ALBUQUERQUE PUBLIC SCHOOLS

INVITATION TO BID

BID #18-060MS

ICE CREAM NOVELTIES AND ICE SLUSH PRODUCTS WITH DISPENSING MACHINES

BUYER CONTACT INFORMATION

Name	Melissa Sanchez
Phone Number	(505) 345-5661 ext. 38241
E-Mail	Melissa.sanchez@aps.edu
Any inquiries or requests regarding clarification of this BID document shall be submitted to the buyer in writing. Proposers may contact ONLY the buyer regarding the terminology stated in the procurement documents.	

BID SCHEDULE

Action	**Date & Time**
Bid Issued	4/2/2018
Pre-Bid Meeting	N/A
Pre-Bid Meeting Location	N/A
Deadline for Questions	4/17/2018 @ 3:00pm (local time)
Bid Due Date & Time	4/18/2018 @ 11:00am (local time)
Proposals must be received by the due date and time. No late proposals will be accepted. The only acceptable evidence to establish the time of receipt is the date/time stamp imprint from the APS Procurement bid clock.	

BID SUBMITTAL LOCATION

Physical Address (NO USPS MAIL) **(*For walk-in delivery or carrier service (UPS, FedEx, etc.))**	**US Postal Mail Address - (allow 10 extra days for delivery)**
Albuquerque Public Schools ATTN: Procurement Department 6400 Uptown Blvd. NE, Suite 500E Albuquerque, NM 87110	Albuquerque Public Schools ATTN: Procurement Department, City Center, Suite 500E P.O. Box 25704 Albuquerque, NM 87124-0704
The outermost envelope of your proposal shall be clearly labeled with the following: Proposers' business name, RFP number and RFP title, and opening date & time. Please note: if you put your sealed bid inside of a FedEx, UPS, etc. envelope, all of this information must be clearly written on that outer envelope as well. ***Please note: APS does not have a mailbox on site. For US Postal Mail, we can only accept delivery at our P.O. Box. If you send a US Postal Mail package or letter to the Physical Address, it will not reach our office.**	

BID TERM

APS reserves to right to enter into a five (5) year indefinite quantity contract with awarded Bidder(s).
Contract Term: 8/1/2018 thru 7/31/2023

SUBMISSION COVER SHEET

(Submit with your bid.)

BIDDER ACKNOWLEDGEMENT: By responding to this Bid, the undersigned Bidder (1) acknowledges that he or she agrees to the terms and conditions set forth in this Bid; (2) certifies that the Bidder has not, either directly or indirectly, entered into action in restraint of full competition in connection with the bid submitted to the District; and (3) agrees to furnish the materials, supplies or services as required within the time specified under the conditions imposed at the price indicated.

SIGN HERE

Signature of Authorized Representative: _____ Contractor's License #: _____ (If Applicable)

Type or print name of above: _____ Address 1: _____

Name of Firm: _____ Address 2: _____

Telephone No.: _____ E-Mail: _____

Resident/Veterans Preference Certification No. (If applicable): _____

Contact information for Sales Department:	**Contact information for POs/Invoicing/Etc.:**
Name of Contact: _____	Name of Contact: _____
Telephone No.: _____	Telephone No.: _____
Email Address: _____	Email Address: _____

***** IF ANY OF THIS CONTACT INFORMATION CHANGES, IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO IMMEDIATELY NOTIFY APS PROCUREMENT. *****

BID SUBMITTAL REQUIREMENTS AND CHECKLIST

Please submit your completed bid, including the following items. Note that the requested information is mandatory and **failure to submit these items with your response may deem it non-responsive and may be disqualified.** Submittals must be in the following order and all items must be included in your response to this bid.

PRINTED SUBMITTALS:

- ☐ Submission Cover Sheet **SIGNED**
- ☐ Bid Pricing List – **DO NOT SUBMIT ANY PRINTED CATALOGS.**
- ☐ Specification Exception Form **SIGNED**
- ☐ Completed Conflict of Interest and Debarment/Suspension Form (see Compliance section) **SIGNED**
- ☐ Campaign Contributions Disclosure Form (see Compliance section) **SIGNED**
- ☐ Resident Contractor (or Veteran Resident Contractor) Preference Certificate (if applicable)
- ☐ Addendums (if applicable) – **before** submitting your bid, please check for addendums here: http://www.aps.edu/procurement/current-bids-and-rfps

ELECTRONIC SUBMITTALS:

- ☐ Electronic Price List/Catalog (either include a web-link where your pricing lists/catalogs can be found (in the space provided on the Electronic Bid Pricing List) **or** include a CD with your pricing list/catalogs)
- ☐ Electronic Bid Pricing List – please find an excel spreadsheet on the APS Procurement website here: https://www.aps.edu/procurement/current-bids-and-rfps Fill in all highlighted fields in the spreadsheet. DO NOT E-MAIL. Submit with your sealed bid on a flash drive, CD, etc.

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INSTRUCTIONS FOR ALL BIDDERS

1. **READ ALL DOCUMENTS.** Bidders must familiarize themselves with all documents contained herein; it is mandatory that all submitted bids be in compliance with all the provisions contained in the Invitation to Bid. No claim shall be made nor will one be allowed the bidder for negligence, misunderstanding, or error in this regard.

   The submission of a bid constitutes a representation by the bidder that the bidder has made all appropriate examinations, investigations, and analysis and has made provision as to the cost thereof in his bid.

   Bidders should promptly notify the buyer of any ambiguity, inconsistency, error, or missing attachments which they may discover upon examination of the Bid. Any response made by the District will be provided in writing to all Bidders by addendum, no verbal responses shall be authoritative.

2. **ELECTRONIC BID DOCUMENTS.** This Bid is being made available by electronic means. In the event of conflict between a version of the RFP in the Bidder's possession and the version maintained by APS, the Bidder acknowledges that the version maintained by APS shall govern.

3. **FORMS AND ATTACHMENTS.** Each bid must be submitted on the prescribed form.

   It is the responsibility of every bidder to ensure they have downloaded the latest version of each bid, including any addendum(s) which may have been issued and posted on the APS Procurement Department Website. Bidders should revisit the website (http://www.aps.edu/procurement then select "See Current Bids and RFPs") prior to the due date before submitting their bid to Albuquerque Public Schools. All addendums must be acknowledged in the submitted bid. It is the bidder's responsibility to ensure the bid arrives before the due date and time. Bidders are cautioned that "late is late". It is the responsibility of the Bidders to allow sufficient time for the hazards of traffic, weather, finding parking, locating the proper office, third party delivery, US Postal Service mail delivery, etc.

   No Addendum will be issued later than SEVEN (7) days prior to the date for receipt of Bids, except an Addendum withdrawing the Bid or one which extends the date for receipt of Bids.

4. **PRINTED OR TYPED RESPONSE.** All blank spaces for bid prices must be filled in with ink or typewritten.

5. **CORRECTIONS.** Corrections shall be initialed in ink by the person signing the bid.

   Bidders will be allowed to withdraw their bid at any time prior to the deadline for receipt of bids. The Bidder must submit a written withdrawal request to the Buyer and signed by the Bidder to withdraw their offer. The approval or denial of withdrawal requests received after the deadline for receipt of the bids is governed by the applicable procurement regulations.

   A bidder may submit an amended bid prior to the deadline for receipt of bids. Such an amended bid must be a complete replacement for a previously submitted bid and must be clearly identified as such in the transmittal letter. Owner personnel will not collate or assemble bid materials for the bidder.

6. **PRICE IS ALL INCLUSIVE.** The bid price shall be a delivered price. All materials shall be shipped F.O.B. Destination Freight prepaid as specified in the Invitation to Bid.

   All costs incurred by a Bidder in connection with responding to this Bid, the selection process undertaken in connection with this procurement, and any negotiations with the District will be borne by the Bidder.

7. **BRAND NAMES.** Where a brand-name or equal specification is used in a solicitation, the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. If a vendor proposes an "equal" to scope of work/specifications, APS is the sole interpreter of the scope of work/specifications and sole judge as to whether the "equal" proposed complies with the scope of work/specifications.

8. **BID PRICING DURATION.** Responses, including bid prices, will be considered firm for ninety (90) days after the due date of the bid.

9. **PRICE DISCREPANCY.** Bidders shall note that prices previously submitted via any informal quotation (verbal or in writing) are hereby superseded and will not be considered for award. If you have previously submitted an informal quotation, you must participate in this bid to be considered for an award.

   If bidder offers more than one brand or price per item, APS shall evaluate bids and award the products that are in the District's best interest with regards to pricing and quality.

   Bidders offering other than specified goods must submit illustrated literature and complete product data for evaluation purposes.

10. **EXPLANATIONS, EXCEPTIONS.** Any exceptions to the scope of work and/or specifications shall be listed separately in the submitted bid and unless otherwise stated, specifications attached are the minimum requirements.

    The buyer, after review of the bids may request clarifications on information submitted by any and all bidders in a written format, with a specified deadline for response.

    The District reserves the right in its sole discretion to waive minor informalities in bids submitted provided that such informalities have no effect on price, quality, quantity, fitness, delivery or any matter to be evaluated in making a selection and confer no material advantage on the Bidder whose non conformity is waived.

11. **AWARD CRITERIA.** The bid will be awarded to the lowest responsible and responsive Bidder that meets or exceeds the specifications/scope of work outlined in the Bid Documents. Albuquerque Public Schools reserves the right to the sole judge to determine "meets or exceeds".

    Albuquerque Public Schools reserves the right to award by item, group of items, or total bids; to reject any and all bids in whole or in part, if it is in the best interests of Albuquerque Public Schools. Additionally, the District reserves the right to reject any or all bids for any reason that the District determines prudent. Such rejection shall not result in any penalty to the District, but shall be deemed a cost of doing business by the bidder.

    If this bid results in a non-exclusive discount pricing agreement, more than one award may be made. No commitment is made by the District as to quantity and frequency of purchase. Albuquerque Public Schools reserves the right to purchase items referenced under this agreement using any other method and from any other vendor as deemed necessary and in the best interest of the District.

    In the event APS receives comparable pricing structures and list prices in the same categories, then APS may choose to (1) award to the vendor who submits the more comprehensive price list or (2) make multiple awards in that category.

12. **PREFERENCES.** Bids may be awarded preference in compliance with NMSA 13-1-21 for New Mexico In-State Resident Business and Resident Veteran Business. Bidders shall include in their bid a copy of the certificate issued by State of New Mexico Taxation & Revenue. If Bid is Joint Venture, Bidder shall state in submitted bid the percentage of work that will be performed by Resident Business and/or Resident Veteran Business. Please Note: A Bid cannot be awarded both a resident preference and a resident veteran business preference. Additionally, preferences are not applicable for federal fund purchases.

13. **TIMELY SUBMISSIONS.** Bids must be submitted by the due date and time. Albuquerque Public Schools does not accept bids electronically, by fax, or email, as a hardcopy with original signature must be submitted. Any and all Bids not received by the submission date and time shall be rejected.

    APS may in its sole discretion extend the time for the submission of bids upon a finding that it is in the interest of the District to do so. Such extensions shall be by addendum, which may be issued before the submission due date.

    Any and all bids not received by the Bid submission due date and time shall be rejected. No late bids will be accepted under any circumstances, not even if the delivery company is late. It is recommended to send your bid early.

14. **BID CANCELLATION OR REJECTION.** This bid may be canceled or may be rejected in whole or in part when it is in the best interest of Albuquerque Public Schools.

    The District reserves the right to eliminate any Bidder who submits incomplete or inadequate responses or is not responsive to the requirements of this Bid.

15. **BID OPENING.** The contents of the bid will be available to the public at bid opening. The Procurement Department will not disclose or make public any pages of a bid on which the Bidder has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

    Proprietary or confidential data shall be readily separable from the bid in order to facilitate eventual public inspection of the non-confidential portion of the offer. Confidential data is normally restricted to confidential financial information concerning the Bidder's organization and data that qualifies as trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary of confidential information.

    Any sole response that is received may be rejected by the District depending on available competition and timely needs of the District. The District reserves the right to award the contract to the responsible bidders submitted responsive bids with resulting agreements most advantageous and in the best interest of the District.

    The District reserves the right to eliminate any Bidder who submits incomplete or inadequate responses or is not responsive to the requirements of this Bid.

16. **NEGOTIATIONS.** APS reserves the right to negotiate pricing with successful bidder(s) for equipment/parts/materials related to this contract but which are not specifically included herein.

17. **MULTI-AWARD.** The District reserves the right to multi-award contracts as necessary for adequate delivery or service in accordance with 13-1-153 NMSA.

18. **AFTER AWARD.** The District reserves the right to increase or decrease the quantity of any item called for, add additional related items as the District deems necessary, or to eliminate any item entirely.

    It is mutually understood and agreed that the successful bidder(s) shall not assign, transfer, convey, sublet or otherwise dispose of the purchase order, contract, or his/her right, title of interest therein, or power to execute such purchase order or contract to any other person, company or corporation without the previous written consent of APS.

    This procurement in no manner obligates Albuquerque Public Schools until a valid signed Price Agreement or valid Purchase Order is executed.

    Any resulting purchases under the bid will be made by Albuquerque Public Schools purchase order or procurement card. Quotes provided to Albuquerque Public Schools will be quoted as provided on the Invitation to Bid and will reference the Price Agreement number so verification of pricing can be made.

19. **DEFINITIONS.** Definition of Terminology: This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

"Agency" shall mean Albuquerque Public Schools (APS)

"Contract" shall mean an agreement for the procurement of items of tangible personal property or services.

"Contractor" shall mean the successful bidder

"Determination" shall mean the written documentation of a decision of a procurement manager including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

"Desirable" the terms "may", "can", "should", or "prefers" identify a desirable or discretionary item or factor.

"Invitation to Bid" or "Bid" shall mean all documents, including those attached or incorporated by reference, used for soliciting bids.

"Mandatory" the terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Bidder's bid.

"Offeror", "Bidder", or "Proposer" is any person, corporation, or partnership who chooses to submit a bid.

"Purchase Order" shall mean the document, which directs a contractor to deliver items of tangible personal property or services pursuant to an existing contract.

"Responsible Bidder" shall mean a Bidder who submits a responsive bid and who has furnished, when required, information and data to prove that its financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible property described in the bid.

"Responsive Bid" shall mean a bid, which conforms in all material respects to the requirements set forth in the Bid.

TERMS & CONDITIONS

1. **REQUEST(S) NOT DEFINED IN SCOPE OF WORK:** Contractor shall be held responsible to NOT fill requests which are clearly beyond the defined scope of this contract. Should such requests occur, contractor has the responsibility of calling such violations to the attention of the APS Procurement Officer.

2. **MINIMUM AMOUNT:** Albuquerque Public Schools does not guarantee a minimum amount of purchases in conjunction with award of this invitation to bid.

3. **PRICING ESCALATION:** APS will require a 30 day written notice for any price escalations. Price escalations will be considered only at the time the contractor is able to submit written documentation that adequately justifies need for pricing escalation, to include the proposed new pricing structure. The District will review the information and render a Determination accepting or rejecting the new proposed pricing. Any such approved increase will be confirmed by amendment. If prices should decrease in the market, APS should benefit from any market fluctuation which would derive in a savings.

4. **TAXES:** APS holds a Class 9 Nontaxable Transaction Certificate and is exempt from payment of taxes on tangible personal property. A NTTC will be issued upon request.

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

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

7. **TERMINATION:** Either party may terminate this contract as follows:

   A. Termination by the Contractor
      1. The contractor may terminate this contract only if Albuquerque Public Schools fails to comply with any provisions of this contract and after receiving notice of the noncompliance the District fails to cure the noncompliance within ten (10) days, or
      2. By written mutual agreement between the Contractor and the District.

   B. Termination by the District
      1. For Cause
         a. The occurrence of either one of the following events will justify termination for cause:
            i. Contractor's persistent failure to perform the work in accordance with the contract documents (including but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment).
            ii. Contractor's violation in any substantial way of any provisions of this contract.
         b. If either one of the events identified above occur, the District may, after giving Contractor (and the surety, if any) ten (10) days written notice, terminate the service of Contractor, exclude Contractor from site, and take possession of the work. Contractor shall be paid for project costs incurred up to the date of termination but shall not be paid for loss of profits resulting from such termination.
         c. Where Contractor's services have been so terminated by the District, the termination will not affect any rights or remedies of District against contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the Contractor by the District will not release the Contractor from liability.

2. For Convenience
    a. Upon ten (10) days written notice to contractor, APS may without cause and without prejudice to any other right or remedy of APS elect to terminate the contract.
    b. In such case, Contractor shall be paid (without duplication of any items):
        i. for completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination,
        ii. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the contract document in connection with uncompleted work.
    c. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

8. **INDEMNIFICATION:** The Bidder shall be responsible for damage to persons or property that occurs as a result of his fault or negligence, or that of any of his employees, agents or subcontractors. He shall save and hold harmless Albuquerque Public Schools against any and all loss, cost, damage, claims, expense or liability in connection with the performance of the contract. Any equipment or facilities damaged by the Bidders' operation shall be repaired and/or restored to their original condition at the Bidder's expense.

9. **INSURANCE (If Applicable):** The successful Bidder shall (if applicable) purchase and maintain statutory limits of Worker's Compensation, and Public Liability and Automobile Liability insurance approved by APS at the time of contract award. Albuquerque Public Schools shall be included as a loss payee and/or additional insured. Public Liability and Automobile Liability insurance shall include at least the following coverage:

    a. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
    b. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **$1,000,000** per accident for bodily injury and property damage.
    c. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease.
    d. **Professional Liability (Errors and Omissions):** Insurance appropriates to the Contractor's profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate

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

NOTE: Certificate holder shall be:	Albuquerque Public Schools.
Certificate of Insurance forwarded to:	Albuquerque Public Schools Procurement Department 6400 Uptown Blvd. NE, Suite 500E Albuquerque, NM 87110

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

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

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

13. **PROCUREMENT UNDER EXISTING CONTRACTS:** In accordance with NMSA 13-1-129, Bidders are hereby notified that other governmental entities within the State of New Mexico, or as otherwise allowed by their respective governing directives, may contract for services with the awarded Bidder. Contractual engagements accomplished under this provision shall be solely between the awarded proposer and the contracting entity with no obligation by Albuquerque Public Schools.

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

15. **CONFLICT OF INTEREST:** By submitting a bid, the proposer certifies that no relationship exists between the proposer and the District that interferes with fair competition or is a conflict of interest; and no relationship exists between such propose and another person or firm that constitutes a conflict of interest that is adverse to the District.

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

17. **DELIVERY:** The goods shall be delivered free of the rightful claim of any third person, any security interest or other lien. Unless otherwise agreed all goods called for in this Bid shall be tendered in a single delivery and payment is due only upon such delivery (NET 30).

18. **FOB:** Unless stated otherwise, the price for goods is FOB: Destination (District's designated address).

19. **DELAYS IN DELIVERY:** Time is of the essence and this purchase may be subject to termination for failure to deliver on time, unless delay was caused by APS. If delay in delivery is foreseen, Seller must notify the APS Requesting Department of late delivery, cause of late delivery and remedy for late delivery.

20. **INSPECTION:** Final inspection will be made at the destination upon completion of delivery of goods/services. Final inspection shall include any testing or inspection procedures required by the specifications.

21. **ACCEPTANCE:** Acceptance of delivery of goods/services shall not be considered acceptance of the goods/services furnished. Acceptance occurs when the Requesting Department, after a reasonable opportunity to inspect the goods/services, signifies to the seller that are goods/services are conforming and fails to make an effective rejection.

22. **BUYERS REVOCATION OF ACCEPTANCE:** Requesting Department can revoke acceptance of goods when it is discovered, in a reasonable time, that the Sellers non-conforming goods substantially impair the value of the goods.

23. **SELLERS RIGHT TO CURE A NON-CONFORMING DELIVERY OF GOODS:** The Seller, upon notice of revocation of acceptance, shall correct without charge and deliver conforming goods in a reasonable time

24. **ASSIGNMENTS:** The awarded Contractor shall not assign nor delegate specific duties as part of this Bid nor transfer any interest nor assign any claims for money due or to become due under this Bid without the written consent of APS.

25. **PROMOTIONAL GIFTS AND ACTIVITIES:** APS policy prohibits the distribution of jackets, shirts, caps, or any other clothing items with company or product logo or any other form of advertising to its employees. Furthermore, APS employees are prohibited from entering drawings, contests, or other promotional/advertising activities with vendors or potential vendors in connection with a procurement action.

26. **PROTEST:** Any Offeror who is aggrieved in connection with a solicitation or award of an Agreement may protest to the Purchasing Office in accordance with the requirements of the Contracting Procurement Regulations and the State Procurement Code. The protest should be made in writing within 24 hours after the facts or occurrences giving rise thereto, but in no case later than 15 calendar days after the facts or occurrences giving rise thereto (13-1-172 NMSA 1978). The protest must be in writing and delivered to the Executive Director - Procurement Department, Albuquerque, New Mexico

    In the event of a timely protest under this section, the Purchasing Agent and the Contracting Agency shall not proceed further with the procurement unless the Purchasing Agent makes a determination that the award of Agreement is necessary to protect substantial interests of the Contracting Agency (13-1-173 NMSA 1978).
    The Purchasing Agent or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning a procurement. This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorneys' fees (13-1-174 NMSA 1978).
    The Purchasing Agent or his designee shall promptly issue a determination relating to the protest. The determination shall:

    I. State the reasons for the action taken; and
    II. Inform the protestant of the right to judicial review of the determination pursuant to 13-1-183 NMSA 1978.

    A copy of the determination issued under 13-1-175 NMSA 1978 shall immediately be mailed to the protestant and other Offerors involved in the procurement (13-1-176 NMSA 1978)

SPECIFICATIONS

TECHNICAL SPECIFICATIONS

1. **Scope of Work:** Purpose of the bid is to establish a contract for **Ice Cream Novelties and Ice Slush Products with Dispensing Machines** at no extra charge to APS. The contract will be awarded to a single vendor for the term of the contract. APS reserves the right to bid any item(s) separately whenever it may be in its best interest to do so. New items which may become available over the life of the contract may be added if the product is representative of the materials requested by this bid.

   The specifications listed abide by the New Mexico Nutrition Rules for Competitive Foods. No substitutions of product are allowed unless approved by APS Procurement Department and Food & Nutrition Services.

   Although, this contract is being bid on behalf of APS, vendor agrees to extend pricing to all New Mexico Publicly funded entities, if requirements that can be adapted to the specified items awarded.

2. **Vendor Qualifications:** Bidders must have adequate organizations, facilities, equipment and personnel to ensure prompt and efficient service. Albuquerque Public Schools (APS), reserves the right before recommending an award, to inspect the facilities and organization or to take any other action necessary to determine ability to perform in accordance with specifications terms and conditions.

   The Procurement Department will determine whether the evidence of ability to perform is satisfactory and will make awards only when such evidence is deemed satisfactory and reserves the right to reject bids where evidence submitted or investigation and evaluation indicates inability of the bidder to perform. The decision as to whether a bidder meets the qualifications stated below is at the discretion of the Department of Food and Nutrition Services and the Procurement Division.

   - Bidder must have or have access to and will utilize refrigerated warehouse facilities capable of holding temperatures at 35 degrees, 50 degrees and 70 degrees for shelf stable and refrigerated products.
   - Bidder must have freezer(s) that are set at 0 degrees or below for long term storage for frozen product.
   - Bidder must have or have access to and will utilize a fleet of mechanically refrigerated trucks compartments capable of holding air temperatures dependent on products either 0 or below for frozen or 45 degrees minimum for refrigerated products while on delivery routes.
   - Bidder must have a HACCP plan in place. The district may require documentation verifying that a written HACCP plan is followed.

   Price Agreements may be cancelled for failure to provide verifying documentation at the request of APS.

3. **Nutritional Information:** Contractor's most current Nutritional information for each item **MUST** be submitted with this bid.

   All specifications listed in this bid document are nutritionally approved products. APS for audit purposes must request from each company **"Labels"** of each of their product(s) awarded.

   Fruit slush product items must be compliant HHKA Smart Snack. (Healthy Hunger Kid Act)

***"Competitive Food**" means a food or beverage sold at school other than one served as part of the United States Department of Agriculture school meal program. The term includes any item sold in vending machines, a la carte, or through other school fundraising efforts during normal school hours.*

All Items must meet the State of New Mexico Public Education Departments, "Competitive Foods Rule." Please reference Nutrition Grid on page 17.

USDA's SMART SNACKS IN SCHOOLS STANDARDS: Nutrition Standards for Foods
Any Food Sold in schools must:

- Be a "whole grain-rich" grain product; or
- Have as the first ingredient a fruit, a vegetable, a dairy product, or a protein food; or
- Be a combination food that contains at least ¼ cup of fruit and /or vegetable; or
- Contain 10% of the Daily Value (DV) of one of the nutrients of public health concern in the 2010 Dietary Guidelines for American (calcium, potassium, vitamin D, or dietary fiber).*

Foods must also meet several nutrient requirements:

Calorie Limits:

- Snack items: ≤ 200 calories
- Entrée items: ≤ 350 calories

Sodium Limits:

- Snack items: ≤ 200 mg
- Entrée items: ≤ 480 mg

Fat Limits:

- Total fat: ≤ 35% of calories
- Saturated fat: ≤ 10% of calories
- Trans fat: zero grams

Sugar Limit:

- ≤ 35% of weight from total sugars in foods

All food products furnished to APS shall comply with the latest standards and regulations established by the Federal Laws (including the Federal Food, Drug and Cosmetic Act) and the U.S. Department of Agriculture (USDA).

Competitive Foods Sale Rule Grid

A La Carte (only during lunch period)

"A la carte" means a beverage or food product sold in schools to students during the lunch period that is not part of the United States Department of Agriculture school meal program. A la carte items may be sold only by the recognized food service establishment (Food & Nutrition Services Department) and as part of the curriculum as long as a food license permit is obtained, such as DECA.

A La Carte	**Elementary**	**Middle**	**High**

Beverages	**Allowed only during lunch period:**
	• Milk 2% or less
	• Soy milk
	• Water
	
	****No Carbonated Drinks**
		Allowed only during lunch period:
		• Milk 2% or less
		• Soy milk
		• Water
		• 100% fruit juice that has:
		  • no added sweeteners
		  • no more than 125 calories/container and
		  • a serving size not to exceed 20 oz.
		
		****No Carbonated Drinks**
			Allowed only during lunch period:
			• Milk 2% or less
			• Soy milk
			• Water
			• At least 50% fruit juice that has:
			  • no added sweeteners and
			  • a serving size not to exceed 20 oz.
			
			****No Carbonated Drinks**

A La Carte **Foods**	**Foods products sold a la carte during the lunch period must meet the following guidelines** *****with the exception of nuts, seeds, cheese, yogurt, and fruit***: • No more than 400 calories per container or per package or amount served; and • No more than 16 grams of fat (no more than 2 grams from saturated and trans fats combined) per container or per package or amount served and • No more than 30 grams of total sugar per container or per package or amount served.		

4. **Product Specifications:**

   - All containers in which products are packaged must be sturdy enough to contain the product.
   - Ready Made frozen slush's **must** contain 100% fruit juice. Product packaged in 1 gallon containers.
   - The successful bidder will be required to replace at no charge to APS Food & Nutrition Services all products lost due to spillage or leakage from faulty containers.
   - Successful bidder must pick up any damaged or unusable products at the time of the next delivery.
   - A safe working environment must be maintained at all times. Student and staff safety must be of primary concern therefore, all delivery personnel must have a photo ID and have passed a background check. Uniforms are preferred but optional. Please follow school's protocol before entering school premises.

5. **Substitution of Product:** No substitutions of product are allowed unless **"written prior approval"** by APS Purchasing Department and Food & Nutrition Services. The specifications listed abide by the New Mexico Nutrition Rules for Competitive Foods. The contractor must deliver the same requests specified in the pricing sheets from this bid. A substitution, if approved, shall be billed at the same per unit cost as the original bid items. A substitution not approved will be refused at delivery and bidder will be responsible for return shipment at no cost to APS.

   Bidding on items just to secure an award **will not be tolerated** and can disqualify you from doing business with APS.

6. **Special Instructions:**

   Training – The awarded vendor must provide training for the use of equipment storage, maintenance and handling of your product.

   Marketing – The awarded vendor may provide posters, point of sale and nutritional posters.

   Product Testing – Food & Nutrition Services reserves the right to test any product not previously tested for student acceptability.

   Delivery Requirements – Fruit Slush Products and Machines are to be delivered to thirty six (36) locations, however, all schools may not participate during the contract period. Deliveries will be made to the receiving area of each school site during school hours, of 7:30am - 1:30pm.

High Schools	**Middle Schools**	
Highland	Kennedy	James Monroe
Rio Grande	Van Buren	Roosevelt
Nex Gen	Garfield	Polk
Volcano Vista	Jimmy Carter	Harrison
West Mesa	LBJ	Cleveland
Cibola	Tony Hillerman	Grant
La Cueva	Jefferson	Jackson
AHA	Desert Ridge	Taft
Manzano	Eisenhower	Washington
Valley	John Adams	Truman
Eldorado	Wilson	Madison
Sandia	Hoover	Mckinley

Awarded vendor will contact, Director of Site Operations, Vincent Medina, (505) 345-5661 ext. 38219 for school contact information. Individual school sites will place and receive all orders at their locations. Emergency order may be required.

Additional schools may be added through the term of the contract.

7. **Equipment and Service Program**: (Machines must be provided at no extra charge)

   Frozen Juice Machine – The vendor will supply the machine that converts mix and water into ice slush. Machine must operate on standard 120 volt, 15 amps electric. It must not require water drain lines. Please submit picture along with dimensions and electrical requirements.

   Ice Cream Freezers – Must operate on standard 120 volt, 15amp electric and drain hose or valve for condensation.

   Service – The vendor will train staff upon installation and provide maintenance by factory trained in house technicians for the duration of the contract.

8. **Equipment Specifications**:
   - Equipment must be designed for high-volume commercial foodservice use.
   - 120 Volt 15 Amps
   - Portable
   - Two (2) bowl capacity
   - Dispenser must be capable of dispensing two (2) flavors of shelf stable product.
   - Continuous flow operation for multiple drink sizes.
   - Tank drain exterior location.
   - Machine must be fast, efficient, and simple to operate.
   - Customize with attractive color trim packages.

9. **Equipment Guarantee**: The Bidder shall unconditionally guarantee the materials and workmanship of all merchandise furnished under Bid for a period of one year or longer from date of acceptance of the items delivered and installed unless a different time period is required under the Bid specifications. If, within the guarantee period, any defects or signs of deterioration are noted, which, in the opinion of the District is due to the faulty design and installation, workmanship or materials, upon notification, the contractor, at its expense, shall repair or adjust the equipment or parts to correct the condition, or replace the part or entire unit to the complete satisfaction of the District. These repairs, replacements or adjustments shall be made only at such times as will be designated by the District to cause the least disruption

10. **Safety Requirements**: The Bidder/vendor shall provide all equipment, machinery and chemicals furnished and delivered to the District in compliance with the Safety Regulations as required by OSHA.

    Certify that all material and equipment bid by this firm and to be supplied to Albuquerque Public School District, meets all safety and health standards as prescribed by the rules and regulations of the Occupational Safety and Health Act (OSHA).

11. **Negotiation of Related Items**: During the life of the contract, APS reserves the right to negotiate with successful bidder(s) for pricing on items related to this contract but not specifically named herein.

In the event a purchase is made as a result of such negotiations, the contract shall be amended to reflect the new item(s) and pricing structure. APS reserves the right to add new products within each category with approved contractor(s) as they are introduced into the market with prior written approval from APS Purchasing Department and APS Food and Nutrition Services.

12. **Pricing**: All pricing will be F.O.B destination including cost, insurance, and freight. F.O.B destination shall be interpreted as final site as specified by APS.

13. **Letter of Withdrawal**: Contractor may decline a renewal with no penalty by submitting a "Letter of Withdrawal" to the Procurement Office. A letter of withdrawal will be required by bidders unable to honor pricing after bid has closed or after contract award, due to misquote by Broker, unavailability of product, unacceptable product upon delivery, etc. APS will go to the next low bidder to obtain goods in question and /or re-bid. "Letter of Withdrawal" to be addressed to, APS Purchasing Department, Attn: Melissa Sanchez, P.O. Box 25704, Albuquerque, NM 87125 or email address, Melissa.sanchez@aps.edu

14. **Specification Sheets**: Specification Sheets have been modified. Please review the specification sheets carefully, as to particular references are made to products. Bids are to be submitted according to pricing structure.

    Submit with your bid a description of your product, product code, case pack, and price/pound. Bids submitted will be evaluated to determine which bidder(s) offer the best value to APS in accordance with pricing, quality, product availability, accessibility, and delivery.

15. **Bid Sheets/Electronic Copy:** Please review Bid Specification Sheets carefully and fill in **all** required information. Submit with your bid a description of your product, product code, case pack, price/pound, and price/case. Bids submitted will be evaluated to determine which bidder(s) offer the best value to APS in accordance with quality, product availability, and accessibility. Every cell in each column of the items that you are bidding must be filled in by the Corporate Office of the Processor. **Bid specification Sheets must be typed, in order for accurate entry on bid analysis report. A CD or Thumb Drive of the excel file is required along with a hard copy of the Specification Sheets.**

    DO NOT leave any cells blank on the specification sheets. If you are not bidding on that item(s), please mark N/A in that cell. Every cell must be filled in for proper analysis.

    If the following information is not submitted, your bid will be considered non-responsive and will be mailed back to you as such.

16. **Approved List:** The approved products have been incorporated into the pricing sheets. Brand names as may be noted are for the bidder's reference as to level of quality of approved products which meet the **Federal/ State Nutrition Rules**. This is not a preference or an endorsement on the part of APS. If you choose to offer another brand, please submit samples. **Samples must be tested and approved prior to bid opening**. Please supply the samples at no cost to APS, throughout the school year or 3-4 months in advance prior to bid opening. Submit samples to the attention of Sandra Kemp, Executive Director (505) 345-5661, ext. 38201 or Juan Saiz, Commodity Purchasing (505) 345-5661, ext. 38207, at Food & Nutrition Services, 800 Louisiana Blvd. NE, Albuquerque, NM 87108, for testing. If product sample(s) is approved, product will then be added to **next years** approved list unless Food & Nutrition Services can utilize approved sample into the 2018-2019 school year menu.

17. **Equivalent Products:** Equivalent products offered will be evaluated and approved based on a comparison of the proposed equivalent product's nutritional information and/or child nutrition label information, ingredients list, appearance and taste to that of the specified product listed on specification sheet. The determination of equivalency shall be based solely on the opinion of the District.

    Products that **do not** meet the equivalency of the approved brand specified on specification sheet will be awarded to the next low approved bidder.

18. **Transition Period:** If the new agreement is with a different vendor, a thirty (30) day transition period will take place. During the time period, removal of current and installing of new equipment will take effect, unless the parties agree to different terms. Director of Site Operations, Vincent Medina will be the contact for the organizing of the transition.

19. **Awarded Price Agreements:** Upon award, APS will issue a pricing agreement which will be in effect for the duration of the contract and which will accommodate multiple billings as work is completed.

20. **Delivery:** Prompt delivery is of the essence and may be a factor in determining the successful bidder; therefore, delivery time after receipt of order must be stated in definite terms. **BIDDER OWNS GOODS IN TRANSIT.**

    Delivery times quoted must be accurate. Failure to meet the quoted times may result in cancellation of contract and an alternative bidder will be assigned at the discretion of APS.

21. **Purchase Order and Invoicing Procedures:** Price Agreement (PA) will be issued to the successful bidder(s) on all awarded bid items for the duration of the contract. Actual quantities of award items requested by APS and delivered by the bidder will be charged to a Blanket Purchase Order referencing the PA. Delivery shall be ticketed separately, showing the APS Purchase Order, delivery location, and the full signature with printed name underneath of employee receiving the item(s). Initials only are not acceptable and will not be processed for payment. APS will not pay for unauthorized purchases.

    Invoices must clearly state the "Price Agreement" assigned to your company for this fiscal year bidding, the quantity, description, individual prices and total. All information on invoice(s) must be filled out in ink or typed and readable.

    Itemized invoices, clearly referencing appropriate pricing agreement number and bid number shall be submitted to Food & Nutrition Services, 800 Louisiana Blvd. NE, Albuquerque NM, 87108. Copies of delivery tickets, signed by the receiving employees, and other information needed to substantiate charges shall be attached to the invoice for auditor tracking purposes.

    APS will make a good faith effort to work with your company to remedy any problems with invoices. If invoices are not generated as per contract pricing and invoiced properly, APS reserves the right to request corrected invoices.

    As a minimum, the following information must appear on all Delivery Tickets and Invoices:

    a. Price Agreement Number
    b. Purchase Order Number or SPO Number
    c. Invoice Number
    d. Delivery Date
    e. Item Number
    f. Item Description
    g. Quantity Shipped
    h. Unit Price

i. Lot/Batch #'s
j. Extended Price
k. Total Invoice
l. School Location Number
m. Recipient's Signature
n. Company Header

22. **Food Protection:** Transportation of food must meet the Food Sanitation Ordinance for General Food protection 9-6-1-3. Albuquerque code of Ordinances, which states as follows: All foods while prepared, served, displayed, stored, sold at food processing and/or food service establishments or during transportation shall be wholesome and protected from contamination. The product temperature of all potentially hazardous food be maintained at 45 degrees F. (7 degrees C.) or below 140 degrees F. (60 degrees C) or above, except during necessary period of preparation.

    Frozen product should be frozen solid when being received at a temperature of 0 degrees. Refrigerated trucks are required for delivery of all frozen foods.

    It is crucial that all products be delivered on time and at the appropriate temperatures to meet health code requirement. Foods received at the wrong temperature **will not be accepted.**

23. **The Agriculture Appropriations Act for Fiscal Year: Buy American Provision of the Law:** Section 104(d) of the William F. Goodling Child Nutrition Reauthorization of 1998 requires schools and institutions participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) in the contiguous United States to purchase, to the maximum extent practicable, "domestic commodities or products" for use in meals served under the NSLP and SBP. The legislation defines "domestic" commodities or products for use in meals served under the NSLP and SBP. The legislation defines "domestic" commodity or product as one that is produced and/or processed in the United States substantially using domestic agricultural commodities. "Substantially" means that over 51% of the final processed products consist of agricultural commodities that were grown in the United States.

24. **City of Albuquerque Environmental Health Inspection Certificate:** APS prefers to have a copy of your latest City of Albuquerque Environmental Health Inspection Certification submitted with your bid. If certificates are not submitted at time of bid opening, APS reserves the right to require them prior to award. All awarded bidders must submit certificates prior to award.

25. **Use of Federal Funds:** Food Services revenues are derived primarily from federal sources. Federal Law prohibits application of any residential preference when the expenditure of federal funds designated for specific purchase(s) is involved.

26. **Request(s) not defined in Scope of Work:** Contractor shall be held responsible to **NOT** fill requests which are clearly beyond the defined scope of the proposed contract. Should such requests occur, contractor has the responsibility of calling such violations to the attention of the APS Procurement Officer.

27. **Guarantee:** All bidders must guarantee full satisfaction of their products' use or permit unsatisfactory product to be returned **collect** for full money refund. Bidders will replace damaged items at no cost to APS.

28. **Basis of Award:** APS reserves the right to make multiple awards as may be necessary to have all product categories represented or as may otherwise be in the best interest of the District.

    APS reserves the right to award to a single contractor, on an "All or None" basis. Awards will be based as, best prices overall. In this instance, award will be made to the lowest total bidder based on per lb., or each cost, of the commodity and by the APS school weekly menu plan.

If a particular item is determined to be "not standard in the industry" by at least half of the bidders, then that item will be deleted from the bid for evaluation purposes.

Contact Information: Provide the following information.

Contact for Payment/Invoice Information:_____

Company: _____

Contact:_____

Address: _____

City, State ZIP Code: _____

Phone No.: _____

Fax No.: _____

E-mail Address: _____

Contact for Product or Delivery Issues:

Contact Name:_____

Phone No.: _____

E-mail Address: _____

Contact for Equipment Issues:

Contact Name: _____

Phone No.: _____

E-mail Address: _____

Delivery

Delivery times quoted must be accurate. There are thirty six (36) schools; all schools however, may not participate during the contract period.

Can your company provide APS District with this service? _____

Turnaround time after receipt of order? _____

Does your company have a minimum delivery requirement? If so, please state amount

_____

_____

APS School Sites

Any new school(s) opening may be added during the contract period.

Can your company provide APS with this service? _____

Does your staff wear uniforms or distinctive clothing and what kind of identification do they carry?

_____

Acknowledge your understanding that fraternization with staff and students is unacceptable behavior and will be grounds for replacement of any individual servicing any site where the behavior is reported.

_____

Signature Date

What is your response time to repair or replace a machine?

_____

Preventative maintenance as well as service to the equipment as needed will be provided at no cost to APS, unless otherwise defined by provider. Therefore, are there any circumstances under which APS would be charged for parts, labor, other charges, etc.?

_____

_____

IMPLEMENTING THE BUY AMERICAN PROVISION

The Buy American provision supports the mission of the Child Nutrition Programs, which is to serve children nutritious meals and support American agriculture. SFAs are reminded that when funds are used from the nonprofit food service account, procurement transactions for food products on the commercial market must comply with the Buy American provision, whether food products are purchased by SFAs or entities that are purchasing on their behalf.

Some examples of entities purchasing on the behalf of SFAs include: food service management companies, group purchasing organizations, or cooperatives of schools purchasing shared goods and services, or through an inter-entity agreement, etc. If SFAs have difficulty ensuring that food products meet this regulation, FNS encourages a specification to be included in solicitations and contracts that only 100% domestically grown and processed products are approved for purchase.

THE BUY AMERICAN PROVISION SUPPORTS LOCAL AND SMALL BUSINESSES

Using food products from local sources supports small local farmers and provides healthy choices for children in the school meal programs. Purchasing from these entities also supports the local economy. Compliance with the Buy American provision may also encourage SFAs to work with local, or small, minority, and women-owned businesses. Federal regulations require SFAs to take all necessary affirmative steps, when possible, to assure that small, minority, and women-owned business enterprises are used (2 CFR Part 200.321). These entities may also be good sources for products of the United States, or its territories. FNS encourages purchasing food products from local and regional sources when expanding farm to school efforts as well.

LIMITED EXCEPTIONS

There are limited exceptions to the Buy American provision which allow for the purchase of products not meeting the "domestic" standard as described above ("non-domestic") in circumstances when use of the domestic products is truly not practicable. However, before utilizing an exception, alternatives to purchasing non-domestic food product should be considered. For example, SFAs should ask:

- Are there other domestic sources for this product?
- Is there a domestic product that could be easily substituted, if the non –domestic product is less expensive (e.g. substitute domestic pears for non-domestic apples)?
- Am I soliciting bids for this product at the best time of year? If I contracted earlier or later in the season, would prices and /or availability change?

Again, although exceptions to the Buy American provision exist, they are to be used as a last resort. These exceptions, as originally outlined in the 2012 guidance, are:

- The product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

If a SFA is using one of the above exceptions, there is no requirement to request a waiver in order to purchase a non-domestic product. SFAs must, however, keep documentation justifying the exception(s).

Buy American

Contractor must comply with the Buy American Act (7 C.F.R. 210.21), which states that a school food authority purchase, to the maximum extent practicable, domestic commodities or products. Pursuant to the Buy American Act, the term "domestic commodity of product" means; (i) an agricultural commodity that is produced in the United States; and (ii) a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

Signature of Company Representative: _____Date:_____
(Company Name /Certifying Official Signature)

Buy American Requirements

The following three documents (hyperlinks) are consistent in defining the Buy American requirements.

1. Richard B Russell National School Lunch Act (n)1 (A) and (B)
2. 7 CFR 210.21 Procurement, (3)d and
3. SP 20-2006: Procurement questions related to the Buy American Provision

The Richard B. Russell National School Lunch Act provides in Section 12(n) the Buy American provision which requires that school food authorities (SFAs) operating school meals programs purchase domestically produced (grown) and processed foods, to the maximum extent practicable. The Buy American provision was codified in the National School Lunch Program regulations at 7 CFR 210.21(d). A "domestic commodity or product" is defined in the Federal regulations as:

(i) an agricultural commodity that is produced in the United States (U.S.); and

(ii) a food product that is processed in the U.S., substantially using agricultural commodities that are produced in the U.S., 7 CFR 210.21(d).

The language about *'substantially'* using U.S., agricultural commodities is referring to products that are processed in the U.S., comprised of at least 51% domestic ingredients. According to the regulations, a food product must meet a two part test to be considered a domestic commodity or product: (1) the food product must be processed in the U.S.; and (2) the food product must be processed substantially using agricultural commodities that are produced in the U.S. There is no further need to determine whether 51% of a foreign product consists substantially of agricultural commodities that are produced in the U.S., because the product does not meet the first part of the test as it is not processed in the U.S.

Waivers to the Buy American provision are rare. While the Food and Nutrition Service (FNS) sets the Buy American requirements by which States and SFAs must abide, keep in mind that USDA is not a part to the contract between the SFA and its food supplier. It is the responsibility of the SFA to document that there is basis for allowing an exception (waiver); it is unacceptable for exceptions to be granted without substantial evidence that either of the two following situations have occurred:

1) The product is not produced or manufactured in the U.S., in sufficient and reasonable available quantities of a satisfactory quality; **and**
2) Competitive bids reveal the costs of a U.S., product is significantly higher than the foreign product.

Availability, cost, and quality are factors an SFA must weigh when considering the purchase of non-domestic products. The SFA needs to review current market information to determine if purchasing a specific non-domestic product meets one or more of the exceptions to the Buy American provision.

SFAs are encouraged to include in their bidding process a requirement for certification similar to: "We require that suppliers certify the percentage of U.S., content in products supplied to us. If you are unable or unwilling to make such certification, we will not purchase from you." Appearing under this statement could be the sentence, "We certify that our U.S., processed ____ have at least ____% U.S., content," with space for the supplier to fill in the name of the product and its percentage of domestic content. The SFA's active role in clarifying the Buy American provision to all contractors in the bidding process helps ensure that contractors have a clear understanding of the Federal requirements and the ingredients contained in a product during the manufacturing process do not contain significant foreign content. Additionally, the best tool an SFA has to ensure that the Buy American provision is being followed is its contract with the distributor. If an SFA writes a contract with specific provisions and administers its contract properly, many conflicts or issues with the distributor can be avoided.

It is important for both SFAs and distributors to recognize that the determination as to whether a product meets the requirements of the Buy American Contractual provision rests with the SFA; it is not enough to assume that a product with a well-recognized American brand name or a product supplied by a domestic foodservice distributor complies with the Buy American provision. Distributors/suppliers should, in good faith, facilitate this process and provide the SFA with sufficient information regarding the country of origin for each end product in order for the SFA to make a determination. These efforts will enable distributors and suppliers to provide SFAs with products tat meet the specifications of their contract. A brief description of the Buy American Requirement is printed behind the front cover of the Food Buying Guide for Child Nutrition Programs.

BID PRICE FORM

An electronic version of the price list can be found at:

http://www.aps.edu/procurement/current-bids-and-rfps

Firm Name: _____

SPECIFICATIONS EXCEPTION FORM

Note: Your bid may be rejected if you do not sign and submit this page.

Bid on materials, supplies, or equipment with varying specifications may be considered by Albuquerque Public Schools. However, in the interest of fairness and sound business practice it should not be the responsibility of APS to probe for information concerning items which you intend to furnish. Therefore, if your bid differs from the specifications or if you take exemption to any of the requirements, such information must be clearly stated in the space following. Failure to do so may result in forfeiture of bid bond, if applicable, or seller may be found in default.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

I do meet specifications: _____
Signature

Exceptions are as stated: _____
Signature

COMPLIANCE

(REQUIRED LEGAL FORMS)

All of the following forms must be signed and submitted with your proposal or your bid may be rejected.

CONFLICT OF INTEREST AND
DEBARMENT/SUSPENSION CERTIFICATION FORM

CONFLICT OF INTEREST

As utilized herein, the term "Vendor" shall mean that entity submitting a proposal to Albuquerque Public Schools in response to the above referenced bids/request for proposals.

The authorized Person, Firm and/or Corporation states that to the best of his/her belief and knowledge: No employee or board member of Albuquerque Public Schools (or close relative), with the exception of the person(s) identified below, has a direct or indirect financial interest in the Vendor or in the proposed transaction. Vendor neither employs, nor is negotiating to employ, any Albuquerque Public Schools employee, board member or close relative, with the exception of the person(s) identified below. Vendor did not participate, directly or indirectly, in the preparation of specifications upon which the quote or offer is made. If the Vendor is a New Mexico State Legislator or if a New Mexico State Legislator holds a controlling interest in Vendor, please identify the legislator: _____ List below the name(s) of any Albuquerque Public Schools employee, board member or close relative who now or within the preceding 12 months (1) works for the Vendor; (2) has an ownership interest in the Vendor (other than as an owner of less than 1% of Vendor's stock, if Vendor is a publicly traded corporation); (3) is a partner, officer, director, trustee or consultant to the Vendor; (4) has received grant, travel, honoraria or other similar support from Vendor; or (5) has a right to receive royalties from the vendor. _____

DEBARMENT/SUSPENSION STATUS

The Vendor certifies that it is not suspended, debarred or ineligible from entering into contracts with the Federal Government, or any State agency or local public body, or in receipt of a notice or proposed debarment from any Federal or State agency or local public body. The vendor agrees to provide immediate notice to Albuquerque Public School's Purchasing Department in the event of being suspended, debarred or declared ineligible by any department or agency of the Federal government, or any agency of local public body of the State of New Mexico, or upon receipt of a notice of proposed debarment that is received after the submission of the quote or offer but prior to the award of the purchase order or contract.

CERTIFICATION

The undersigned hereby certifies that he/she has read the above CONFLICT OF INTEREST and DEBARMENT/SUSPENSION Status requirements and that he/she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the vendor named **and that the information contained in this document is true and accurate to the best of their knowledge.**

SIGN HERE

Signature: _____ Date_____

Name of Person Signing (typed or printed): _____

Title: _____

Email:_____

Name of Company (typed or printed): _____

Address: _____

City/State/Zip: _____

Telephone: _____ Fax: _____ Email: _____

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars ($250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"**Applicable public official**" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"**Campaign Contribution**" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"**Family member**" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

"**Pendency of the procurement process**" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"**Prospective contractor**" means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

"**Representative of a prospective contractor**" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any: _____
(Completed by State Agency or Local Public Body)

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____
_____

Amount(s) of Contribution(s) _____
_____

Nature of Contribution(s) _____
_____

Purpose of Contribution(s) _____
_____

(Attach extra pages if necessary)

_____ _____ _____
Signature Date Title (position)

SIGN WHERE APPLICABLE

--OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS ($250) WERE MADE to an applicable public official by me, a family member or representative.

_____ _____ _____
Signature Date Title (Position)