



**State of New Mexico
General Services Department**

Price Agreement

Awarded Vendor

0000047978

N & K Electric Company

1383 Brilliant Pl

Raton, NM 87740

Telephone No. (575) 445-8864

Price Agreement Number: **90-805-18-16727**


Payment Terms: **Net 30**

F.O.B.: **Destination**

Delivery: **As Requested**

Ship To:

Various Locations

Procurement Specialist: **Mark Lujan** 

Telephone No.: **(505) 827-0564**

Email: **Mark.Lujan@state.nm.us**

Invoice:

New Mexico Department of Transportation

South Highway 85

Las Vegas, NM 87701

For questions regarding this contract please contact:

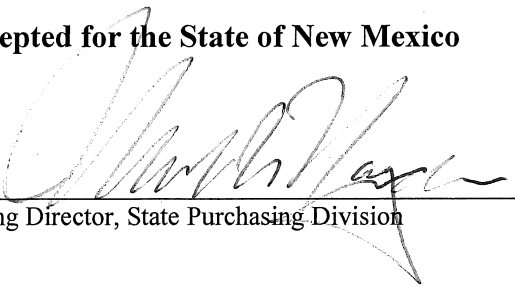
Dolores Baca (505) 570-7936

Title: Electrical Services – District Four, Raton Area

Term: March 5, 2019 – March 4, 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



Acting Director, State Purchasing Division

Date: 03/05/19

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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.insurenwmexico.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!*

New Mexico Pay Equity Initiative

Contractor agrees, if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees, contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts that are up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report it self.

Two (2) copies of the Pay Equity Worksheet shall be submitted prior to Award by the prospective Awarded Vendor.

The PE10-249 and PE250 worksheet is available at the following website:
http://www.generalservices.state.nm.us/statepurchasing/Pay_Equity.aspx

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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 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:

**0000047978
N & K Electric Company
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To establish a contract for the New Mexico Department of Transportation (NMDOT) District Four, for electrical repairs and services "on-call", in the Raton, New Mexico area.

Terms and Conditions

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

Escalation / Reduction Clause:

In the event of a product cost increase, an escalation request will be reviewed by the State Purchasing Division on an individual basis. Price decreases as well as increases shall apply. If vendor's prices are reduced for any reason, users shall receive the benefit of such reductions. Price increases will not be retroactive to orders already in house or backorders. Orders will be filled at the price in effect on the date of receipt of the order by the vendor. *This measure is not intended to allow any increase in profit margin, only to compensate for an actual cost increase.*

To facilitate prompt consideration, all requests for price increase must include all information listed below:

1. Contract Number
2. Contract Item Number
3. Current Item Price
4. Proposed New Price
5. Percentage of Increase
6. Mill/Supplier Notification of Price Increase indicating percentage of increase including reason for increase.

Requests for service shall be coordinated through the District Four Procurement Office.

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 contract has a valid license issued by CID to bid and perform the type of work to be undertaken, 60-13-12, NMSA 1978.

Contractor License No. 2983

Scope

The successful bidder (hereafter, Contractor) agrees to provide services within twenty-four (24) hours for normal service and three (3) hours for emergency services. All calls will be relative to service and/or repairs to all units, pump controls (water and fuel), tank heaters, new construction, lighting systems, and general electrical systems, but not limited to additional outlets, breakers, disconnects and fixtures. Work shall also include rest areas (Thaxton, Sierra Grande), administration buildings, and all patrol and construction buildings (Raton, Clayton, Des Moines, Eagle Nest, Springer, Roy) located within the Raton Area.

Contractor must be located within a maximum of a seventy (70) mile radius from the Raton Area.

Electrical contractors will be required to provide an itemized, biddable, list of all material requirements for jobs over two hundred fifty dollars (\$250.00).

In the event that the Contractor is unable to be contacted within a forty-eight (48) hour period to perform electrical services, the NMDOT reserves the right to call on another vendor to perform the needed service.

The NMDOT District Four reserves the right to purchase materials directly from State Price Agreements and to provide these materials to the awarded contractor.

Hourly rate will begin at the job site. Travel time will not be allowed from vendor's place of business.

All repairs started shall be worked thru completion. The contractor must provide written justification to the NMDOT for leaving a jobsite unfinished for more than two (2) days.

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Failure to respond by the awarded vendor to the requests for services as specified by the NMDOT District Four will be cause for cancellation of this contract.

This contract may be terminated by the NMDOT District Four with a thirty (30) day written notice approved by the State Purchasing Agent or duty authorized representative.

Contractor Responsibility

The contractor shall be held responsible for the work being completed. Should the contractor neglect, refuse, or otherwise fail to complete the work within the time specified, the contractor agrees to pay to the owner in partial consideration for the award of this contract in the amount of fifty dollars (\$50.00) per consecutive calendar day, not as a penalty, but as liquidated damages for such breach of the contract.

The contractor is in apparent default of the contract if the contractor:

- A. Fails to begin the work under the contract within the time specified or;
- B. Fails to perform the work with sufficient supervision, workmen, equipment or materials to assure the prompt completion of said work, or;
- C. Performs the new work that is unsuitable or neglects or refuses to remove materials or to perform new such work a may be rejected as unacceptable and unsuitable, or;
- D. Discontinues the prosecution of the work, or;
- E. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or;
- F. Becomes insolvent or is declared bankrupt or commits any acts of bankruptcy or insolvency, or;
- G. Fails to carry on the work in an acceptable manner.

Upon the default of the contractor, the NMDOT may undertake and complete the work with its own forces, or may procure a competing contractor to finish the work. All costs and charges thereby incurred by the NMDOT, together with the cost of completing the work under contract, will be deducted from funds that are due or may become due with the defaulting contractor.

Hold Harmless Clause:

Contractor shall indemnify and hold harmless the State, its officers, and employees, against liability, claims, damages, losses, or expenses arising out of bodily injury to persons or damage to properties caused by, or resulting from, Contractor's and/or its employees, own negligent acts or omissions while Contractor, and/or its employees perform or fail to perform its obligations and duties under the terms and conditions of this Price Agreement. This Save Harmless and Indemnification Clause is subject to the immunities, provisions, and limitations of the Tort Claims Act (Section 41 4-1, et seq., NMSA 1978 Comp. and Section 56-7-1 NMSA 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 this Price Agreement to create the public or any member hereof a third party beneficiary or to authorize anyone not a party to the Price Agreement to maintain a suit for wrongful death, bodily and/or personal injury to persons, damage to properties and/or other claims whatsoever pursuant to the provisions of this Price Agreement.

Insurance Requirements

The Contractor shall procure and maintain at the Contractor's expense insurance of the kinds and in amounts herein provided. This insurance shall be provided by the insurance companies authorized to do business in New Mexico and shall cover all operations under the Contract, whether performed by the Contractor, the Contractor's agents or employees or by subcontractors. 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 and employees, agents and subcontractors 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: \$500,000 each occurrence; \$1,000,000 aggregate

Property Damage Liability: \$500,000 each occurrence, \$1,000,000 aggregate

- a. The policy to provide this insurance is to be written on a Comprehensive General Liability Form or Commercial General Liability Form which much include the following:
 - 1) Coverage for liability arising out of the operation of independent Contractors;

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- 2) Completed operation coverage; and
 - 3) Attachment of the Broad Form Comprehensive General Liability Endorsement.
 - b. In the event that a form of work next to an existing building or structure is a required part of the Contract, the Contractor's insurance must include coverage for injury to or destruction of property arising out of the collapse of or structural injury to building or structures due to excavation, including borrowing, filling or backfilling in connection therewith, or to tunneling, cofferdam work or caisson work or to moving, shoring, underpinning, razing or demolition of buildings or structures or removal or rebuilding of structural supports thereof.
 - c. 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 therefrom.
2. Automobile liability insurance coverage for the contractor (whether including in the policy providing general liability insurance or in a separate policy) must provide liability for the ownership, operation and maintenance of owned, non-hired cars. The limits of liability for automobile insurance shall be provided in the following amounts:

Bodily Injury Liability: \$500,000 each occurrence; \$1,000,000 aggregate
Property Damage Liability: \$500,000 each occurrence; \$1,000,000 aggregate

- B. **Worker's Compensation Insurance:** The Contractor shall also carry Worker's Compensation Insurance or otherwise fully comply with the provision of the New Mexico Workman's Compensation Act and Occupational Disease Disablement Law.

If the contractor 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 Contract.

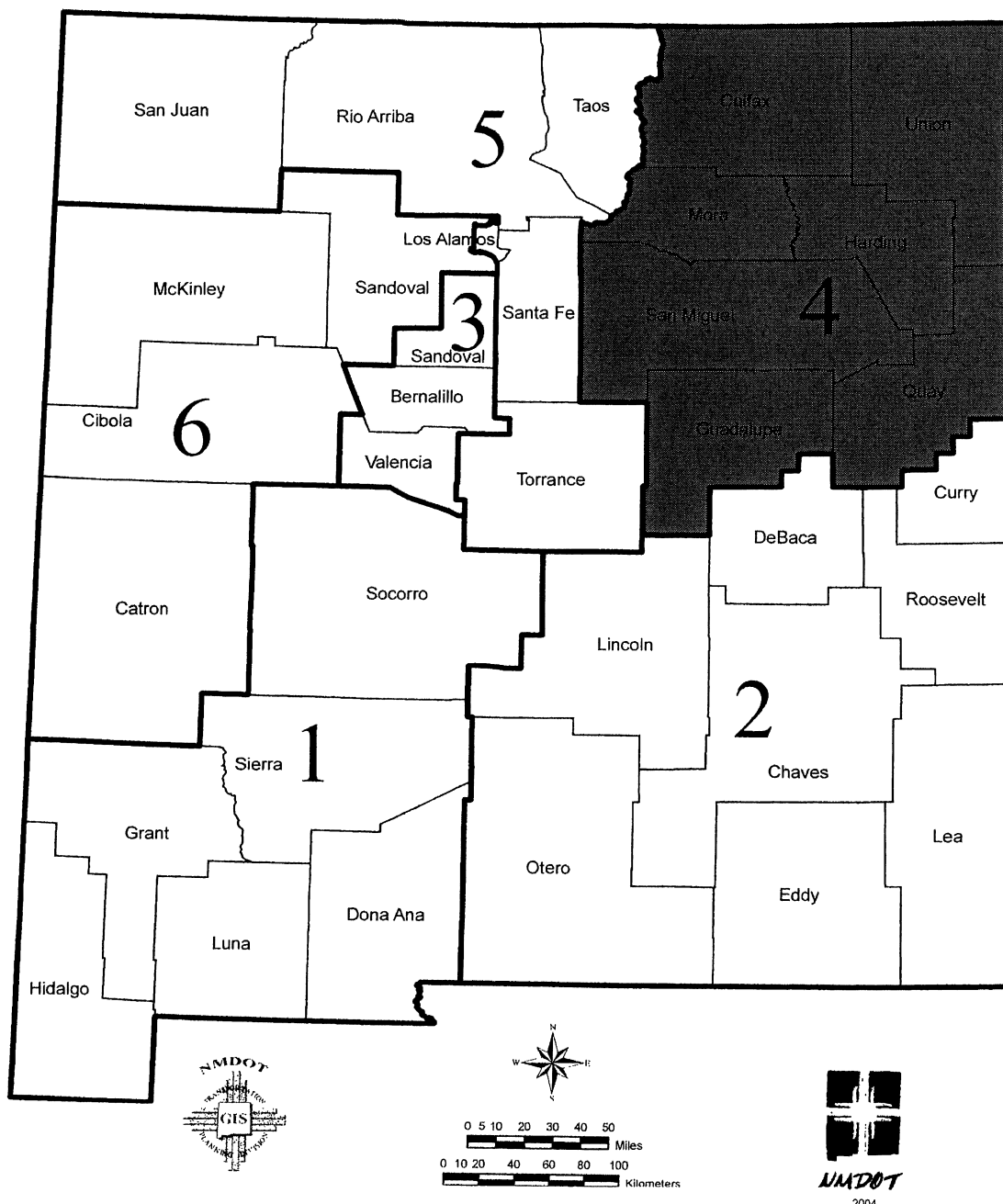
- C. **Certification of Insurance/Department as Additional Insured:** The Contractor awarded the Contract shall furnish evidence of Contractor's insurance coverage by a Certificate of Insurance. The Certificate of Insurance **shall be submitted prior to award of the Contract.**

The Contractor shall have the New Mexico Department of Transportation (NMDOT) named as additional insured on the Comprehensive General Liability Form or Commercial General Liability Form furnished by the Contractor 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, canceled or allowed to laps without giving the Department thirty (30) days prior written notice. Also, a Certificate of Insurance shall be furnished to the Department on renewal of a policy or policies as necessary during the terms of this Contract. The Department 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 an individual Contractor. The Department will recognize following form excess coverage (umbrella) as meeting the requirements of Subsection A.1.a. of this Contract should such insurance otherwise meet all requirements of such subsections.
- E. **Optimal Insurance:** The Contractor shall procure and maintain, when required by the Department, form and types of Bailee Insurance such as, but not limited to, Builder's Risk Insurance, Contractor's Equipment Insurance, Rigger's Liability Property Insurance, etc., in an amount necessary to protect the Department against claims, losses, and expenses arising from the damage, disappearance or destruction of property of others in the care, custody or control of the Contractor, including property of others being installed, erected or worked upon by the Contractor, his agents, or subcontractors.

NEW MEXICO DEPARTMENT OF TRANSPORTATION DISTRICTS



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Endorsement

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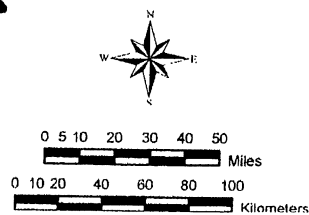
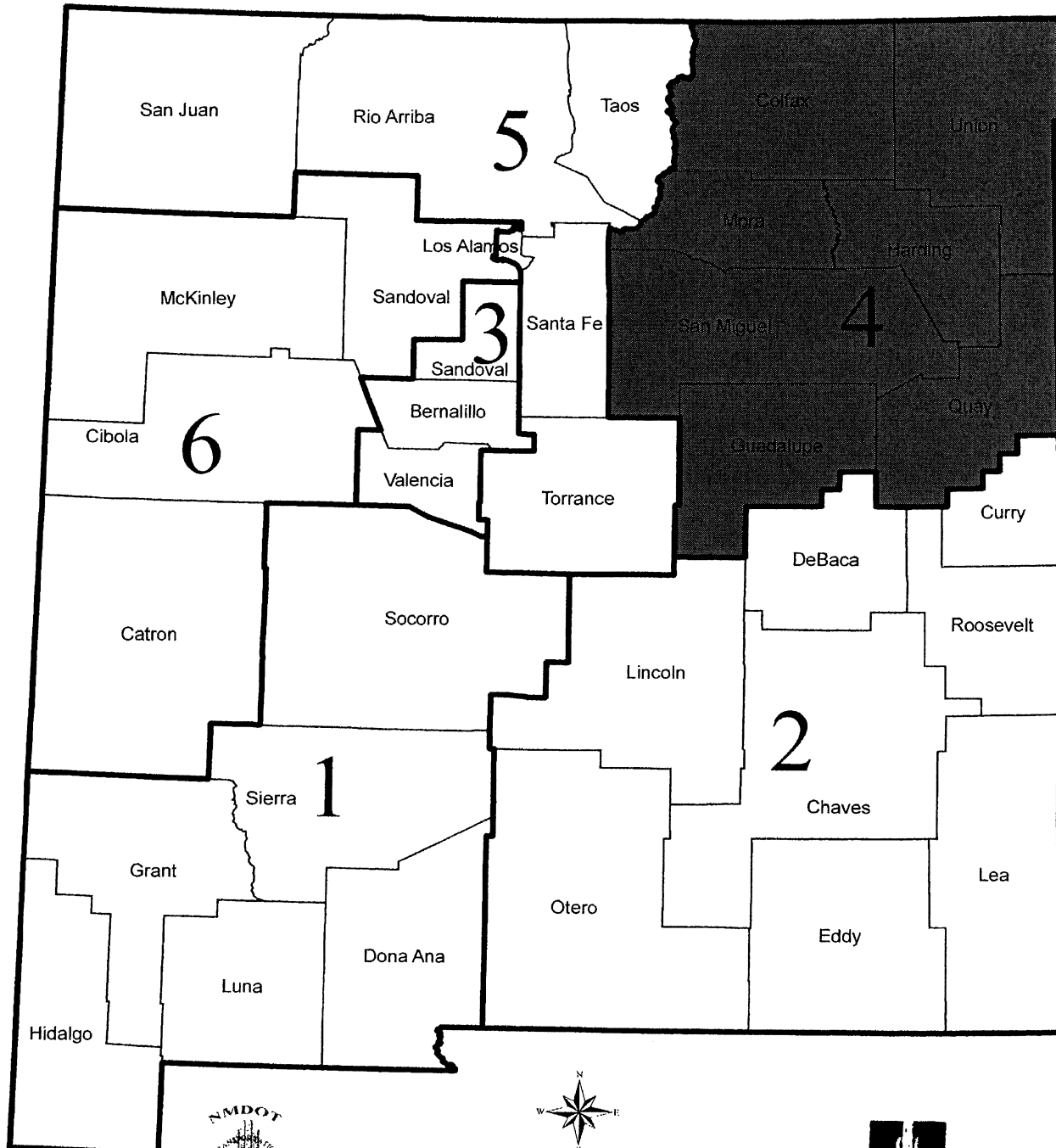
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Item No.	Approx. Qty.	Unit	Description	Unit Price
001	1	Hour	Certified, licensed journeyman regular working hours	\$49.75
002	1	Hour	Apprentice helper regular working hours	\$29.75
003	1	Hour	Certified, licensed journeyman after 5:00p.m. weekends and holidays	\$75.00
004	1	Hour	Apprentice helper after 5:00 p.m. weekends and holidays	\$45.00
005	1	Percent	Parts and Materials discount % offered on manufacturer list price (Note: Cost plus percent is not acceptable)	20%
006	1	Mile	Mileage portal to portal to locations beyond 20 miles of the Raton vicinity	\$0.80

***** 6 Items Total *****