



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

Price Agreement Amendment

Awarded Vendor:
4 Vendors

Number: **90-805-19-16764**

Amendment No.: **One**

Term: **November 6, 2019 – November 5, 2021**

Ship To:
New Mexico Department of Transportation District 3
Purchasing Office
7500 Pan American Freeway NE
Albuquerque, NM 87109

Procurement Specialist: **Mark Lujan**

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

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

Telephone Number: (505) 934-0354

Invoice:
Same as Ship To

For questions regarding this contract please contact:
Angela Martinez (505) 570-7940

Title: Asphalt Concrete Open Graded Friction Course (OGFC) for D-3

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 November 6, 2020 to November 5, 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

Valerie Paulk
Mark Hayden, New Mexico State Purchasing Agent

Date: 10/28/2020

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



State of New Mexico General Services Department

Price Agreement

Awarded Vendor:
4 Vendors (see Page 6)

Telephone No.:

Price Agreement Number: **90-805-19-16764**

Payment Terms: **See Page 6**

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

Delivery: **See Page 6**

Ship To:
New Mexico Department of Transportation
Purchasing Office
7500 Pan American Freeway NE
Albuquerque, NM 87109

Telephone No.: (505) 934-0354

Procurement Specialist: **Mark Lujan**

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Invoice:
New Mexico Department of Transportation
District 3 Purchasing Office
7500 Pan American Freeway NE
Albuquerque, NM 87109

Telephone No.: (505) 934-0354

For questions regarding this agreement please
contact:


Angela Martinez (505) 570-7940

Title: Asphalt Concrete Open Graded Friction Course (OGFC) for D-3

Term: November 6, 2019 – November 5, 2020

This Price Agreement is made subject to the “terms and conditions” as indicated on subsequent pages.

Accepted for the State of New Mexico


Mark Hayden, New Mexico State Purchasing Division

Date: 11/6/2019

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General Services Department
Purchasing Division
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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.
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.

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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, 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.

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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.

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.insurenemexico.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.

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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:

(AA) 0000047738
Albuquerque Asphalt, Inc.
P.O. Box 66450
Albuquerque, NM 87193
(505) 831-7311
Dan@alb-asphalt.com
Bobw@alb-asphalt.com

Payment Terms: Net 30 Days
Delivery: As requested by issuing
agency

(AB) 0000129980
Black Rock Services
P.O. Box 1379
Peralta, NM 87042
(505) 873-6524
rcaldwell@blackrock-services.com
jhale@blackrock-services

Payment Terms: Net 15
Delivery: As Requested

(AC) 0000047577
Mountain States Constructors, Inc.
3601 Pan American Fwy NE, Ste. #111
Albuquerque NM, 87107
(505) 292-0108
dotoski@msconstructors.com
robg@msconstructors.com

Payment Terms: Net 30
Delivery: FOB Destination

(AD) 0000093143
Vulcan Materials Company
1500 N. Renaissance Blvd. NE Ste. B
Albuquerque, NM 87107
(505) 343-7878
Martinez@vmcmail.com

Payment Terms: Net 15 Prox.
Delivery: As Requested

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Specifications:

To establish a Price Agreement for Asphalt Concrete Open Graded Friction Course (OGFC) to be used by the New Mexico Department of Transportation District 3 and other Districts as needed.

TERM:

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 director at the same price, terms and conditions. This agreement shall not exceed four (4) years.

QUANTITIES:

Quantities are estimates; exact quantities shall be determined by the District Engineer or his designee. Open Graded Friction Course shall be in accordance with Section 403, Open Graded Friction Course (OGFC), or the New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction, current Edition. They are available on the NMDOT website, at the following link: <http://dot.state.nm.us/content/nmdot/en/Standards.html> and they are available for purchase at the General Office Financial Control Section (505) 827-5159.

SPECIFICATIONS:

The Open Graded Friction Course shall be composed of a mixture of aggregates, bituminous material, and hydrated lime in such proportions as determined by the materials laboratory. The aggregate fractions shall be sized, combined and mixed with bituminous materials, and hydrated lime in such proportions that result in a uniformly grade mixture as per Section 403, Open Graded Friction Course.

The type bituminous material shall be polymerized asphalt cement PG 70-28+ or better. The amount of bituminous material to be used in the mixture to be established by the Engineer within the range of six percent (6%) to nine percent (9%) bituminous material by weight of this total mix, and shall be maintained within plus or minus three tenths percent (0.3%).

The mineral aggregate will be mixed with hydrated lime in accordance with provisions of Section 402. The mixing plant shall dry, size, blend and mix the mineral aggregate and the bituminous material uniformly. Mixing time shall be sufficient to thoroughly and satisfactorily coat all aggregate with bituminous material.

FOB Vendors Plant(s) within a fifty (50) miles radius of the I-40/I-25 (Big-I) interchange. Vendor(s) need to make material available for pick up within fourteen (14) days of notification/request from NMDOT representative.

Vendor is requested to indicate federal Tax ID number: _____.
NM Gross receipts number or social security number: _____.

ANTI-ADHESION RELEASE AGENT:

Vendor shall have available, at plant location, a biodegradable anti-adhesion release agent, with proper dispensing equipment to be used by NMDOT personnel when purchasing asphalt concrete. Anti-adhesion release agent shall be compatible with asphalt concrete, and not affect asphalt concrete when used at recommended dilution. Anti-adhesion release agent shall not require special solvents for clean-up; anti-adhesion release agent shall have an anti-rust preventive. Vendor shall be responsible for disposal of waste material. User reserves the right to inspect and review anti-adhesion release material at any time during the period covered by this price agreement. Compensation to vendor by the NMDOT shall be based on five (5) yard truck beds.

Vendor shall not "Bump – (other clients being moved ahead of NMDOT trucks during loading)" NMDOT or NMDOT contractor vehicle(s) which are in line waiting for loading of asphalt concrete material. Should this occur, NMDOT will register an official complaint in writing to vendor. Should future delay(s) to NMDOT vehicle(s) due to vendor prioritizing other customer's needs over NMDOT needs, then NMDOT shall have the right to charge vendor \$70.00 per hour due to excessive delay(s) in loading procedures.

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THIS IS AN "ALL OR NONE" PROCUREMENT. All items must be bid on, failure to do so will result in bid deemed unresponsive.

PAYMENT TERMS:

Within fifteen (15) days after the Department receives written notice from the contractor that payment is requested for services, construction or items of tangible personal property delivered on site and received, the Department shall issue a written certification of complete or partial acceptance or rejection of services, construction or items of tangible personal property. If the Department finds that the services, construction or items or tangible property are not acceptable, it shall, within thirty days after the date of receipt of written notice from the contractor that payment is requested, provide to the contractor a letter of exception explaining the defect or objection to the services, construction or delivered tangible property along with details of how the contractor may proceed to provide remedial action. Upon certification by the Department that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the contractor within thirty days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued. Late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of 1 ½ percent per month. For purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the Federal or State Funding Agency, but has already certified that the services or items of tangible personal property have been received and accepted, payments shall be tendered to the contractor within five working days of receipt of funds from that funding agency, final payment shall be made within thirty days after the work has been approved and accepted by the Department's secretary or his duly authorized representative. The contractor agrees to comply with state laws and rules pertaining to worker's compensation insurance coverage for its employees. If contractor fails to comply with the worker's compensation act and applicable rules when required to do so, the contract may be canceled effective immediately.

ESCALATION CLAUSE:

In the event of a product cost increase an escalation request will be reviewed by NMDOT. Please be aware this measure is not intended to allow increases in profit margin, only to compensate for an actual cost increase. Price decrease as well as increases shall apply. If vendor's prices are reduced for any reason, DOT 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. Effective dates for increases will not be any sooner than fifteen (15) days from the date the written request is received by DOT. To facilitate prompt consideration, all requests for price increase must include all information below:

- a.) Price Agreement number
- b.) Price agreement item number affected
- c.) Current item price
- d.) Proposed new price
- e.) Percentage of increase; and

Mill/supplier notification of price increase indicating percentage of increase.

This escalation policy will be terminated as soon as the market stabilizes. Should you have questions concerning this policy, please contact the State Purchasing Division.

THE CONTRACTOR AGREES TO:

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 property caused by, or resulting from, Contractor's and/or its employees, own negligent act(s) or omission(s) while Contractor, and/or its employees, perform(s) or fails to perform its obligations and duties under the terms and conditions of this agreement. This save harmless and indemnification clause is subject to the immunities, provisions and limitations of the tort claims act (41-4-1, et seq., N.M.S.A. 1978 comp.) and section 56-7-1 N.M.S.A. 1978 comp. and any amendments thereto.

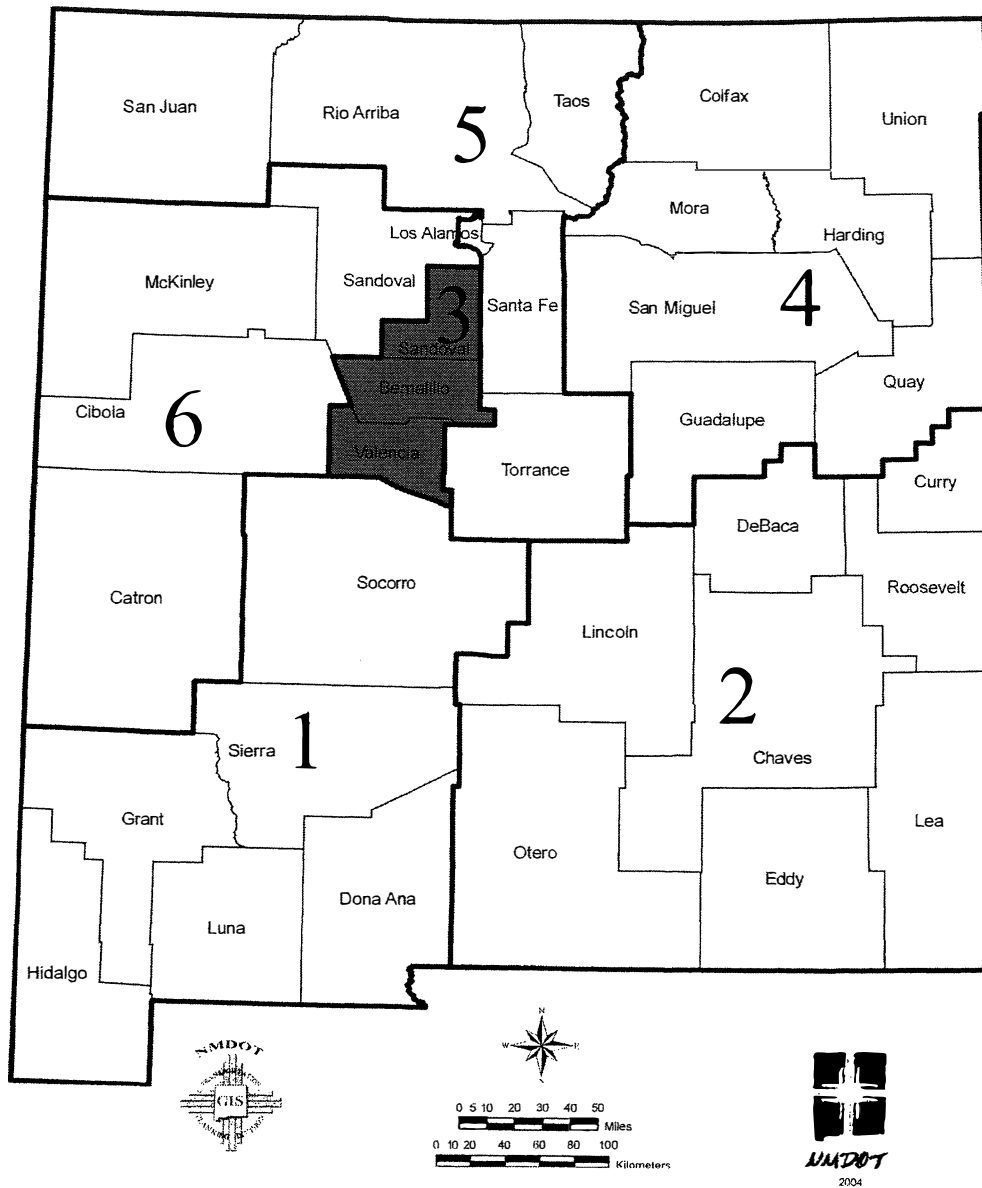
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Ship To:
Purchasing Office
7500 Pan American Freeway NE
Albuquerque, NM 87109

Invoice/Bill to:
District 3 Purchasing Office
7500 Pan American Freeway NE
Albuquerque, NM 87109

NEW MEXICO DEPARTMENT OF TRANSPORTATION DISTRICTS



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Items:

Item No.	Approx. Qty.	Unit	Description	Vendors			
				(AA)	(AB)	(AC)	(AD)
001	5000	Ton	Open Graded Friction Course Bituminous with PG 70-28+ or better Bituminous material.	<u>\$89.50</u>	<u>\$85.00</u>	<u>\$94.16</u>	<u>\$81.85</u>
002	500	Gallon	Release agent anti-adhesion release agent for use in preventing asphalt concrete build-up in truck bed when hauling hot mix. One application unit will be described as one (1) coating for one (1) five (5) cubic yard truck bed capacity.	<u>\$8.00</u>	<u>\$5.00</u>	<u>\$20.00</u>	<u>\$2.00</u>

*** 2 Items Total ***