



ALBUQUERQUE PUBLIC SCHOOLS

Procurement Division

Winston Brooks
SUPERINTENDENT

Mark Heckart, CPM
DIRECTOR/PROCUREMENT OFFICER

September 13, 2011

BID: 12-020PS-SL Gas Convection Ovens for Food & Nutrition Services

DATE: September 27, 2011

TIME: 2:00 p.m.

LOCATION: Albuquerque Public Schools
(Address for Procurement Department
Hand or Courier 6400 Uptown Blvd NE, Suite 600W
Delivery) Albuquerque, NM 87110

U.S. MAIL Albuquerque Public School
DELIVERY: Procurement Department
P.O. Box 25704
Albuquerque, NM 87125
(Allow appropriate time for delivery to the Procurement Department location before the deadline time and date.)

CONTACT: Priscilla A. Saavedra, District Buyer
saavedra_pr@aps.edu (505) 878-6117

SPECIAL INSTRUCTIONS: Complete Bid/RFP documents as required. Your response must be received in the APS Procurement Department prior to the specified date and time regardless of delivery option selected. **Late bids are not accepted and will be returned unopened.** To ensure proper identification and handling, clearly indicate the Bid/Proposal Number and the Opening Date and Time on the outside of the sealed response envelope.

sls

**Gas Convection Ovens for Food & Nutrition Service
Bid No. 12-020PS-SL**

Intent: Albuquerque Public Schools (APS) invites you to bid on a requirements contract for **Gas Convection Ovens for Food & Nutrition Service**, in accordance with the attached specification.

INFORMATION FOR BIDDERS

1. **Contract Documents:** The bidding documents included in this packet and listed below constitute the contract documents. The bidder's signature signifies his full understanding of the terms of the contract documents and agreement to perform the work under these terms if awarded the contract. The award shall be made by a blanket contract issued by APS to the contractor and shall bind the contractor to the terms of the contract documents.
 - Information for Bidders
 - General Terms and Conditions
 - General Conditions
 - General Requirements
 - Specifications and Pricing
 - Conflict of Interest & Debarment/Suspension Certification Form
 - Terms and Conditions (Signature Page -2) shall be signed.
2. **Preparation of Bids:** Each bid must be submitted on the prescribed form. All blank spaces for bid prices must be filled in with ink or typewritten. Corrections shall be initialed in ink by person signing the bid. Each bid must be submitted in a sealed envelope bearing on the outside the name and address of the bidder and the bid number as listed on the Bid Invitation. Improper identification may result in premature opening of, or failure to open bid. An authorized representative of the company shall sign all bids. **Bids not signed may be considered as non-responsive and rejected.**
3. **Receipt and Opening of Bids:** Bids must be prepared and submitted in accordance with the provision hereof. APS reserves the right to reject any or all bids which exceed the available funds. Any bid may be modified or withdrawn prior to the scheduled time for the opening of bids or authorized postponement thereof by delivering written notice to the location designated as the place where bids are to be received. Any bid received after the specified time for the opening of bids shall not be considered.

Procurement law requires sealed bids or proposals. Therefore, APS cannot accept bids which are transmitted using facsimile equipment. This may not apply to amendments or addenda which do not refer to pricing or to the transmittal of supplemental product literature, drawings and the like. Please refer the specific situation to the buyer for clarification before proceeding.

4. **Qualification of Bidder:** APS may make such investigations as necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish all such information and data for this purpose as APS may request. APS reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy APS that such bidder is qualified to carry out the obligations of the contract and to complete the work described therein.

Bidder shall also construe this provision to incorporate a necessary investigation and/or monitoring during the life of the contract to enforce any current policy of the Board of Education such as, but not limited to, no smoking or alcoholic beverages on APS property. As a general rule, any such regulation or law applying to APS personnel shall be deemed to be in force for contractor's work force occupying any work site.

5. **Familiarity with Conditions:** Clarification of bidding procedures for this contract may be made by contacting Priscilla Saavedra, District Buyer, telephone (505)878-6117; clarification of the specifications or other technical aspects of the bid document may be made by contacting Juan Saiz, Food & Nutrition Service, (505)345-5661-X37027. **Bidders must have acquainted themselves with all conditions affecting this contract before submitting a bid.** No claim shall be made nor will one be allowed the contractor for negligence, misunderstanding or error in this regard.

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Bidders shall carefully examine the proposed contract documents to obtain first-hand knowledge of all proposed work. Contractors will not be entitled to any additional compensation or extension of the contract time for conditions which can be determined by examining current work requirement and the proposed contract documents. 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.

6. **Conditional Bids:** Bids in which acceptance is in some manner restricted or conditioned by the bidder will be reviewed by APS. If the limitations imposed are not in the best interest of APS or are prejudicial to other bidders, bid will be rejected.
7. **Multiple Offers:** APS will not select from multiple offers on a single document. If bidder offers more than one brand and/or price per item, the 1) as specified or the 2) most expensive will be considered as the primary bid. Other offers will not be evaluated unless the primary bid is low bid in its own right. If you wish to offer an alternate bid in addition to your regular bid, make extra copies of the necessary pages (including the signature pages) and submit as Bid #2. Each bid must stand-alone and comply with the terms and conditions of the contract.
8. **Records:** Records shall be maintained by the contractor in compliance with municipal, federal or state laws, ordinances, codes, and this contract. At any time during normal business hours and as APS may deem necessary, there shall be made available to APS for examination all of contractor's records with respect to all matters covered by this agreement. APS may audit, examine and/or make excerpts or transcripts from such records including but not limited to invoices, materials, payrolls, records of personnel, conditions of employment or any other such data as may be pertinent.
9. **Awards:** APS reserves the right 1) to award bid received on the basis of individual items, or groups of items, or on the entire list of items; 2) to reject any or all bids or any part thereof; 3) to waive any informality in the bids; and 4) to accept the bid that is in the best interest of APS. Bid award will be made to the low responsible and responsive bid taking into consideration prior qualifications and capabilities of the bidder, availability of funds and any other relevant factors. **It is the responsibility of the bidder to inquire as to the status and/or subsequent award of bids.**

Award will be based on extended total of an acceptable product for the estimated orders plus installation charges, if any, and ability of the bidder to perform in a timely manner.

10. **Tax Requirements:** APS holds a Class 9 Nontaxable Transaction Certificate (NTTC) and is exempt from payment of taxes on tangible personal property. A NTTC will be issued on request.
11. **Protest:** Any bidder, offeror, or contractor who is aggrieved in connection with procurement may protest to the Procurement Division, Albuquerque Public Schools. The protest shall be submitted in writing within 15 calendar days after the fact of occurrences giving rise thereto.
12. **The Procurement Code:** The Procurement Code, Sections 13-1-21 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.
13. **Brand Names:** Brand names, as may be noted are for the bidder's reference as to level of quality or approved products. This is not a preference or endorsement on the part of APS.
14. **Quantities:** The estimated quantities as shown are a projected proportional annual usage based on historical data. This is not a commitment to purchase. The information is included to provide a potential bidder with some idea of possible contract activity.

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GENERAL TERMS AND CONDITIONS

The submission of a bid will indicate that the bidder has read the terms and conditions, understands the requirements, and that bidder can supply items(s) specified.

No contract exists on the part of Albuquerque Public Schools until a written Blanket Purchase Order (BPO) is executed which will bind the bidder to the terms and conditions of the bid. Issuance of a BPO will be considered sufficient notice of acceptance of contract.

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 right, title, or interest therein, or power to execute such purchase order or contract to an other person, company or corporation without the previous written consent of Albuquerque Public Schools.

Albuquerque Public Schools reserves the right to return ovens which do not meet specifications indicated in bid at bidder's expense. Bidder guarantees that ovens delivered are standard new and regular stock.

Failure to examine any specification and/or instructions will be at bidder's risk.

GENERAL CONDITIONS

1. **Contract Modification:** No oral statement by any person shall modify or otherwise affect the terms, conditions, specifications, or price agreements stated in this contract. This contract is the final expression of the agreement between parties unless amended in writing by the Procurement Division.

Submit all questions about the proposed contract specifications including any discrepancies, omissions, or ambiguities noted by any bidder to the appropriate APS contact person. If appropriate, APS Procurement division will issue a written addendum that shall thereafter become part of the bid documents and proposed contract documents. Oral interpretations other than routine clarification and the like, if given shall not be binding unless reduced to a written addendum issued prior to bid opening. All bids shall be responsive to and include any addenda issued prior to bid opening.

GENERAL REQUIREMENTS

1. **Time:** The duration of this contract shall be one (1) year following award of the contract.
2. **Escalation Clause:** Price escalation will not be considered following award of the contract. Prices shall remain firm for the duration of the contract. Moreover, if prices should decrease in the market, APS shall benefit from any market fluctuation which would derive a savings. Contractor may refuse any renewal with no penalty and APS will rebid. No substitutions of product are allowed. The contractor must deliver the same brand and model numbers as bid.
3. **Form of Contract:** Following bid award a Blanket Purchase Order (BPO) will be issued to the successful bidder(s) on awarded bid items. Actual quantities of award items requested by APS and delivered by bidder will be charged to a Purchase Order number referencing the BPO number.
4. **Subcontractors:** Installation may be contracted separately at the discretion of the successful bidder, but the successful bidder will be responsible for the performance of the installer and all payment to the installer. APS will not contract separately with a third party.

If during the life of the contract, your contracted installer changes, please notify the Procurement Department and Food & Nutrition Service of the change.

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5. **Delivery:** Delivery will be F.O.B. Destination including cost, insurance, and freight to a specified location as designated on the purchase order "Ship To" section. Delivery shall not include setting in place and removing refuse, APS will install the ovens. Although, awarded contractor will responsible for removing the oven from the crate. Schools do not have docks therefore; all deliveries must be "inside". Delivery to the location must be organized with a minimum disruption to the classroom setting or construction site. It is recommended that the vendor call in advance, to schedule delivery date and time. Call either Pat Espinoza, (505)767-2600 or Sandy Garcia, (505)243-6685.

6. **Invoicing:** Itemized invoices, clearly referencing appropriate bid pricing, item number, and contract number shall be submitted to the Food & Nutrition Services, 720 Rankin Rd NE, Albuquerque, NM, 87107, telephone number (505)345-5661.

Final invoice for each delivery shall be accompanied by all required guarantees, releases of lien and/or other submittal required by the contract.

7. **Scope of Work:** APS is currently involved in projects that require the type of oven listed herein. Quantities shown are estimates only for Food & Nutrition Services and may vary if project budgets change.

Contractors are encouraged to visit any site as needed to determine area limitations, loading zones, etc. Delivery to each location must be organized with a minimum of disruption to the classroom setting or construction site, and must be accomplished as expeditiously as possible.

Particular brands are referenced for the bidder's information as to general characteristics and quality desired. This is not a preference or an endorsement on the part of APS. Other manufacturers/models will be considered. It is the purpose of the specifications to describe the necessary requirements for the appliances. Dimension, weight, etc. are to be considered approximate insofar as lesser tolerances do not compromise the intended use or safety of the equipment or change the intent of the bid. Please detail any differences which may exist between your product and the specifications.

APS reserves the right to make multiple awards to ensure an adequate number of suppliers to meet the needs of the district.

Quantities listed are based on up-coming projects for the APS Food & Nutrition Service.

8. **Product Literature:** If bidding other than as specified, "as specified" is defined as the exact brand and model referenced in the specification, bidder must submit product literature and technical specification sheet. Literature, technical data and samples (see below) are necessary evaluation tools. **Failure to furnish such data may result in the rejection of your bid.** APS will not unduly delay award of bid due to lack of literature or sample (if requested). APS reserves the right to reject products(s) if literature, technical specification or sample indicates item is of a lesser quality than has been referenced by APS' written specification and/or brand/model.

9. **Samples:** If literature and technical data are inadequate to determine evaluation of any particular bid item, APS reserves the right to view and/or test the product. Bidder should be prepared to make available to APS upon demand an actual model of intended item for its inspection. Depending upon the size, APS may visit the bidder's showroom for demonstration or require smaller items to be brought to the Procurement Division. Such samples must be furnished within a reasonable time, i.e. allowance for shipping, etc. and at the sole expense of the bidder. "Actual specimen" is defined as either the exact item or a reasonable configuration with variation readily apparent. APS reserves the right to reject a product based on the actual sample, if sample is of lesser quality than reflected in the written specification and/or brand/model.

10. **Packaging:** APS will not require a vendor to break even cartons at time of order. The required quantity will be adjusted \pm to accommodate vendor's stated packaging. If no adjustments are noted, packaging will be

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assumed to be as specified with no deviations. Leave no reasonable doubt as to what you intend to furnish in satisfaction of any potential order.

Pallet Requirements: Any shipments received as a result of purchase orders generated as a result of awards on this solicitation shall be palletized if the quantity of cartons in the shipment is more than twenty (20) and/or if the total shipment weight exceeds 200 pounds.

Palletized product must be shrink-wrapped to avoid shifting in transit and during unloading. Palletized product must not exceed four (4) feet in height.

All palletized cartons must have externally facing labels identifying carton contents and quantity. All ovens must be removed from the crate and APS will install.

Purchase orders will not specify palletizing requirements. Bidder's signature signifies understanding of these requirements. APS reserves the right to reject shipments which are not palletized.

11. **Warranty/Guarantee:** All bidding 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.

Warranty terms shall be stated where requested on the bid and must be, as a minimum, the manufacturer's best-preferred warranty.

12. **Cancellation of Contract:** APS may by written notice cancel contract for contractor default in whole or in part, at any time contractor refuses or fails to comply with the provisions of the contract, or so fails to make progress as to deliveries, packaging of product, and/or unacceptable product and does not cure such failure within a reasonable period of time. In such event, contractor shall be liable to APS for any excess costs occasioned thereby.

If after notice of cancellation for default, APS determines that the contractor was not in default or that the failure to perform was due to causes beyond the control and without the fault or negligence of the contractor, cancellation shall be deemed for the convenience of APS unless APS shall determine that the products, service, etc were obtainable from other sources in sufficient time to meet requirements.

APS may create a written notice stating the extent and effective date to cancel the contract for convenience, in whole or in part at any time. APS shall pay contractor as full compensation for performance until such reasonable amount, not otherwise recoverable from sources by contractor as approved by APS with respect to the undelivered or unacceptable portion of the order; provided compensation shall in no event exceed the total contract price.

Failure to comply with the terms of the contract documents and/or unsatisfactory performance on the job will constitute grounds for cancellation of the contract. If after consultation between Food & Nutrition Service and APS Procurement Division grounds for cancellation still exist; immediate notification of cancellation will be provided in writing by the Procurement Division. Upon such notification, the Contractor will cease work immediately and shall submit an invoice for work satisfactorily completed to date. No allowance will be made for anticipated profits.

13. **Workers' Compensation Coverage:** The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this agreement may be terminated by APS.
14. **Prompt Payment:** APS will strive to meet or exceed prompt payment terms as may be established by statute. Late payment charges may be assessed on any unpaid balance due over 60 days in arrears at the

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rate of one and one-half percent (1.5%) per month. APS will not automatically include late charges in your payment. Late charges must be properly documented with separate invoice numbers, amount, date and computation to verify charges. Typically, APS payment will be 30-45 days.

15. Do not bid unless your firm is authorized to sell to APS and in the State of New Mexico.

Pricing: All prices quoted will be F.O.B. destination including cost, insurance and freight. **Bidder Owns Goods During Transit.**

Indicate your earliest delivery date ARO: _____

Ship all orders in a single shipment whenever possible. Partial shipments of less than 25% of the ordered quantity for any line item will not be accepted and will be returned to shipper at shipper's expense. Supplier will be required to call the school/site to make delivery arrangements at least 24 hours before anticipated delivery. Contact Pat Espinoza, (505) 767-2600 x37721 or Sandy Garcia, (505) 243-6685.

16. **Order placement:** Provide information where purchase orders should be mailed. Include contact name.

Company name: _____

Attn: _____

Address: _____

City, State, Zip: _____

Phone/Fax no. _____

E-mail address: _____

Name of authorized local representative: _____

Address: _____

City, State, Zip: _____

Phone/Fax no. _____

E-mail address: _____

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FIRM NAME

Item No.	Quantity	Description	Unit Cost	Extended Cost
1.	25 Each	Gas Convection Oven: Brand/Model. No. _____	\$ _____	\$ _____

Gas Convection Oven; To be full-size, standard depth, able to accept five 18"x26" standard full size baking pans. Exterior construction should be full angle iron frame, stainless steel; Dual pane thermal glass windows encased in stainless steel door frames with porcelain door handles (simultaneous door operation). To have a removable front control panel and should contain solid mineral fiber insulation on all sides. Interior construction to be, double sided porcelainized baking compartment liner. To include 5 chrome plated racks, with eleven rack positions. To include dual flow gas system, combining direct and indirect heat. To include an electronic spark ignition control system, including removable dual tube burners. Solid state thermostat with temperature control range of 200 – 500 degrees Fahrenheit. Should include 2speed fan motor, 1/3 horsepower blower motor with automatic thermal overload protection. To include adjustable legs (no casters). To include gas manifold (snap fast kit) hose should be full port 3/4" gas connection. To be as; Blodgett Model ZEPHAIRE-240G PLUS

If bidding other than approved product, specification/cut sheets must be submitted along with two current, local users.

Manufacture and Model No.

Indicate your earliest delivery date ARO: _____

Type of warranty: _____

Length of warranty: _____

Name and address of local authorized representative: _____

Successful bidder must have local authorized representative who will support the sale of this equipment. Representative must be available to each delivery site for demonstration of product, maintenance and repair during warranty period. Representative must also be available for trouble shooting and technical advice after warranty period. This will be a consideration in the award process.

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BOARD OF EDUCATION
TERMS AND CONDITIONS
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Preparation of Bids

Bidders are to comply with all instructions and provide the information requested in the appropriate spaces. Bid prices must be entered in ink or typewritten. Mistakes may be corrected prior to bid opening, but shall be initialed by the person signing the bid. Corrections and/or modifications received after the bid opening time will not be accepted. Bids must be submitted by the date and at, or prior to, the time specified for consideration. Late bids will not be accepted. All bids must be signed by an authorized representative of the company.

Paste provided bid label on your return bid package. Improper identification may result in premature opening of or failure to consider the bid. Bids must be submitted in a sealed envelope. Procurement law requires sealed bids. Therefore, APS cannot accept bids which are transmitted using facsimile equipment.

Albuquerque Public Schools holds a Class 9 Tax Exemption Certificate and is exempt from paying sales tax on tangible personal property. A non-taxable transaction certificate (NTTC) will be provided upon request. Services (including construction or materials that become part of a construction project) are not exempt. The Contractor shall comply with all requirements of the State of New Mexico Gross Receipts Law and shall require all subcontractors to comply with same. Do not include tax in your bid price. Tax must be shown as a separate item on all invoices.

General

Brand Names: It is intended that bid specifications admit maximum competition. Brand names or model numbers, where used, are for reference as to standard of character, quality and/or operation and are not indicative of preference on the part of APS. Equal item(s) will be considered, provided the bid clearly describes the item by brand, model number, level of quality or any other appropriate criteria. Descriptive literature must be included for bid evaluation purposes. Include sample(s) if specifically requested. Failure to provide this information may disqualify your bid. Determination by APS as to what item(s) are equal shall be final and conclusive. When brand, model or other identification is not stated, it shall be understood that the bidder is quoting as specified.

Qualifications of Bidders: APS may make such investigations as necessary to determine the ability of the bidder to perform the work required. Bidder shall furnish all necessary information and data as may be requested. APS reserves the right to reject any bid if the evidence submitted or the investigation of a bidder fails to satisfy APS that the bidder is qualified to perform the obligation of the contract.

Award

Award(s) will be made to the low responsible and responsive bid(s) taking into consideration prior qualifications and capabilities of the bidder, availability of funds and any other relevant factors.

APS reserves the right: (1) to award bids received on the basis of individual item(s), or groups of items, or on the entire list of items; (2) to reject any or all bids, or any part thereof; (3) to waive any informality in the bid(s) and (4) to accept the bid(s) that is in the best interest of APS.

APS will take advantage of prompt payment discounts whenever possible; however, these will not be used as award criteria.

New Mexico procurement law provides for a five percent (5 %) residential preference. A bidder who meets state requirements shall be awarded a contract in preference to a non-resident bidder whenever the resident contractor, whose bid is nearest to the low bid of the non-residential contractor, is made lower when multiplied by a factor of .95. This does not apply when federal funds are being used. Any New Mexico firm claiming preference will insert its residential reference number as issued by the State Purchasing Department in the appropriate space. Provision of the number will be the responsibility of the contractor.

Any bidder, offeror or contractor who is aggrieved in connection with a procurement action may protest to the Albuquerque Public Schools Procurement Department. The protest shall be submitted in writing within fifteen (15) calendar days after the facts or occurrences giving rise thereto.

Bidders are informed that initial orders must be furnished at prices submitted. Albuquerque Public Schools reserves the right to make award(s) within (90) days after the date of bid opening unless bidder distinctly specifies that acceptance must be within a shorter time.

Time of delivery may be a consideration in bid award(s) and shall be defined as the number of calendar days following receipt of the order, either verbally or in writing until receipt of materials, supplies or services by APS.

Packing, Shipping and Invoicing

Bidder agrees to deliver all item(s) inclusive of all cost, insurance, freight, drayage, express or other charges. Title to materials or supplies shall pass directly from bidder to APS at the F.O.B. point shown, subject to the right of APS to reject upon inspection. All bids must be F.O.B. destination.

The purchase order number, vendor's name and user's name and location shall be shown on each packing and delivery ticket, pack-age, bill of lading and any other correspondence in connection with any shipment. The user's count will be accepted by the Seller as final and conclusive on all shipments not accompanied by a packing list. All invoices shall reference the order number, description of supplies or services, quantities, unit prices and extended totals. Separate invoices are required for each shipment.

Bidder shall be paid upon submission of acceptable invoices for materials, supplies or services delivered and accepted. Invoices must be accompanied by transportation receipts or facsimiles, if transportation is payable and charged as a separate item.

Patent Indemnity

Seller shall pay all royalty and license fee(s) relating to the item(s) covered hereby. In the event any third party shall claim the manufacture, use and sale of goods covered hereby to be infringement of any copyright, trademark or patent, Seller shall indemnify and hold APS harmless from any cost, expense, damage or loss incurred in any manner by APS because of any such alleged infringement.

Warranties

Materials, supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Seller gives to any customer for the same or substantially similar materials, supplies or services. The rights and remedies provided herein shall extend to APS and are in addition to and do not limit any rights afforded to APS by any other clause of this order. Seller agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

Inspection

Materials, supplies or services shall be furnished exactly as specified, free from all defects in workmanship, materials, and design. Final inspection and acceptance will be made at the destination. If, prior to final acceptance, any item(s) or service(s) are found to be defective or not as specified, APS may reject them, require the Seller to correct without charge or require delivery at a reduction in price which is equitable under the circumstances. If Seller is unable or refuses to correct such item(s) within a time deemed reasonable by APS, APS may terminate the order in whole or in part. Seller shall bear all risks as to rejected materials, supplies or services and, in addition to any other costs for which the Seller may become liable to APS under other provisions in these terms and

conditions, shall reimburse APS for all transportation costs, other related costs incurred, or payments to Seller for unaccepted materials, supplies and services. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud or such gross mistakes as amount to fraud. Any test programs and procedures required by the specifications are in addition to, and do not limit, APS rights provided in this section.

Assignment

Neither the order nor any interest therein, nor claim thereunder shall be assigned or transferred by the Seller except as authorized in writing by APS. No assignment or transfer shall relieve the Seller from its obligations and liabilities.

Non-discrimination

Sellers doing business with APS must be in compliance with Federal Civil Rights Act of 1964 and Title VII of the Act. Rev. 1979.

Changes

APS may make changes within the general scope of this order by giving notice to the Seller and subsequently confirming such changes in writing. If such changes affect the cost and/or the time required for performance of this order, an equitable adjustment in the price or delivery or both shall be made. No change by the Seller shall be recognized without written approval of APS. Any claim of Seller for any adjustment must be made in writing within thirty (30) days from date of receipt by Seller of notification of such change unless APS shall waive this condition. Nothing in this section shall excuse Seller from proceeding with performance of the order as changed hereunder.

Kickback Statement

The Procurement Code, Sections 13-1-21 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for this violation. In addition, New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kick-backs.

Termination

APS may, by written notice stating the extent and effective date, terminate this order for convenience in whole or in part, at any time. APS shall pay Seller as full compensation for performance until such termination (1) the unit or prorata order price for the delivered and accepted portion; and (2) a reasonable amount, not otherwise recoverable from other sources by Seller as approved by APS with respect to the undelivered or unaccepted portion of the order; provided compensation shall in no event exceed the total order price.

APS may by written notice terminate this order for Seller's default in whole or in part, at anytime, if Seller refuses or fails to comply, with the provisions of this order, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of the item(s) or service(s) or to perform the service(s) within the time specified or any written extension thereof. In such event, APS may purchase or otherwise secure item(s) or service(s) and except as may be otherwise provided, Seller shall be liable to APS for any excess costs occasioned thereby.

If after notice of termination for default, APS determines that the Seller was not in default or that the failure to perform was due to causes beyond the control and without the fault or negligence of the Seller, termination shall be deemed for the convenience of APS, unless APS shall determine that the item(s) or service(s) were obtainable from other sources in sufficient time to meet required delivery schedule.

If APS determines that Seller has been delayed due to causes beyond the control and without the fault and negligence of the Seller, APS may extend the time for completion when promptly applied for in writing by the Seller. If such delay is due to failure of APS, not caused or contributed to by Seller, to perform services or deliver property in accordance with the terms of the order, the time and price of order shall be subject to change under the Changes section. Sole remedy of Seller in event of delay by failure of APS to perform shall be limited to any money actually and necessarily expended in the work during the period of delay, solely by reason of delay. No allowance will be made for anticipated profits. 'Seller' is defined as the Seller and his subsuppliers at any tier.

Contingency

Seller warrants that no person or selling agency has been employed or retained to solicit or secure this order upon an agreement or understanding for a commission, percentage., brokerage or contingent fee excepting bona-fide employees or bona-fide established commercial or selling agencies maintained or utilized by Seller for the purpose of securing business. For violation or breach of this warranty, APS shall have the right to annul this order without liability or, at its discretion, to deduct from this order price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

Other Applicable Laws

Any provisions required to be included in a contract of this type by any applicable and valid executive order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.

Non-Collusion

The undersigned certifies that he or she has not either directly or indirectly entered into any action in restraint of free competitive bidding in connection with this solicitation and agrees to furnish the materials, supplies or services as required within the time specified under the conditions imposed and at the price indicated.

Signature of Authorized Representative_____

Date_____

Type or print name of above_____

Name of Firm_____

Address_____

Area Code and Telephone No._____

Contractor's License No: _____
(If Applicable)

Resident Certification No: _____
(If Applicable)

Federal I.D. No. _____

Fax No: _____

Wats Line (If available) _____

E-Mail Address (If available) _____