



# ALBUQUERQUE PUBLIC SCHOOLS INVITATION TO BID

**BID # 22-052MS**

**BID TITLE: Distribution of Fresh Milk and Dairy Products**

**NIGP: 38015, 38030, 38075, 38085, and 38090**

## BID SCHEDULE

Action	Date & Time
Bid Issued	03/31/2022
Non Mandatory Pre-Bid Meeting	N/A
Non-Mandatory Pre-Bid Meeting Location	N/A
Deadline for Questions	04/12/2022 @5:00 PM (local)
Bid Due Date & Time	05/03/2022 @2:00 PM (local)
Bids 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 from electronic bidding system (Vendor Registry)	

## BUYER CONTACT INFORMATION

<b>Name</b>	Melissa Sanchez
<b>Phone Number</b>	505-345-5661 Ext. 38241
<b>E-Mail</b>	Melissa.sanchez@aps.edu
Any inquiries or requests regarding clarification of Bid document shall be submitted to the buyer in writing. Bidders may contact ONLY the buyer regarding the terminology stated in the procurement documents. Any other communication will be considered unofficial and non-binding.	

## BID SUBMITTAL

**Bids must be submitted electronically via electronic bidding system (Vendor Registry) by required date and time as noted on BID document.**

<https://vrapp.vendorregistry.com/Vendor/Register/Index/albuquerque-public-schools-nm-vendor-registration>

Bidders understand and agree that technical support may not be readily available the day of and or the hours/minutes prior to a bid closing time (Due Date/Time). Offerors also understand and agree that internet access, browsers, and operating systems are not supported by the District and/or its agents.

**Bidders are strongly encouraged to review, create, and submit all electronic bid responses several days in advance of the due date and time.**

## BID TERM

APS reserves to right to enter into, not to exceed five (5) year, indefinite quantity contract with the awarded Bidder(s).

## SUBMISSION COVER SHEET (**REQUIRED: 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.

Signature of Authorized

Representative: \_\_\_\_\_

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.

### SUBMITTALS:

- Submission Cover Sheet, **Completed and SIGNED \*\*\*REQUIRED\*\*\***
- BID PRICE FORM **\*\*\*REQUIRED\*\*\***
- Specification Exception Form, **Completed \*\*\*REQUIRED\*\*\***
- Conflict of Interest and Debarment/Suspension Form, **Completed and SIGNED \*\*\*REQUIRED\*\*\***
- Byrd Anti Lobbying Certification \*\*Signed for Federal Purchases\*\***
- Campaign Contributions Disclosure Form (see Compliance section) **Completed and SIGNED \*\*\*REQUIRED\*\*\***
- Resident Contractor (or Veteran Resident Contractor) Preference Certificate (if applicable)  
Obtain more information:  
<http://tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx> **and**  
<https://www.generalservices.state.nm.us/statepurchasing/vendorpreferencelist.aspx>
- Addendums (if applicable) – **BEFORE** submitting your bid, please check for addendums here:  
<http://www.aps.edu/procurement/current-bids-and-rfps>
- Submit Bid on Vendor Registry

<https://vrapp.vendorregistry.com/Vendor/Register/Index/albuquerque-public-schools-nm-vendor-registration>

## **SUBMITTAL REQUIREMENTS**

### **ATTENTION:**

**Bids must be submitted electronically via Vendor Registry by required date and time as noted on Bid document.**



<https://vrapp.vendorregistry.com/Vendor/Register/Index/albuquerque-public-schools-nm-vendor-registration>

**Important Information:** Albuquerque Public Schools Online Bidding System (Vendor Registry) utilizes the Internet and the World Wide Web which is comprised of systems that are completely out of APS's control including but not limited to: the District, its agents, and registered suppliers' respective internet service providers. The District and its agents are not responsible for Internet outages, hardware failures, software failures, downtime, internet slowness, acts of God, power failures, and or user errors. All bids/proposals must be submitted before the due date regardless of your organization's ability to submit proposals online. It is the suppliers' responsibility to ensure that Bid/RFP offers arrive before the due date and time.

Proposers understand and agree that technical support may not be readily available the day of and or the hours/minutes prior to a bid closing time (Due Date/Time). Proposers also understand and agree that internet access, browsers, and operating systems are not supported by the District and/or its agents. **Suppliers are strongly encouraged to review, create, and submit all electronic bid responses several days in advance of the due date and time.** Please Note: **There is no fee to submit a bid/RFP response, contact Vendor Registry Customer Service for assistance if you see a fee is required.**

# Table of Contents

<b>INSTRUCTIONS FOR ALL BIDDERS</b> .....	<b>5</b>
<b>TERMS &amp; CONDITIONS</b> .....	<b>10</b>
<b>SPECIFICATIONS</b> .....	<b>22</b>
<b>BID PRICE FORM</b> .....	<b>30</b>
<b>COMPLIANCE (<i>REQUIRED LEGAL FORMS</i>)</b> .....	<b>33</b>

# **INSTRUCTIONS FOR ALL BIDDERS**

1. **READ ALL DOCUMENTS:** Bidders must familiarize themselves with all documents contained herein; it is mandatory that all submitted offers be in compliance with all the provisions contained in the Invitation to Bid. Bidders should promptly notify the buyer of any ambiguity, inconsistency, error, or missing attachments which they may discover upon examination of the BID.
2. **OFFICIAL CONTACT:** Bidders may contact ONLY the Buyer regarding the terminology stated in the procurement documents. Other APS employees do not have the authority to respond on behalf of APS. Bidders **MAY NOT** contact other District departments or employees. Any contact with a district department or employee may result in rejection of any bid.

Any other communication will be considered unofficial and non-binding. Communication directed to parties other than the buyer will have no legal bearing on this BID or the resulting contract(s). Any response made by the District will be provided in writing to all Bidders by addendum, no verbal responses shall be authoritative.

3. **TIMELY SUBMISSION:** Bids must be submitted by the due date and time on Vendor Registry as stated on cover page. Any and all Bids not received by the submission date and time shall be rejected. No late bids will be accepted under any circumstances. It is recommended to submit the bid in early.

**Important Information:** Albuquerque Public Schools Online Bidding System (Vendor Registry) utilizes the Internet and the World Wide Web which is comprised of systems that are completely out APS's control including but not limited to: the District, its agents, and registered suppliers' respective internet service providers. The District and its agents are not responsible for Internet outages, hardware failures, software failures, downtime, internet slowness, acts of God, power failures, and or user errors. All bids/proposals must be submitted before the due date regardless of your organization's ability to submit proposals online. It is the suppliers' responsibility to ensure that Bid offers arrive before the due date and time.

Bidders understand and agree that technical support may not be readily available the day of and or the hours/minutes prior to a bid closing time (Due Date/Time). Bidders also understand and agree that internet access, browsers, and operating systems are not supported by the District and/or its agents.

**Bidders are strongly encouraged to review, create, and submit all electronic bid responses several days in advance of the due date and time.** If you have any questions contact the Buyer listed on the Bid/RFP documents for assistance.

4. **BIDDER ACKNOWLEDGMENT:** By responding to the bid, Bidders acknowledge and agrees to the terms and conditions set form in bid. 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. All costs incurred by a Bidder in connection with responding to this bid, the selection process undertaken in connection with this bid, and any negotiations with APS will be borne solely by the Bidder.
5. **ELECTRONIC BID DOCUMENTS:** This bid is being made available by electronic means. In the event of conflict between a version of the bid in the Bidder's possession and the version maintained by APS, the Bidder acknowledges that the version maintained by APS on the APS Procurement website shall govern.
6. **FORMS AND ATTACHMENTS:** 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.

7. **ADDENDUM(S)**: No Addendum will be issued later than FIVE (5) 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.
8. **CORRECTION OR WITHDRAWAL OF BIDS**: Pursuant to NMSA 13-1-106, a bid containing a mistake discovered before bid opening may be modified or withdrawn by bidder prior to the time set for bid opening by delivering written notice to the location designated in the invitation for bids as the place where bids are to be received. After bid opening no modifications in bid prices or other provisions of bids shall be permitted. A low bidder alleging a material mistake of fact which makes his bid nonresponsive may be permitted to withdraw its bid. Any decision by Buyer to permit or deny the withdrawal of bid on the basis of a mistake contained shall be accordance with applicable procurement statutes.
9. **IRREGULARITIES IN BIDS**: Pursuant to NMSA 13-1-132, APS may waive minor informalities in bids submitted provided that such informalities have no effect on price, quality, or quantity.
10. **BIDDERS 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.
11. **BRAND NAMES**: Pursuant to NMSA 1978, §13-1-168, 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.
12. **BIDDER SUBMITS MULTIPLE BRAND OR PRICE**: If Bidder offers more than one brand or price per item, APS shall evaluate bids and award the goods that are in APS’s best interest with regards to pricing and quality. Bidders offering other than specified goods must submit complete product data specification information for evaluation purposes.
13. **BID PRICING**: Responses, including bid prices, will be considered firm.
14. **PRICING ESCALATION**: Price escalation may be considered only at the anniversary date of the award. The Contractor must submit written documentation that adequately justifies need for pricing escalation, to include the proposed new pricing structure. APS will review the information and render a Determination accepting or rejecting the new proposed pricing.
15. **BID OPENING**: Pursuant to NMSA 13-1-107, the contents of the bid will be available to the public at bid opening.
16. **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 APS. Any sole response that is received may be rejected by APS depending on available competition and timely needs of APS.

17. **NON RESPONSIVE:** APS reserves the right to eliminate any Bidder who submits incomplete or inadequate responses or is not responsive to the requirements of this Invitation to Bid.
18. **AWARD:** In accordance with NMSA 1978, §13-1-108, 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. APS reserves the right to the sole judge to determine “meets or exceeds”.
19. **NEW MEXICO PREFERENCES:** Bids may be awarded preference in compliance with NMSA 1978, §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. A bid cannot be awarded both a resident preference and a resident veteran business preference. Preferences are not applicable for federal fund purchases.

20. **MULTI-AWARD:** APS reserves the right to multi-award contracts as necessary for adequate delivery or service in accordance with NMSA 1978, §13-1-153. APS reserves the right to award by item, group of items, or total bids.
21. **AFTER AWARD:** APS reserves the right to increase or decrease the quantity of any item called for, add additional related items as APS deems necessary, or to eliminate any item entirely.
22. **PURCHASE AFTER AWARD:** Any resulting purchases under the bid will be made by APS purchase order or procurement card. Quotes provided to APS personnel will be quoted per the awarded APS Price Agreement and will reference the APS Price Agreement number so verification of pricing can be made.
23. **CONFIDENTIAL INFORMATION:** 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, NMSA 1978, §57-3A-1 to §57-3A-7. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.
24. **DEFINITIONS:** Definition of Terminology: This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

“**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

“**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. **TERM:** APS reserves the right to procure the services/goods as described in this Bid and enter into a contract as described on Bid front cover.
2. **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.
3. **NO MINIMUM GUARANTEE:** APS does not guarantee a minimum amount of purchases in conjunction with award of this invitation to bid.
4. **PRICING ESCALATION:** Price escalation will be considered only at the anniversary date of the award. The Contractor must submit written documentation that adequately justifies need for pricing escalation, to include the proposed new pricing structure. APS will review the information and render a Determination accepting or rejecting the new proposed pricing.
5. **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.
6. **NON-APPROPRIATION:** APS' obligation to make payment under the terms of this bid is contingent upon its appropriation of sufficient funds to make those payments. If APS does not appropriate funds for the continuation of this procurement, this procurement will terminate upon written notice of that effect to the Principal. APS determination that sufficient funds have not been appropriated is firm, binding and not subject to review.
7. **PROCUREMENT CODE:** The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico Criminal Statutes impose felony penalties for bribes, gratuities, and kickbacks.
8. **PROCUREMENT UNDER EXISTING CONTRACTS:** In accordance with NMSA 1978 13-1-129, Offerors are hereby notified that other governmental entities within the State of New Mexico, or as otherwise allowed by their respective governing directive, may contract for services with the awarded Offeror. Contractual engagements accomplished under this provision shall be solely between the awarded proposer and the contracting entity with no obligation by APS.
9. **TERMINATION:** Either party may terminate this contract as follows:
  - A. Termination by the Contractor
    1. The Contractor may terminate this contract only if APS fails to comply with any provisions of this contract and after receiving notice of the noncompliance APS fails to cure the noncompliance within ten (10) days, or
    2. By written mutual agreement between the Contractor and APS.
  - B. Termination by APS
    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(s) in any substantial way of any provisions of this contract.

- b. If either one of the events identified above occur, the APS 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 APS, 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 APS 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.

**10. INDEMNIFICATION:** The Bidder shall be responsible for damage to persons or property that occurs as a result of his/her fault or negligence, or that of any of his/her employees, agents or subcontractors. Bidder shall save and hold harmless APS 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.

**11. 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. APS shall be included as a loss payee and/or additional insured. Public Liability and Automobile Liability insurance shall include at least the following coverage:

General Liability Insurance – per occurrence	\$1,000,000
General Aggregate - \$2,000,000	
Product/completed operations aggregate \$1,000,000	
Professional Liability Insurance (E&O)-per occurrence	\$2,000,000
Professional Aggregate - \$2,000,000	
Bodily injury, per occurrence	\$1,000,000
Medical and medically-related expenses	\$10,000

Vehicle bodily injury, each occurrence, excluding medical and medically related expenses	\$750,000
Property Damage, per occurrence	\$1,000,000

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

12. **AUDIT:** APS 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 APS personnel or a third party under contract with APS. APS shall give the contractor reasonable notice prior to the conduct of any audit and upon receiving the notice from APS the Contractor agrees to fully cooperate with the auditors. If Contractor subcontracts any portion of its obligation to another party, Contractor shall guarantee APS’ access to books and records of such party.
13. **GOVERNING LAW:** This Bid and any contract with a Bidder which may result from this procurement shall be governed by the laws of the State of New Mexico.
14. **INDEPENDENT CONTRACTOR:** The Contractor is an Independent Contractor performing services for APS. The Contractor shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of APS as a result of this procurement.
15. **DEBARMENT OR SUSPENSION:** A business (Contractor, Subcontractor or Supplier) that has either been debarred or suspended pursuant to the requirements of NMSA 1978, §13-1-177 through §13-1- 180, and §13-4-11 through §13-4-17, as amended, shall not be permitted to do business with APS and shall not be considered for award of the contract during the period for which it is debarred or suspended with APS.
16. **CONFLICT OF INTEREST:** By submitting a bid, the Bidder certifies that no relationship exists between the Bidder and APS 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 APS.
17. **NON-DISCLOSURE:** The Bidder 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 and costs in the event any unauthorized release of such information occurs.
18. **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).
19. **FOB:** Unless stated otherwise, the price for goods is FOB: Destination (District’s designated address).

20. **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.
21. **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.
22. **ACCEPTANCE:** Acceptance of delivery of goods/services shall not be considered acceptance of the goods/services furnished. Acceptance occurs when the APS Requesting Department, after a reasonable opportunity to inspect the goods/services, signifies to the Seller that the goods/services are conforming and fails to make an effective rejection.
23. **BUYERS REVOCATION OF ACCEPTANCE:** The APS Requesting Department can revoke acceptance of goods when it is discovered, in a reasonable time, that the Sellers nonconforming goods substantially impair the value of the goods.
24. **SELLERS RIGHT TO CURE A NONCONFORMING DELIVERY OF GOODS:** The Seller, upon notice of revocation of acceptance, shall correct without charge and deliver conforming goods in a reasonable time
25. **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.
26. **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.
27. **PAYMENT:** Any invoice receive and payment made shall be subject to APS' terms and conditions (NET 30) unless specifically waived by APS in a separate written document.
28. **DISPUTE RESOLUTION:** In the event the Parties do not agree to mediate the dispute or unable to resolve the dispute through mediation, then the dispute shall be resolved by binding arbitration. Such arbitration shall be governed by the New Mexico Uniform Arbitration Act, NMSA §44-7A-1, et seq. as amended.

## **ADDITIONAL TERMS AND CONDITIONS**

### **FOR COMPLIANCE WITH 2 C.F.R. PART 200, APPENDIX II**

#### **1. REMEDIES**

The parties agree that the Owner reserves all rights and privileges under applicable laws and regulations with respect to this contract in the event of a breach of contract, including but not limited to the right to institute legal proceedings in a court of competent jurisdiction seeking monetary damages, court costs and litigation expenses, as applicable.

#### **2. TERMINATION FOR CAUSE AND CONVENIENCE**

The parties agree that the Owner reserves the right to terminate the contract immediately, with written notice to the Contractor, in the event of a breach or default of the Contractor, including but not limited to situations in which the Contractor fails, after a reasonable opportunity to cure, to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. The Owner also reserves the right to terminate the contract immediately, with written notice to the Contractor, for convenience, if the Owner believes that it is in the best interest of the Owner to do so. In the event of a termination for convenience of the Owner, the Contractor will be compensated only for work performed and goods provided by the Owner as of the termination date. The amount of compensation due the Contractor in the event of a termination for the convenience of the Owner shall be a reasonable amount, using as a guide factors such as the percentage of work or services performed by the Contractor and accepted by the Owner as of the date of termination, the contract price and any unit prices specified in the contract, as applicable.

#### **3. EQUAL EMPLOYMENT OPPORTUNITY**

**During the performance of this contract, the contractor agrees as follows:**

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in

which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

d. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

f. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. The contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any Subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the



Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **4. DAVIS-BACON ACT**

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.

#### **5. COPELAND ANTI-KICKBACK ACT**

- a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

- a. *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (a) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and

subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

c. *Withholding/or unpaid wages and liquidated damages.* The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

d. *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

#### **7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

The parties agree to comply with the requirements of 37 CFR Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA.

#### **8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT**

##### a. Clean Air Act

- I. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- II. The contractor agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- III. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

##### Federal Water Pollution Control Act

- I. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

II. The contractor agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

III. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### **9. DEBARMENT AND SUSPENSION**

a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt.

3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

b. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

c. This certification is a material representation of fact relied upon by Owner. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Owner, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **10. PROCUREMENT OF RECOVERED MATERIALS**

The Contractor agrees to comply with all applicable requirements of Section 6002 of the Solid Waste Disposal Act.

#### **11. ACCESS TO RECORDS**

The following access to records requirements apply to this contract:

a. The Contractor agrees to provide Owner, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

c. The Contractor agrees to provide the FEMA Administrator or his authorized representative's access to construction or other work sites pertaining to the work being completed under the contract.

d. In compliance with the Disaster Recovery Act of 2018, the Owner and the Contractor

Acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**12. DHS SEAL, LOGO, AND FLAGS**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**13. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**14. NO OBLIGATION BY FEDERAL GOVERNMENT**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

**15. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.



12.1.2020

## **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 (NMSA 1978, §13-1-172). 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 (NMSA 1978, §13-1-173).

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 (NMSA 1978, §13-1-174).

The Purchasing Agent or his/her 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 NMSA 1978, §13-1-183.

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

# **SPECIFICATIONS**

## TECHNICAL SPECIFICATIONS

1. **Intent:** The purpose of this bid is to establish pricing for distribution of fresh Milk and Dairy Products that meet the Smart Snack Nutritional Guidelines for Albuquerque Public Schools.
2. **Scope of Work:** Albuquerque Public Schools is the largest School District in New Mexico, currently operating with 142 schools. It is important to contract with a vendor that can furnish and deliver fresh fluid milk and dairy products to each APS school food service operating site all year round.

All milk and related products delivered to Albuquerque Public Schools under this contract shall be fresh, Grade A Pasteurized Milk Ordinance – 1978 (Publication 229) and related documents as published by the Federal Food and Drug Administration. Such products shall be delivered in suitable plastic coated, pure pack containers, and shall be date stamped with the product expiration date. Products must meet all federal, state, and local health department standards. Reconstituted and recombined milk is UNACCEPTABLE.

Award is based on the price of the half pint cartons of milk due to the volume of sales for the district. The annual value of this contract is estimated at 2 million. This is not a commitment to purchase. The information is included to provide a potential Bidder(s) with some idea of possible contract activity.

Regardless of discounts received, APS reserves the right to negotiate a deeper discount in the event of a large quantity purchase.

Although, this BID is issued on behalf of APS, vendor agrees to extend pricing to all New Mexico publicly funded entities.

3. **Product Nutritional Information:** Vendors must submit a product label for each item you are bidding on with their bid. Label must include product name, nutrition facts, ingredient list and allergen information. All items must meet all USDA Regulations for use in School Nutrition Programs.

All specifications listed in this BID document are nutritionally **NSLP** (National School Lunch Program) and **NSBP** (National School Breakfast Program) approved products.

4. **Pricing: Fixed price contract with economic adjustment.** The base milk price submitted shall remain firm and continue in force during the entire contract period. Price escalation/de-escalation will be based on the **May 2022 Federal Milk Order** announcements for the applicable geographical zone. **(include a copy with your bid):**
  - a. **Price Escalations:** All prices shall be firm for 30 days, after which prices for milk can escalate or de-escalate according to changes in Class 1 raw milk prices based on monthly Federal Milk Order announcements for the applicable geographical Zone. Price for milk delivered can be escalated or de-escalated at the rate of \$.001 per half pint for each full \$.15 increase in raw milk per hundred weights. A copy of the Federal Milk Order must accompany any changes in price.

Summer Lunch Program for the months of June and July will reflect discount pricing for drop shipments to Central Kitchen in accordance with the Federal Milk Order announcement monthly report.

5. **BID Price Form:** – **Attachment A (Excel document)**

Pricing sheets are broken into seven (7) categories with current products requested by APS. Please review the pricing sheets carefully as specific requirements are provided for each product. Pricing sheets must be typed (no hand written responses will be accepted).

6. **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 clean, pest-free and protected from contamination.

The product temperature of all potentially hazardous food be maintained at 40 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.

The district reserves the right to refuse or return items, which are, leaking, show evidence of temperature abuse or are damaged in any way.

Offeror(s) must have a HACCP plan in place. The district may require documentation verifying that a written HACCP plan is followed.

7. **Ordering of Food Products:** The ordering of milk and dairy products shall be made via APS Purchase Order issued by the Procurement Department. Any order placed via any other means may become the personal responsibility of the person placing that order. Once order is placed, all vendors shall provide confirmation within 48 hours of order that includes delivery date and product quantities, to Food and Nutrition Services. Confirmation of these orders are to be sent to Director Site Operations, Vincent Medina email, [medina\\_vin@aps.edu](mailto:medina_vin@aps.edu) and Director Menu/Production, Gloria Kozeliski email, [gloria.kozeliski@aps.edu](mailto:gloria.kozeliski@aps.edu)

8. **COVID-19 Clause:** Due to the crisis of the global pandemic COVID-19, some or all product(s) estimated usage amounts for the initial contract term may vary. The current operation of APS Food & Nutrition Services Department is vastly different from the past year of operation which we drew our estimations from. We are asking for flexibility in product usage due to the unknown foreseeable future of alternative operations.

9. **Equivalent Products:** Equivalent products offered will be evaluated and approved based on a comparison of the proposed equivalent product's specifications listed. The determination of equivalency shall be based solely of the opinion of the District.

10. **Substitutions:** No substitutions or product are allowed unless **“written prior approval”** by APS Purchasing Department and Food & Nutrition Services. A substitution, if approved, shall be billed at the same per unit cost as the original offer item. A substitution not approved will be refused at delivery and Offeror will be responsible for return shipment at no cost to APS. The specifications listed abide by the New Mexico Nutrition Rules for Competitive Foods.

Items may be added throughout the term of the contract, to accommodate Albuquerque Public Schools lunch menus. New items must be approved and registered with USDA before consideration for Albuquerque Public



Schools. Products must be appropriate for School Nutrition Programs (SNP's) with proper documentation to include: complete product description, Nutrition Facts, Ingredient List, CN Label (if applicable). Albuquerque Public Schools may reject any proposed additions, without cause, in its sole discretion.

Changes on product codes and nutritional **must** be communicated to Food & Nutrition Services by manufacturer/distributor or broker.

**11. Quality, Best Used by Date, Rotation of Product:**

All milk products are to be delivered fresh with a 'Best Used By' date of at least 10 days. It is the responsibility of the delivery driver to rotate product within the cooler upon delivery to help ensure that the oldest products are used first. The determination of quality or acceptability of products offered will be made by the School District.

**12. Delivery of Food Products:** All deliveries shall be to the requesting school/department per the purchase order and FOB Destination. Orders will be determined between APS Food & Nutrition Services and Bidder based upon the delivery schedule.

- Seal of container shall not make it unduly difficult to open carton by small children nor produce noticeable leakage. Should a leakage occur, vendor will replace entire crate of milk upon being notified.
- Milk shall be delivered a minimum of 10 working days prior to the code date indicated on the carton. Bad tasting or sour smelling milk shall be replaced immediately upon notification.
- Milk crates must be in clean sanitary condition upon delivery and washed and sanitized regularly to be free of dirt and debris.
- Milk shall be delivered unwrapped with no plastic.
- Milk and all dairy products shall be delivered in a refrigerated truck in an approved sanitary manner. Milk shall be delivered between 35-40 degrees.
- Empty milk crates are to be picked up and credit used as needed.
- Milk will be stored in the school's milk coolers by the delivery person.
- Delivery shall not be made so close to service time as to create concern by the school site and necessitate emergency deliveries by Food & Nutrition Services.
- Most sites will require 2 to 3 day per week deliveries, the successful bidder will need to accommodate the sites to provide sufficient product for meal service.

**13. APS School Site List: - **Attachment B****

List of APS School sites is in Attachment B for your reference. Schools are color coded by Elementary, Middle and High School for your reference. Awarded vendor will contact Director of Site Operations, Vincent Medina (505) 345-5661 ext. 38219, email [medina\\_vin@aps.edu](mailto:medina_vin@aps.edu) for school site scheduling and orders.

**14. Cancellation of School:**

Orders may be adjusted or cancelled out when school is cancelled due to inclement weather or other reasons. Vendors will be contacted regarding necessary adjustments by APS Food & Nutrition Services.

**15. Summer Program Delivery: - Food & Nutrition Services/Central Kitchen**

Summer Lunch Program for the months of June and July will reflect discount pricing for drop shipments to Food & Nutrition Services in accordance with the Federal Milk Order monthly report. Price for milk delivered can be escalated or de-escalated at the rate of \$.001 per half pint for each full \$.15 increase in raw milk per hundred weights. A copy of the Federal Milk Order must accompany any changes in price.

Listed below is Food & Nutrition Services delivery warehouse address for Central Kitchen deliveries. Successful contractors are required to deliver to this APS location for Central Kitchen. Successful contractors must call Production Managers (505) 345-5661 ext. 38222 or ext. 38234 to coordinate drop shipments to Food & Nutrition Services Warehouse.

Successful contractor(s) are required to deliver to Food & Nutrition Services warehouse location only.

**(One way to access loading dock, enter off Chama, 1 block East of Louisiana)**

- **Food & Nutrition Services Warehouse** – 800 Louisiana Blvd. NE Albuquerque NM 87108, which accepts deliveries Monday thru Friday between 7:00am to 1:00pm.

**16. Purchase Order and Invoicing Procedures:** Price Agreement (PA) will be issued to the successful contractor(s) for all awarded items for the duration of the contract. A single Blanket Purchase Order referencing the Pricing Agreement will be issued to the awarded contractor for the duration of the contract.

Proof of delivery document, showing the APS Purchase Order, delivery location, and the full signature with printed name underneath of employee receiving the item(s) must be submitted to APS Food and Nutrition. Initials are not acceptable and will not be processed for payment. APS will not pay for unauthorized purchases.

Itemized invoices, clearly referencing appropriate pricing agreement number and PO number shall be submitted to Food & Nutrition Services, 800 Louisiana Blvd, NE, Albuquerque NM, 87108. Copies of delivery tickets or proof of delivery, 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
- c. Invoice Number
- d. Order Date
- e. Delivery Date
- f. Item Number
- g. Item Description
- h. Quantity Shipped
- i. Lot/Batch #'s
- j. Unit Price
- k. Extended Price
- l. Total Invoice
- m. Location Number
- n. Recipient's Signature

o. Company Header

17. **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.
18. **Guarantee:** All Offerors must guarantee full satisfaction of their products use or permit unsatisfactory product to be returned for full money refund. Offeror will replace damaged items at no cost to APS.
19. **Protection of Adjacent Surfaces:** The contractor shall take all measures necessary during the course of delivery to protect existing property including adjacent surfaces, equipment, electrical systems, piping, sidewalks, and landscaping from damage and shall repair promptly any such damage at his own expense and to the satisfaction of APS.
20. **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.

It is essential that all purchases or agricultural commodities and food products comply with this statutory provision on page 28 of this BID.

21. **City/County of Albuquerque Environmental Health Inspection Certificate:** APS requests to have a copy of your latest City of Albuquerque Environmental Health Inspection Certification Submitted with your BID at time of BID opening.

**MUST FILL OUT REQUIRED INFORMATION, SIGN AND SUBMIT WITH PROPOSAL**

**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 that 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.

**Signature of Company Representative:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**(Company Name/Certifying Official Signature)**

# Vendor Registry BID Format

Do not upload individual files for each individual document. When creating a file, make sure they are no larger than 800mb with the required information per the format listed below. You should have no more than 3 files or zip files uploaded onto Vendor Registry.

Upload files onto Vendor Registry and label them by category. Numbered files are listed by category below for your reference. If a file is larger than 800mb, please upload additional files and label it; part 2, part 3 etc. for that category.

Note: Files cannot exceed 800mb.

## Category/File Name

# 1 File – BID Price Form – Attachment A (**excel version**)

#2 File - Required Forms to include:

- a) Buy American Requirement Form – Signed
- b) Buy American Content Form Signed
- c) Campaign Contribution Disclosure Form – Signed
- d) Specification Exception Form - Signed
- e) Conflict of Interest, Non Collusion and Debarment/Suspension Form – Signed
- f) Byrd Anti-Lobbying Amendment - Signed
- g) Terms & Conditions Statement of Confidentiality Form - Signed
- h) Addendums (if applicable) – Signed

#3 File – Nutritionals – **only submit nutritional information for items you are bidding.**

# **BID PRICE FORM**

*Attachment A (excel)*



## **BUY AMERICAN PROVISION FORM – Submit with your Proposal**

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 SFA's 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)**



# COMPLIANCE

***(REQUIRED LEGAL FORMS)***

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

# CONFLICT OF INTEREST, NON-COLLUSION 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.

### CERTIFICATION OF NON-COLLUSION STATEMENT

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity.

Does vendor agree? **YES Initials of Authorized Representative of 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, NON-COLLUSION 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.**

**Signature:** \_\_\_\_\_ **Date** \_\_\_\_\_

Name of Person Signing (typed or printed) \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Name of Company (typed or printed): \_\_\_\_\_

Address: \_\_\_\_\_ City/State: \_\_\_\_\_



## BYRD ANTI-LOBBYING AMENDMENT

Contractor must sign and submit to the Owner the following certification:

### APPENDIX A, 44C.F.R. PART 114 CERTIFICATION REGARDING LOBBYING

**Certification for Contracts, Grants, Loans, and Cooperative Agreements: The undersigned certifies, to the best of his or her knowledge and belief, that:**

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an

Employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit

Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

**This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.**

**The Contractor, certifies or affirms the truthfulness and accuracy of each**

**Statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.**

\_\_\_\_\_  
**Signature of Contractor's Authorized Official**

\_\_\_\_\_  
**Name and Title of Contractor's Authorized Official**

\_\_\_\_\_  
**Date**

## 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 INVITATION TO BIDS 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)

--OR--

**SIGN  
WHERE  
APPLICABLE**

**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)