

Pricing Agreement #20201005-F

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

This agreement effective this 2 day of Feb 2012 is entered into between Regents of New Mexico State University, hereinafter referred to as the "University", and Miljoco hereinafter referred to as "Contractor".

1. SEVICES AND/OR GOODS TO BE PROVIDED: The Contractor shall have the good(s) and/or service(s) available, 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. The University 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 the University. 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 the University if a cost decrease occurs and will adjust pricing accordingly. The University shall review the request by the 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 the 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, the University's solicitation documents, and the Contractor's response to the solicitation, in that order, shall control the interpretation of the parties' respective rights and obligations.

3. TERM: The period of performance for this Pricing Agreement shall commence Feb 2, 2012 and be automatically renewed for up to 4 additional years, not to exceed a total of 4 years.

4. COST AND PAYMENT: The 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: New Mexico State University 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, the Contractor shall be responsible for paying those taxes. Charges for any taxes shall be a separate line on all invoices.

5. REPORTING: The Contractor shall have available to the University detailed records/reports documenting that the Contractor is extending the agreed upon pricing for good(s) and/or service(s) requested by University Departments. Contractors that repeatedly fail to extend the established agreed upon pricing may be given termination notice in accordance with Termination Clause (Section 12 of this agreement).

6. AUDIT: The University reserves the right to audit the 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 University personnel or a third party under contract with the University. The University shall give the contractor reasonable notice prior to the conduct of any audit and upon receiving the notice from the University the contractor agrees to fully cooperate with the auditors. If contractor subcontracts any portion of its obligation to another party, contractor shall guarantee University's access to books and records of such party.

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

8. ASSIGNMENTS: The 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 the University.

9. PROCUREMENT UNDER EXISTING CONTRACTS: In accordance with NMSA 13-1-129, proposers are 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 the awarded proposer. Contractual engagements accomplished under this provision shall be solely between the awarded proposer and the contracting entity with no obligation by the Regents of New Mexico State University.

10. NON-APPORPRIATION: The University'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 the University does not appropriate funds for the continuation of this procurement, this procurement will terminate upon written notice of that effect to the Principal. The University determination that sufficient funds have not been appropriated is firm, binding and not subject to review.

11. 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.

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

A. Termination by the Contractor

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

B. Termination by the University

(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), 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 the University 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 the University, the termination will not affect any rights or remedies of University against contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the Contractor by the University will not release the 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.

13. INDEMNIFICATION: The 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 the Regents of New Mexico State University 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 the Contractors' operation shall be repaired and/or restored to their original condition at the 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.

14. INDEPENDENT CONTRACTOR: That the Contractor is an independent contractor performing services for the University. The Contractor shall not accrue leave, retirement,

insurance, or any other benefits afforded to employees of the University as a result of this procurement.

15. 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 the University and shall not be considered for award of the contract during the period for which it is debarred or suspended with the University

16. CONFLICT OF INTEREST: By signing this agreement, the proposer certifies that no relationship exists between the proposer and the University 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 the University.

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 www.nmsu.edu/~purchas/.

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.

NEW MEXICO STATE UNIVERSITY

BY: Jon Whelan Date: 2/3/12
For the Regents of NMSU

Michael J. Abernethy, Director of Central Purchasing & Risk Management Administration

CONTRACTOR: Miljoco

BY: [Signature] Date: 2-2-2012

Printed Name: Howard O. Tremie Title: PRESIDENT

Business/Order Contact Information:

Name: _____ E-mail: _____
Phone: _____ Fax: _____

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ATTACHMENT "A"

CONTRACTOR'S LIABILITY INSURANCE

The contractor shall purchase and maintain statutory limits of Worker's Compensation, and Public Liability and Automobile Liability Insurance as approved by the Regents at the time of signing of the contract. The Regents shall be included as a-loss payee and/or additional insured. Public Liability and Automobile Liability Insurance shall include at least the following coverage:

Bodily Injury, each person, excluding medical and medically-related expenses.....	\$400,000
Medical and medically-related expenses.....	\$300,000
Bodily Injury, each occurrence, excluding medical and medically-related expenses.....	\$750,000
Medical and medically related expenses.....	\$300,000
Property Damage, each occurrence.....	\$100,000

Contractor shall furnish Owner with certificates of insurance with the contract documents and prior to the commencement of work.

NOTE: Certificate Holder should be: **Board of Regents
New Mexico State University**

Certificate of Insurance should be forwarded to:

**New Mexico State University
Central Purchasing & Risk Management Admin. Office - MSC 3890
PO Box 30001
Las Cruces, New Mexico 88003-8001**

No Response Attachments

Bid Line Items

201201005-F

Line Specification

1 Commodity Line

Qty UOM Description

15,000 EA Miljoco # S3513091-Z (equal or better) Refrigerator/Freezer Thermometer

Commodity: Food Processing Equipment & Supplies

Item Notes:

Supplier Notes:

Price Extended
\$0.90 \$13,500.00

2 Commodity Line

Qty UOM Description

15,000 EA Miljoco # B12098M82C-5 (equal or better) 1" pocket thermometer

Commodity: Food Processing Equipment & Supplies

Item Notes:

Supplier Notes:

Price Extended
\$2.19 \$32,850.00

3 Commodity Line

Qty UOM Description

20,000 EA Miljoco # M2040PCT (equal or better)(Cooking Temp) magnet

Commodity: Food Processing Equipment & Supplies

Item Notes:

Supplier Notes:

Price Extended
\$0.48 \$9,600.00

4 Commodity Line

Qty UOM Description

20,000 EA Miljoco # M2040CB (Equal or better)(Cutting Board) Magnet

Commodity: Food Processing Equipment & Supplies

Item Notes:

Supplier Notes:

Price Extended
\$0.48 \$9,600.00

5 Commodity Line

Qty UOM Description

20,000 EA Miljoco # M2040FS (equal or better)(Food Storage)Magnet

Commodity: Food Processing Equipment & Supplies

Item Notes:

Supplier Notes:

Price Extended
\$0.48 \$9,600.00

6 Commodity Line

Qty UOM Description

20,000 EA Miljoco # M2040HW (equal or better)(Hand Washing) Magnet

Commodity: Food Processing Equipment & Supplies

Item Notes:

Supplier Notes:

Price Extended
\$0.48 \$9,600.00

Items 1-6 shown of 6

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