pairs	11-600 Series	33.84/Pair		23.69
Ansell HyFlex Coated Glove 8 (Pair)	25 Pairs	11-600 Series	33.84/Pair		23.69
Ansell HyFlex Coated Glove 9 (Pair)	25 Pairs	11-600 Series	33.84/Pair		23.69
Ansell HyFlex Coated Glove 10 (Pair)	25 Pairs	11-600 Series	33.84/Pair		23.69
Ansell HyFlex Coated Glove 11 (Pair)	25 Pairs	11-600 Series	33.84/Pair		23.69
Hard Hat (Ea)	30 Ea	475358	16.41/Ea		11.49
Moldex Dust Mask (Ea)	50 Ea	2300N95	29.34/Ea		20.54
Class 2 Safety Vest Orange Mesh (Med - XL) (Ea)	50 Ea		/Ea		
Item Description	2011 Average Usage	Manufacturer Part #	List Price	% Discount	Final Price
Cartridge Replacement (Pair)	20 Pair	75SCP100	/Pair		
Lens Cleaning Wipes (Box)	25 Boxes		/Bx		
Ear Muff (Ea)	15 Ea	1010926	/Ea		
Percentage discount for items not listed but available through your company					

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