



**State of New Mexico
General Services Department
Purchasing Division**

Price Agreement Amendment

**Awarded Vendor:
2 Vendors (See Page 6)**

Number: 90-805-18-16712

Amendment No.: Two

Term: February 4, 2019 – February 3, 2022

**Ship To:
Various Locations**

Procurement Specialist: Mark Lujan

Telephone No.: 505-827-0564

Email: Mark.Lujan@state.nm.us

**Invoice:
Various Locations (See page 15 & 16)**

**For questions regarding this contract please contact:
India Garcia (505) 690-7383**

Title: Subsurface Communication Line Locating & Spotting

This amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from February 4, 2021 to February 3, 2022 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

Valerie Paulk

Date: 1/1/2021

Mark Hayden, New Mexico State Purchasing Agent

× **This Agreement was signed on behalf of the State Purchasing Agent**



State of New Mexico
General Services Department
Purchasing Division

Price Agreement Amendment

Awarded Vendor
2 Vendors

Email:
Telephone No. _____


Price Agreement Number: 90-805-18-16712

Price Agreement Amendment No.: One

Term: February 4, 2019 – February 3, 2021

Ship To:
Various Locations

Invoice:
Various Locations

Procurement Specialist: Mark Lujan 

Telephone No.: (505) 827-0564

Email: Mark.Lujan@state.nm.us

For questions regarding this Price Agreement please
contact: India Garcia (505) 690-7383

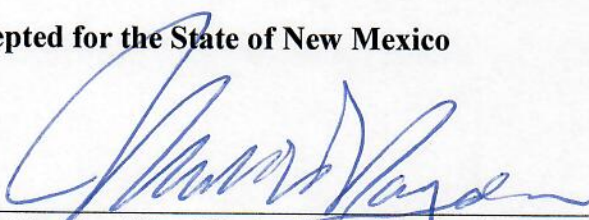
Title: **Subsurface Communication Line Locating & Spotting**

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from February 4, 2020 to February 3, 2021 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico


Mark Hayden, New Mexico State Purchasing Agent

Date: 02/04/2020



**State of New Mexico
General Services Department**

Price Agreement

Awarded Vendor
2 Vendors (See Page 6)

Telephone No. _____

Price Agreement Number: 90-805-18-16712

Payment Terms: Net 30

F.O.B.: Destination

Delivery: See Page 6

Ship To:
New Mexico Department of Transportation
As Requested

Procurement Specialist: Mark Lujan *ML*

Telephone No.: (505) 827-0564

Email: Mark.Lujan@state.nm.us

Invoice:
Various Locations (See page 15 & 16)

For questions regarding this contract please contact:
India Garcia (505)690-7383

Title: **Subsurface Communication Line Locating & Spotting**

Term: **February 4, 2019 to February 3, 2020**

This Price Agreement is made subject to the "terms and conditions" shown on the reverse side of this page, and as indicated in this Price Agreement.

Accepted for the State of New Mexico

Mark N. Lujan

Acting Director, State Purchasing Division

Date: 02/04/2019

ML

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General Services Department
Purchasing Division
Price Agreement #: 90-805-18-16712

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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.

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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.insurennewmexico.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.

Article V - Termination

The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this

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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) 0000046277
BD Industries, Inc.
9720 Bell Avenue SE
Albuquerque, NM 87123
505-299-4464
jwesterfield@banddindustries.com

Payment Terms: Net 30 Days
Delivery: FOB Destination

(AB) 0000067770
MWI, Inc.
PO Box 30670
Albuquerque, NM 87190
505-508-0744
andrew@mwiinc.net

Payment Terms: Net 30
Delivery: FOB Destination

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Specifications:

Establish a Price Agreement for providing labor and equipment necessary to locate, spot and mark known and/or documented New Mexico Department of Transportation (NMDOT) communications and utility lines in support of complying with New Mexico One-call Services. Procurement of the referenced items shall be on an as-needed basis with no guarantee of any quantities implied.

The term of this agreement shall be for one (1) year from date of award with the option to extend for a period (s) of three (3) additional years, 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 agreement shall not exceed four (4) years.

Materials:

Contractor shall furnish all materials necessary to perform the required functions to comply with New Mexico On-call.

Occurrence:

In addition to normal working hours, work can be expected to be performed on weekends, holidays and after normal working hours during potentially hazardous circumstances including exposure to heavily trafficked areas and adverse weather conditions.

Qualifications:

Contractor must have a valid New Mexico license, and demonstrate prior work experience in the location and marking of subsurface utility and communications lines. All employees of the contractor who will perform related work must have a valid New Mexico State Electrical License JE98. Contractor's electrical license and contractor's employee's and associated licenses must be provided.

To ensure the Department has access to the necessary services during surge periods or at locations that are not readily served by a single provider, multiple awards may be sought for each grouped item.

Utilization of Contractors:

The following procedure for the utilization of Contractors shall be used on multiple award Price Agreements.

1. The selection of a Contractor from a multiple award Price Agreement to complete a project shall be based on the pricing contained within this Price Agreement and on the availability of the Contractor to provide the said commodities on a timely basis.
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 Contractor.
3. The Contractor selected to perform the work on the project shall be the Contractor 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 Contractor not offering the lowest cost to the NMDOT can be used for the specific project if the Contractor 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.

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There are no separate bid items for traffic control in this Price Agreement. Bidders are to include traffic control as an embedded cost necessary to perform the work described herein. Specifically, embedded costs shall be allocated on the bid that require field activities. This includes bid items 003, 005, 009, 011, 015, 017, 021, 023, 027, 029, 033 and 035. Traffic control shall conform to the Manual on Uniform Traffic Control Devices, most recent edition at <https://mutcd.fhwa.dot.gov/pdfs/2009/mutcd2009edition.pdf>. Traffic control activities must be under the direct supervision of an ATSSA (American Traffic Safety Services Association) / ACNM TTCP Certified Traffic Control Supervisor.

Failure to provide traffic control in accordance with the fore-mentioned provisions will result in the contractor being shut down and removed from the project location. Additionally, the contractor will be responsible for all costs incurred by the department to have the lines located including any penalties levied by New Mexico One-call for not completing the work within the allowable time. The contractor will not be reimbursed for any of their expenses associated with the one-call ticket nor will they be eligible for receiving payment for any work done prior to shut down.

The awarded contractor for each project shall be the designated point of contact for NMDOT within New Mexico One-call system. After receiving a call or notification from one-call requesting utility spotting clearance, the contractor will be required to contact by telephone or e-mail, the authorized NMDOT representative to determine if field staking will be required. If the authorized NMDOT representative is not available, it will be incumbent upon the contractor to utilize existing maps and drawings to make the determination if field staking is appropriate. Contractor will be notified of any contact changes that may occur during the life of this agreement.

Should the contractor not be able to respond to a one-call utility spotting request, the contractor shall notify the NMDOT no later than fifteen (15) minutes upon receipt of the request. Failure to notify the appropriate NMDOT personnel within that allowable time will be considered as the contractor's agreement to accept the work.

Method of award:

Pursuant to the Procurement Code, Sections 13-1-153 and 13-1-154, the State reserves the right to issue multiple awards to obtain the items listed. Multiple awards are recommended to ensure availability and timely delivery.

Method of award may be to one or more vendors for each group, not to exceed three (3) vendors per group. Items shall be awarded to one or more vendors per group as follows:

Bid Items 001 through 006 – District 1
Bid Items 007 through 012 – District 2
Bid Items 013 through 018 – District 3
Bid Items 019 through 024 – District 4
Bid Items 025 through 030 – District 5
Bid Items 031 through 036 – District 6

A New Mexico Department of Transportation District map is attached to this bid.

For a bid to be considered for award to a group, prices must be submitted for all items for that group. Failure to do so will result in the bid being deemed non-responsive and rejected from consideration for award to that group.

NMDOT contacts will be provided to the contractor(s) after award.

It will be the selected contractor's responsibility to have all work completed within the time allowed by law. The contractor will be allowed forty-eight (48) hours to complete non-emergency work following notification from the one-call system. The contractor will be required to report to the one-call system results of the requested clearance within the forty-eight (48) hour period.

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The contractor will be required to complete emergency work within two (2) hours of notification from the one-call system, including reporting back to the one-call system results of the requested clearance. As with non-emergency work, the contractor will be required to contact authorized NMDOT representatives to determine if field staking will be required. If authorized NMDOT personnel are not available, it will be incumbent upon the contractor to utilize existing maps and drawings to make the determination if field staking is appropriate.

Should the contractor fail to perform the work within the specified time, the contractor agrees to pay all associated fines and penalties assessed against the NMDOT by New Mexico One-call. In addition to the fore-mentioned, the contractor agrees to pay the Department(s) all costs incurred by the Department(s) to have the work performed by other service providers. In addition to assessed fines, penalties and damages including liquidating damages, should the contractor fail to perform the work within the specified time, the department has the option of rescinding the award of all associated bid items in this Price Agreement from the contractor.

Price shall not include state gross receipts or local tax. Tax shall be added at time of invoice at current rates as a separate item to be paid by users.

Contractor Note: (if applicable)

No person shall act as a contractor without a license issued by the (Construction Industries) Division classified to cover the type of work to be undertaken. No bid on a contract shall be submitted unless the Contractor has a valid license issued by the (Construction Industries) Division to bid and perform the type of work to be undertaken, § 60-13-12, NMSA 1978. Contractor's License No. _____.

Bid security in the form of a surety bond executed by a surety company authorized to do business in the state of New Mexico in the amount of \$25,000.00 or the equivalent of cash by means of a cashier's check or in a form satisfactory to the owner, must accompany each bid in accordance with the instructions to bidders.

Prior to issuance of contract orders, the contractor shall provide a performance bond and a payment bond securing labor and materials equal to 100% of each contract order. Said bonds are to be filed with the user agency's purchasing office. Failure to obtain the required bond will result in the contract being cancelled.

Contractor(s) further agrees to:

- A. Furnish labor and tools required to perform the work specified.
- B. Provide competent supervision and skilled (and as applicable - certified) personnel to carry on all work in progress.
- C. Comply with all local, state and federal laws governing safety, health and sanitation. The contractor shall provide all safeguards, safety devices and protective equipment, and take any other needed actions necessary to protect the life and health of employees on the job and the safety of the public, and to protect the property of the State of New Mexico in connection with the performance of the work covered by this contract.
- D. Specific to one call, the contractor will be required to fully comply with the applicable portions Chapter 62, Article 14 of NMSA 1978 (New Mexico Excavation Law), and will assume the liability as a utility operator as detailed in the following law:

Chapter 62, Article 14 NMSA 1978
(known as the New Mexico Excavation Law)

The following information contains the wording of Chapter 62, Article 14 NMSA 1978, including the 2001 Amendment. It has been structurally altered to allow ease of reading and understanding. Please consult a law library to obtain an exact copy of the statute.

An Act

Relating to pipelines and underground utility lines; amending statutes providing for regulation of excavation near or of pipelines and underground utility lines; increasing penalties.

Be it enacted by the legislature of the state of New Mexico:

62-14-1 Purpose and Intent

The purpose of Chapter 62, Article 14 NMSA 1978, is to prevent injury to persons and damage to property from accidents resulting from damage to pipelines, underground utility lines, cable television lines and related facilities by excavating and blasting.

62-14-2 Definitions

For purposes of Chapter 62, Article 14 NMSA 1978:

- A. "advance notice" means two working days;
- B. "blasting" means the use of an explosive to excavate;
- C. "cable television lines and related facilities" means the facilities of any cable television system or closed-circuit coaxial cable communications system or other similar transmission service used in connection with any cable television system or other similar closed-circuit coaxial cable communication system;
- D. "commission" means the public regulation commission;
- E. "emergency excavation" means an excavation that must be performed due to circumstances beyond the excavator's control and that affects public safety, health or welfare;
- F. "excavate" means the movement or removal of earth using mechanical excavating equipment or blasting and includes auguring, backfilling, digging, ditching, drilling, grading, plowing in, pulling in, ripping, scraping, trenching, tunneling and directional boring;
- G. "excavator" means a person that excavates;
- H. "means of location" means a mark such as a stake, a flag, whiskers or paint that is conspicuous in nature and that is designed to last at least ten working days if not disturbed;
- I. "mechanical excavating equipment" means all equipment powered by any motor, engine or hydraulic or pneumatic device used for excavating and includes trenchers, bulldozers, back hoes, power shovels, scrapers, draglines, clam shells, augers, drills, cable and pipe plows or other plowing-in or pulling-in equipment;
- J. "one call notification system" means a communication system in which an operation center provides telephone services or other reliable means of communication for the purpose of receiving excavation notice information and distributing that information to owners and operators of pipeline and other underground facilities;
- K. "person" means the legal representative of or an individual, partnership, corporation, joint venture, state, subdivision or instrumentality of the state or an association;
- L. "pipeline" means a pipeline or system of pipelines and appurtenances for the transportation or movement of any oil or gas, oil or gas products and byproducts, but does not include gathering lines or systems operated exclusively for the gathering of oil or gas, oil or gas products and their byproducts in any field or area, lines or systems constituting a part of any tank farm, plant facilities of any processing plant or underground storage projects unless it is located within a municipality or in the boundaries of an established easement or right of way or within the limits of any unincorporated city, town or village or within any designated residential or commercial area such as a subdivision, business or shopping center or community development;
- M. "reasonable efforts" means notifying the appropriate one-call notification center or underground facility owner or operator of planned excavation;
- N. "underground facility" means any tangible property described in subsections c, l and o of this section that is underground, but does not include residential sprinklers or low-voltage lighting; and
- O. "underground utility line" means an underground conduit or cable, including fiber optics, and related facilities for transportation and delivery of electricity, telephonic or telegraphic communications or water;

62-14-3 Excavation

Every person who prepares engineering plans for excavation or who engages in excavation shall:

- A. Determine the location of any underground facility in or near the area where the excavation is to be conducted, including a request to the owner or operator of the underground facility to locate the underground facility pursuant to Section 62-14-5 NMSA 1978;
- B. Plan the excavation to avoid or minimize interference or damage to underground facilities in or near the excavation area;
- C. Provide telephonic advance notice of the commencement, extent and duration of the excavation work to the one-call-notification system operating in the intended excavation area, or the owners of any existing underground facility in and near the excavation area that are not members of the local one-call notification center, in order to allow the owners to locate, and mark the location of the underground facility described in section 62-14-5 NMSA 1978 prior to the commencement of work in the excavation area and shall request reaffirmation of line location every ten working days after the initial locate request;
- D. Prior to initial exposure of the underground facility, maintain at least an estimated clearance of eighteen inches between existing underground facilities for which the owners or operators have previously identified the location and the cutting edge or point of any mechanical excavating equipment utilized in the excavation and continue excavation in a manner necessary to prevent damage;
- E. Provide such support for existing underground facilities in or near the excavation area necessary to prevent damage to them;
- F. Backfill all excavations in a manner and with materials as may be necessary to prevent damage to and provide reliable support during and following backfilling activities for pre-existing underground facilities in or near the excavation area;
- G. Immediately notify by telephone the owner of any underground facilities which may have been damaged or dislocated during the excavation work; and
- H. Not move or obliterate markings made pursuant to Chapter 62, Article 14 NMSA 1978, or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with the provisions of Chapter 62, Article 14 NMSA 1978.

62-14-4 Emergency Excavation

Every person who engages in emergency excavation shall take all necessary and reasonable precaution to avoid or minimize interference with or damage to existing underground facilities in and near the construction area and shall notify as promptly as possible the owners of underground facilities located in and near the emergency excavation area. In the event of any damage to or dislocation of any underground facility caused by the emergency excavation work, the person responsible for the excavation shall immediately notify the owner of the underground facility.

62-14-5 Marking of Facilities

A. Every person owning or operating an underground facility shall, upon the request of a person intending to commence an excavation and upon advance notice, locate and mark on the surface the actual horizontal location, within twelve inches by some means of location, of the underground facilities in or near the area of the excavation so as to enable the person engaged in excavation work to locate the facilities in advance of and during the excavation work.

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B. If the owner or operator of the underground facility finds he has no underground facilities in the proposed area of excavation, the owner or operator shall contact the appropriate one-call notification center or mark in the appropriate color code as specified in section 62-14-5.1 NMSA 1978 the area as "clear" or "no underground facilities." if the area is not marked "clear" or "no underground facilities," the excavator shall contact the one-call notification system operating in the intended excavation area or the owners or operators of any existing underground facility in and near the excavation area that are not members of the local one-call notification center in order to verify the area as "clear" or "no underground facilities."

C. If the owner or operator fails to correctly mark the underground facility after being given advance notice and such failure to correctly mark the facility results in additional costs to the person doing the excavating, then the owner or operator shall reimburse the person engaging in the excavation for the reasonable costs incurred.

D. An owner of an underground facility shall not move or obliterate markings made pursuant to chapter 62, article 14, NMSA 1978, or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with the provisions of Chapter 62, Article 14 NMSA 1978.

62-14-5.1 Uniform Color Code for Location of Underground Facilities

In marking the location of underground facilities, an owner or operator shall use the following uniform color code:

- A. Blue for water;
- B. Green for sewer;
- C. range for communications/coaxial cable;
- D. Pink for survey;
- E. Purple for reclaimed water;
- F. Red for electric;
- G. White for proposed excavation area; and
- H. Yellow for gas.

62-14-6 Liability for Damage to Underground Facilities

- A. If any underground facility is damaged by any person who failed to make reasonable efforts to determine its location as provided in Chapter 62, Article 14 NMSA 1978, that person shall reimburse the owner of the underground facility for the actual cost of damage to the underground facility, including the cost of restoration of services. The person engaging in the excavation may also be liable to the owner or operator of the underground facility for the comparative negligence of the person engaging in the excavation which results in damage to the facility for an additional amount not to exceed three hundred thousand dollars (\$300,000) for each occurrence.
- B. If any underground facility is damaged by any person who has made reasonable efforts to determine its location and the damaged underground facility was correctly located by the owner or operator of the underground facility as provided in section 62-14-5 NMSA 1978, then that person causing the damage shall be liable to the owner or operator of the underground facility for only the actual cost of damage to the underground facility, including the cost of restoration of service.
- C. If any underground facility is damaged by any person who has made reasonable efforts to determine its location and damage to the underground facility is caused by the failure of the owner or operator to correctly locate that underground facility as provided in section 62-14-5 NMSA 1978, then the person engaging in the excavation shall have no liability for the damage to that facility.
- D. It is not the intent of chapter 62 article 14 NMSA 1978 to impose civil liability to any person beyond that provided in this section.

62-14-7 Liability for Negligence Notwithstanding Information Obtained

The act of obtaining or making reasonable efforts to obtain information as required by Chapter 62, Article 14 NMSA 1978 shall not excuse any person making any excavation from doing so in a careful and prudent manner, nor shall it excuse such person from liability for any damage or injury resulting from his negligence as limited in section 62-14-6 NMSA 1978.

62-14-7.1 Pipeline One-Call Notification System

- A. Every owner or operator of a pipeline facility shall be a member of a one-call notification system. A one-call notification system may be for a region of the state or statewide in scope, unless federal law provides otherwise.
- B. Each one-call notification system shall be operated by:
 - (1) an owner or operator of pipeline facilities;
 - (2) a private contractor;
 - (3) a state or local government agency; or
 - (4) a person who is otherwise eligible under state law to operate a one-call notification system.
- C. If the one-call notification system is operated by owners or operators of pipeline facilities, it shall be established as a nonprofit entity governed by a board of directors that shall establish the operating processes, procedures and technology needed for a one-call notification system. The board shall further establish a procedure or formula to determine the equitable share of each member for the costs of the one-call notification system. The board may include representatives of excavators or other persons deemed eligible to participate in the system who are not owners or operators.
- D. Excavators shall give advance notice to the one-call notification system operating in the intended excavation area and provide information established by rule of the commission, except when excavations are by or for a person that:
 - (1) owns or leases or owns a mineral leasehold interest in the real property on which the excavation occurs; and
 - (2) operates all underground facilities located in the intended excavation area.
- E. The one-call notification system shall promptly transmit excavation notice information to owners or operators of pipeline facilities in the intended excavation area.
- F. After receiving advance notice, owners and operators of pipeline facilities shall locate and mark their pipeline facilities in the intended excavation area.
- G. The one-call notification system shall provide a toll-free telephone number or another comparable and reliable means of communication to receive advance notice of excavation. Means of communication to distribute excavation notice to owners or operators of pipeline facilities shall be reliable and capable of coordination with one-call notification systems operating in other regions of the state.
- H. Operators of one-call notification systems shall notify the commission of its members and the name and telephone number of the contact person for each member and make available to the commission appropriate records in investigations of alleged violations of Chapter 62, Article 14 NMSA 1978.

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- I. One-call notification systems and owners and operators of pipeline facilities shall promote public awareness of the availability and operation of one-call notification systems and work with state and local governmental agencies charged with issuing excavation permits to provide information concerning and promote awareness by excavators of one-call notification systems.

62-14-8 Penalties

In addition to any other liability imposed by law, an excavator, after a formal hearing and upon a finding, who has failed to comply with subsection c of section 62-14-3 NMSA 1978 is subject to an administrative penalty of up to five thousand dollars (\$5,000) for a first offense as assessed by the commission. Thereafter, the commission may assess an administrative penalty of up to a maximum of twenty-five thousand dollars (\$25,000) for subsequent violations of subsection c of section 62-14-3 NMSA 1978. **In addition to any other penalty imposed by law, an operator of underground pipeline facilities or underground utilities, excavator or operator of a one-call notification system, after formal hearing and upon a finding, who has willfully failed to comply with Chapter 62, Article 14 NMSA 1978, and whose failure contributes to the damage of any pipeline or underground utility line, shall be subject to an administrative penalty of up to five thousand dollars (\$5,000) for a first offense as assessed by the commission. Thereafter, upon finding that a violation of Chapter 62, Article 14 NMSA 1978, has occurred, the commission may, upon consideration of the nature, circumstances, gravity of the violation, history of prior violations, effect on public health, safety or welfare and good faith on the part of the person in attempting to remedy the cause of the violation, assess an administrative penalty up to a maximum of twenty-five thousand dollars (\$25,000) per violation consistent with federal law.** No offense occurring more than five years prior to the current offense charged shall be considered for any purpose. All actions to recover the penalties provided for in this section shall be brought by the commission. All penalties recovered in any such action shall be paid into the state general fund.

62-14-9 Enforcement

If any person excavates or intends to excavate in violation of Chapter 62, Article 14 NMSA 1978, the commission or any interested or affected owner or operator of an underground facility may file, in the district court of the county in which the excavation is occurring or intended, an action seeking to enjoin the excavation.

62-14-9.1 Alternative Dispute Resolution

The commission shall promulgate rules for voluntary alternative dispute resolution procedures available to owners or operators, excavators and other interested parties regarding disputes that cannot be resolved through consultation and negotiation arising from damage to underground facilities, including any cost of damage incurred by the owner or operator or the excavator as a result of any delay in an excavation project while an underground facility is restored, repaired or replaced. The alternative dispute resolution procedure shall not affect civil penalties levied pursuant to section 62-14-8 NMSA 1978 or change the basis for civil liability for damages.

62-14-10 Rule Making

The commission shall promulgate rules and regulations to implement the provisions of Chapter 62, Article 14 NMSA 1978.

Effective Date

The effective date of the provisions of the 2001 amendment is July 1, 2001.

- E. Provide workmen adequate insurance, including but not limited to workman's compensation.

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- F. Make necessary arrangements for **safe** storage of his tools and/or equipment. The NMDOT will not be responsible for any lost or stolen **or damaged** property.
- G. Responsible for all cleanup work on the project site(s) and at the equipment storage area(s) prior to final inspection and acceptance.
- H. Comply with all applicable codes for this type of work.
- I. Be held liable for any damages and penalties which occur because of his negligence or that of his employees. This includes, but is not limited to, costs to repair and/or replace NMDOT's infrastructure damaged as a result of the contractor's failure to perform his duties as required here within.

In addition to the contract requirements for notifying the NMDOT of the contractor's receipt of a utility spotting request ticket as they are received, the contractor will also report once daily (calendar day) to the NMDOT (as appropriate) contact either by e-mail and/or written correspondence and/or telephone. Reports will indicate either the absence of spotting requests from nm one-call for that day or will include the utility spotting requests.

Billing for utility spotting activities performed by the contractor must be accompanied by proof of receipt of a utility spotting request from NM on-call and proof of completion and proof of notification from the contractor to NM on-call. Notification content will detail date and time of receipt, date and time of response, date and time of completion, field location of requested spotting, originator of spotting request, work performed to obtain clearance (survey and map review, or field survey), and when performed - results of the field survey.

NMDOT Agrees To:

Provide the contractor with all available drawings and as-builts showing the locations of NMDOT owned or leased communications and utility infrastructure. Unless noted otherwise, the contractor can assume all fiber optic lines are marked with tracer wire.

Invoice as Follows:

New Mexico Department of Transportation
Intelligent Transportation Systems Bureau
809 Copper NW
Albuquerque, NM 87102

New Mexico Department of Transportation
District One
2912 E. Pine St.
Deming, N.M. 88030

New Mexico Department of Transportation
District Two
4505 West Second St.
P.O. Box 1457
Roswell, N.M. 88202-1457

New Mexico Department of Transportation
District Three
7500 East Frontage Road
P.O. Box 91750
Albuquerque, N.M. 87109-3768

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New Mexico Department of Transportation
District Four
28 Bibb Industrial Dr.
P.O. Box 10
Las Vegas, N.M. 87701-0030

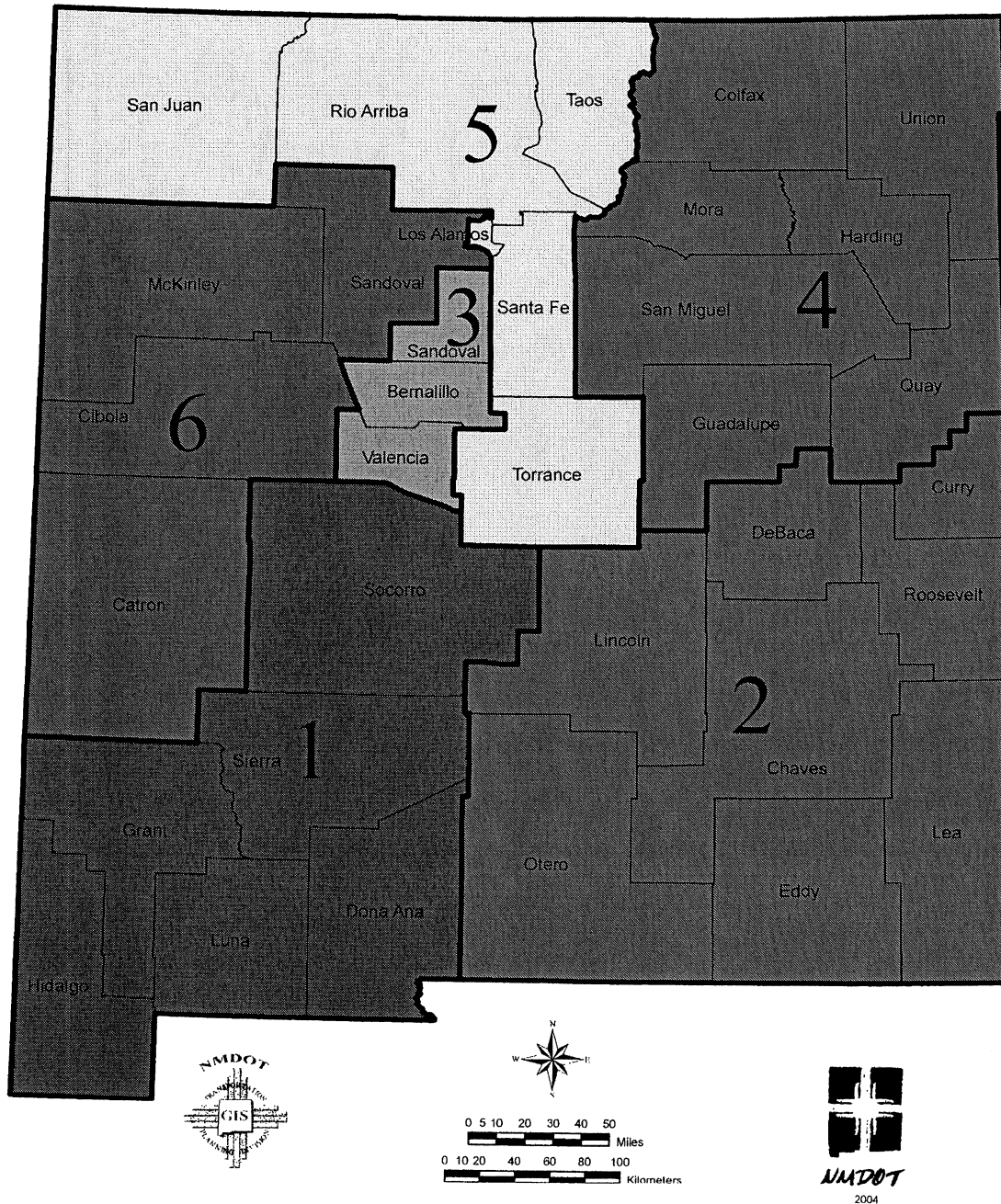
New Mexico Department of Transportation
District Five
7315 Cerrillos Road
P.O. Box 4127 (Coronado Station)
Santa Fe, N.M. 87502-4127

New Mexico Department of Transportation
District Six
1919 Pinon Drive
P.O. Box 2159
Milan, N.M. 87021-2159

New Mexico Department of Transportation
General Office
P.O. Box 1149
Santa Fe, NM 87504-1149

Mobilization - is incidental to the bid items if line spotting/ticket clearance location is within the same county where the contractor is headquartered or has an office. As an example: if contractor is headquartered or has an office in Albuquerque, mobilization will not be paid for locations within the District 3 boundaries. Otherwise mobilization will be paid in accordance with applicable contractor's bid. **For the purpose of this item, the Contractor shall list where they are headquartered _____.**

NEW MEXICO DEPARTMENT OF TRANSPORTATION DISTRICTS



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Item	Approx Qty.	Unit	Article and Description	Unit Price
001	100	Each	Line location review from drawings and as-builts Services to be performed in District 1	(AA) \$48.00 (AB) \$50.00
002	10	Each	Line location call out (field staking) Non-Emergency Response Services to be performed in District 1	(AA) \$430.00 (AB) \$200.00
003	500	Feet	Line location Non-Emergency Response Services to be performed in District 1	(AA) \$1.50 (AB) \$2.00
004	5	Each	Line location call out (field staking) Emergency Response Services to be performed in District 1	(AA) \$500.00 (AB) \$200.00
005	250	Feet	Line location Emergency Response Services to be performed in District 1	(AA) \$2.75 (AB) \$3.50
006	1000	Mi	Mobilization for line location services to be provided in District 1	(AA) \$1.25 (AB) \$1.00
007	50	Each	Line location review from drawings and as-builts Services to be performed in District 2	(AA) \$45.00 (AB) \$50.00
008	5	Each	Line location call out (field staking) Non-Emergency Response Services to be performed in District 2	(AA) \$430.00 (AB) \$200.00
009	250	Feet	Line location Non-Emergency Response Services to be performed in District 2	(AA) \$1.75 (AB) \$2.00
010	5	Each	Line location call out (field staking) Emergency Response Services to be performed in District 2	(AA) \$530.00 (AB) \$200.00
011	125	Feet	Line location Emergency Response Services to be performed in District 2	(AA) \$2.75 (AB) \$3.50
012	500	Mi	Mobilization for line location services to be provided in District 2	(AA) \$1.25 (AB) \$1.50
013	500	Each	Line location review from drawings and as-builts Services to be performed in District 3	(AA) \$28.00 (AB) \$25.00
014	50	Each	Line location call out (field staking) Non-Emergency Response Services to be performed in District 3	(AA) \$58.00 (AB) \$50.00
015	5000	Feet	Line location Non-Emergency Response Services to be performed in District 3	(AA) \$0.99 (AB) \$0.75
016	25	Each	Line location call out (field staking) Emergency Response Services to be performed in District 3	(AA) \$58.00 (AB) \$50.00
017	250	Feet	Line location Emergency Response Services to be performed in District 3	(AA) \$0.80 (AB) \$1.00
018	100	Mi	Mobilization for line location services to be provided in District 3	(AA) \$0.80 (AB) \$0.00
019	50	Each	Line location review from drawings and as-builts Services to be performed in District 4	(AA) \$40.00 (AB) \$50.00

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Item	Approx Qty.	Unit	Article and Description	Unit Price
020	5	Each	Line location call out (field staking) Non-Emergency Response Services to be performed in District 4	(AA) \$400.00 (AB) \$200.00
021	250	Feet	Line location Non-Emergency Response Services to be performed in District 4	(AA) \$1.75 (AB) \$2.00
022	5	Each	Line location call out (field staking) Emergency Response Services to be performed in District 4	(AA) \$530.00 (AB) \$250.00
023	125	Feet	Line location Emergency Response Services to be performed in District 4	(AA) \$2.75 (AB) \$3.50
024	500	Mi	Mobilization for line location services to be provided in District 4	(AA) \$1.25 (AB) \$1.00
025	100	Each	Line location review from drawings and as-builts Services to be performed in District 5	(AA) \$45.00 (AB) \$50.00
026	10	Each	Line location call out (field staking) Non-Emergency Response Services to be performed in District 5	(AA) \$430.00 (AB) \$200.00
027	500	Feet	Line location Non-Emergency Response Services to be performed in District 5	(AA) \$1.75 (AB) \$2.00
028	5	Each	Line location call out (field staking) Emergency Response Services to be performed in District 5	(AA) \$530.00 (AB) \$350.00
029	250	Feet	Line location Emergency Response Services to be performed in District 5	(AA) \$2.75 (AB) \$3.50
030	500	Mi	Mobilization for line location services to be provided in District 5	(AA) \$1.25 (AB) \$1.50
031	20	Each	Line location review from drawings and as-builts Services to be performed in District 6	(AA) \$45.00 (AB) \$50.00
032	10	Each	Line location call out (field staking) Non-Emergency Response Services to be performed in District 6	(AA) \$430.00 (AB) \$200.00
033	200	Feet	Line location Non-Emergency Response Services to be performed in District 6	(AA) \$1.75 (AB) \$2.00
034	5	Each	Line location call out (field staking) Emergency Response Services to be performed in District 6	(AA) \$530.00 (AB) \$250.00
035	100	Feet	Line location Emergency Response Services to be performed in District 6	(AA) \$2.75 (AB) \$3.50
036	1000	Mi	Mobilization for line location services to be provided in District 6	(AA) \$1.25 (AB) \$1.50

*** 36 Items Total***