



Mark Heckart, C.P.M.  
EXECUTIVE DIRECTOR

March 28, 2014

**BID NO:** 14-050GR-SL Photography Services for K-12 Schools

**DATE:** April 9, 2014

**TIME:** 11:00 a.m.

**LOCATION:** Albuquerque Public Schools  
(Address for Procurement Department  
Hand or Courier 6400 Uptown Blvd NE, Suite 500E  
Delivery) Albuquerque, NM 87110

**U.S. MAIL DELIVERY:** Albuquerque Public School  
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).  
***PLEASE NOTE OUR NEW ADDRESS CHANGE***

**CONTACT:** Gustavo M. Rossell, Senior Buyer  
[rossell@aps.edu](mailto:rossell@aps.edu), (505) 878-6125

**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.

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**INFORMATION FOR BIDDERS**

1. **Intent:** Albuquerque Public Schools (APS) invites you to bid on Photography Services for K – 12 Schools. APS seeks qualified, professional vendors to provide Photography Services for K – 12 Schools in accordance with the specifications contained in this Request for Bid (RFB). In particular, the services requested herein and to be provided under any contract awarded as a result of this RFB are for photography-related projects as needed by the K – 12 schools of the district.
  
2. **Contract Documents:** The bidding information included in this packet and listed below constitutes the contract documents. The bidder's signature signifies his full understanding of the terms and conditions of this bid. The award of the contract shall be made by a Price Agreement (PA) issued by APS to the contractor and shall bind the contractor to the terms of the contract documents.
  - Information for Bidders
  - General Operating Procedures
  - General Requirements
  - Scope of Work
  - Cost (ES, MS, and HS)
  - Appendices A, B, C, D
  - Terms & Conditions
  
3. **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 must sign the bid. Bids not signed (on Terms & Conditions page) or terms & conditions not submitted with bid response will be considered non-responsive and will be rejected.**
  
4. **Receipt and Opening of Bids:** Bids must be prepared and submitted in accordance with the provisions hereof. APS reserves the right to reject all bids if all bids 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. Any bid received after the specified date and time for the opening of bids shall not be considered.

Procurement law requires sealed bids or proposals. Therefore, APS cannot accept bids which are emailed or 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.
  
5. **Qualifications 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 to the owner 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.

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Bidder shall also construe this provision to incorporate any 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.

6. **Familiarity with Conditions:** Clarification of bidding procedures for this contract may be made by contacting **Gustavo Rossell, Senior Buyer** in the **APS Procurement Department**, telephone (505) 878-6125- or email at [rossell@aps.edu](mailto:rossell@aps.edu). **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 to the contractor for negligence, misunderstanding, or error in this regard.

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 any extension of the contract time for conditions which can be determined by examining the site location 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 tests and has made provision as to the cost thereof in his bid.

7. **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, 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, payroll, record of personnel, condition of employment or any other such data as may be pertinent.
8. **Multiple Offers:** APS will not select from multiple offers for this bid. The bidder must submit only one bid. Other offers will not be evaluated.
9. **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.
10. **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 on request. The contractor is responsible for payment of all New Mexico Gross Receipt taxes and any other taxes due as a result of this work. Tax rates will fluctuate as required by law and must be shown as a separate amount on each billing or request for payment.
11. **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. It is the responsibility of the bidder to inquire as to bid results and the status of any subsequent award(s).
12. **Cancellation/Termination:** Documented 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 APS using departments, APS Procurement

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Department, and the contractor, grounds for cancellation still exist, immediate notification of cancellation will be provided in writing by the Procurement Department. Upon such notification, the contractor shall cease work immediately and shall submit an invoice for work satisfactorily completed to date. No allowance will be made for anticipated profits.

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

13. **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 Officer.

Submit all questions about the proposed contract specifications including any discrepancies, omissions, or ambiguities noted by any bidder. If appropriate, APS Procurement Division will issue a written addendum which shall thereafter become part of the bid documents and proposed contract documents. No oral interpretations shall be given by APS and, if given, such 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.

14. **Protest:** Any bidder, offeror, or contractor who is aggrieved in connection with a procurement may protest to the Procurement Division, Albuquerque Public Schools. The protest shall be submitted in writing within fifteen (15) calendar days after the fact or occurrences giving rise thereto. Protests shall be addressed to the Executive Director of Procurement.

15. **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.

16. **Terms and Conditions:** The submission of a bid will indicate that the bidder has read the terms and conditions, understands the requirements and that the bidder can supply the services(s) specified. No contract exists on the part of Albuquerque Public Schools until a written Price Agreement (PA) is executed which will bind the bidder to the terms and conditions of the bid. Issuance of a PA 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/her right, title or interest therein, or power to execute such purchase order or contract to any other person, company or corporation without the previous written consent of Albuquerque Public Schools. Failure to examine any specifications and/or instructions will be at bidder's risk.

17. **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.

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18. **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 promotions/advertising activities with vendors or potential vendors in connection with a procurement action.
19. **Permits/Licensing/Fees:** It is the contractor's responsibility to sure in a timely manner and pay for all necessary permits required for a particular job, if applicable. The exact cost of approved job permits will not be reimbursed by APS. APS does not pay for business licenses, contractor licenses, etc. or renewals of same, memberships in professional affiliations and similar costs of doing business which are the contractor's obligation to secure and maintain. The cost of all bonding if applicable will be paid by the contractor and will not be paid by APS.

**GENERAL OPERATING PROCEDURES**

1. **Contract Term:** The terms of any contract issued as a result of this solicitation will be in effect for one (1) year following award. Contingent upon funding and mutual agreement of both parties, the contract may be extended for three (3) additional years, one year at a time. The total duration of this contract, including exercise of any renewal options shall not exceed four (4) years. APS may make multiple awards if necessary for complete coverage of all sites. Contractor may decline renewal with no penalty and APS will rebid.

Price escalation will be considered for the renewal periods only upon receipt of written request from contractor stating reason for the escalation request and the amount being requested. Justifying documentation must accompany price escalation request. Escalation will not be allowed for any reason not related to changes in market conditions (i.e. increase in cost of inputs, et al.) related to the Scope of Work. If prices should decrease in the market, APS should benefit from any market fluctuation which would derive savings.

Regardless of the termination date, any unfinished work will be carried to completion by the same Contractor without unduly prolonging the process. APS also reserves the right to extend any contract on a short-term basis if negotiations for a new contract are still in progress. Contract may be cancelled by either party with thirty (30) days written notice. This provision shall not affect or limit the rights of APS under standard default provisions. APS reserves the right to upgrade or to downgrade service options as may be mutually agreed between the two parties.

Work performed under the contract shall be subject to strict APS internal controls. Contractor may enter into a contract with a school for a maximum of two (2) consecutive years to be renewed one (1) year at a time. The life of vendor's contract shall not exceed the life of the APS-issued Price Agreement. All vendor contracts, presented to APS schools, are subject for review by the APS Procurement Department designee prior to Principal's acceptance and signature.

Regular working hours for APS are 8:00 a.m. to 4:30 p.m., Monday through Friday. Work shall be coordinated with APS principals, or representative, and the site administrator for minimum interference with school's schedule. Overtime, weekend and emergency work are not anticipated.

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2. **Method of Award:** APS reserves the right to make multiple awards if necessary for adequate delivery and service. At the time of award, APS will establish a price agreement (PA) with the successful bidder(s) which will be in effect for the duration of the contract.
3. **Work Orders:** The work to be performed under this contract is subject to strict APS internal controls. After approval, from school Principal or designee, a photography session will be scheduled. In emergency situations, a verbal work request may be made by the Principal or designee. Note: Contractor shall not accept work requested directly from non-authorized school personnel. Contractor shall proceed with work only after receiving proper authorization from authorized contact(s). In the event of cancellation or postponement of photography session, Principal or designee will make every possible effort to provide a 24-hour notice.
4. **Authorized Contact(s):** The Principal or designee have been designated as authorized contacts for their own schools for purposes of this contract.
5. **Work Requests NOT Defined in Scope of Work:** Contractor shall be held accountable to NOT perform work requests which are clearly beyond the defined scope of work. Contractor has the responsibility of calling such violations to the attention of the APS Procurement Officer. Violations, including proceeding without the prior approval of APS' authorized contact for any project, may become the personal liability of the individual(s) involved.
6. **Subcontractors:** All personnel engaged in the work represented by this bid shall be fully qualified and authorized to perform such services as the contract may require. No work may be subcontracted nor may the bidder assign any interest in this agreement without prior written consent of APS. No assignment or transfer shall relieve the bidder from his/her obligations and liabilities.
7. **Purchase Order and Invoicing Procedures:** Following bid award, a Price Agreement (PA) will be issued to the successful bidder(s) on all awarded services. All services requested by an APS school and delivered by bidder will not be charged / invoiced to APS, but rather, to the student and his/her guardians as it has been done historically.
8. **Prompt Payment:** APS is not responsible for payments for photography services provided to our students. Student and his/her guardians are responsible for payment as it has been done historically.

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**GENERAL REQUIREMENTS**

**Fingerprints and Background Checks** (mandatory after awarded)

**Per Section 1 Section 22-10-3.3 NMSA 1978 (being Laws 1997, Chapter 238, Section 1)** New Mexico Statutes and State Board of Education Rules require that all applicants who have been offered employment, contractors, and contractor's employees with unsupervised access to students be fingerprinted in order to establish positive identification for a state and federal criminal background check. Albuquerque Public Schools will also require said applicants or prospective contractors to pay for the cost of obtaining the fingerprints and background check. Employment or contract may be denied under the Criminal Offender Employment Act if the background check reveals a history of convictions of felonies or misdemeanors, or other information (supported by independent evidence) that could establish unfitness for working in proximity to children and youth. Records and any related information shall be privileged and shall not be disclosed to a person not directly involved in the employment decision regarding the applicant or contractor.

If your bid proposal is accepted and a contract is awarded, contractor(s) must complete the fingerprinting process prior to serving APS students. Please contact Sandra Vilella (Fingerprinting Specialist at 505-889-4862) for procedures/paper work for background checks. Ongoing contractor(s) and/or contractor's staff/employees who will have access working in proximity to students will be required to complete the APS fingerprinting process every two (2) years at vendor's expense. Every vendor's employee in contact with APS students must complete the APS fingerprinting process prior to provision of services; no exceptions. APS will not reimburse vendor for fingerprinting / background check expenses. Vendor must keep record of their employee's results and must be able to provide to APS upon request. If vendor's employee does not pass fingerprinting / background check such employee may not enter an APS campus.

Fingerprints are taken on a walk-in basis at APS Central Office, 6400 Uptown Blvd. NE, Suite 105E, Albuquerque, NM 87110. Fingerprinting hours are 8:00 AM – 3:30 PM, weekdays. Candidates must bring picture identification, a **Visa or MasterCard Debit/Credit card, or a cashier's check or money order in the amount of \$44.00 payable to 3M Cogent**. Cash and personal checks are not acceptable.

The APS Personnel Department will forward the cards and funds to the State and the Federal Bureau of Investigation. Receipt of a report requiring further investigation may result in suspension or cancellation of the contract.

After award and prior to providing services, vendor must provide to the schools' Principals copies of satisfactory background checks / fingerprinting results of personnel working at their school(s). Copies of all satisfactory background checks / fingerprinting results of personnel working at all APS schools must be provided to the buyer, in electronic form (PDF), for the procurement file.

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**New Mexico Resident Bidding Preferences** (if applicable, must submit with bid)

There are two preferences that New Mexico companies can use for bidding advantage for this contract. Please note that these 2 preferences are not cumulative.

**I. VETERANS PREFERENCE**

Policy effective July 1, 2012.

In accordance with Sections 13-1-21 and 13-1-22 NMSA 1978 resident veterans businesses are to receive the following preferences:

1. Resident veterans businesses with annual revenues of \$1M or less are to receive a 10% preference discount on their bids and proposals.
2. Resident veterans businesses with annual revenues of more than \$1M but less than \$5M are to receive an 8% preference discount on their bids and proposals.
3. Resident veterans businesses with annual revenues of more than \$5M are to receive a 7% preference discount on their bids and proposals.

This preference is separate from the current in-state preference and is not cumulative with that preference. However, veteran businesses will still receive the in-state preference once the veteran's preference cap is exceeded.

All public solicitations must contain the attached "Resident Veterans Preference Certification", (page 8). Also, please include vendor preference certificate with your bid response.

Complete SPD Policy (see next page for policy) must be returned with bid packet.

**II. RESIDENTIAL PREFERENCE**

Policy effective January 1, 2012

**GOVERNOR MARTINEZ SIGNS SB1 – IN-STATE PREFERENCES**

As of October 5, 2011, applications for in-state preference will no longer be processed through the State Purchasing Division. Per Senate Bill 1, signed by Governor Martinez on October 5, 2011, all New Mexico resident businesses and contractors that wish to obtain a five percent bidding advantage on all state contracts are required to obtain a valid resident business certificate or resident contractor certificate issued by the NM Department of Taxation & Revenue. This policy is effective January 1, 2012. For additional information please call (505) 827-0951. Please, include resident certificate with bid response.



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**Resident Veterans Preference Certification**

\_\_\_\_\_ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veteran’s preference to this procurement:

**Please check one box only**

Not Applicable. I declare under penalty of perjury that I am not a Veteran. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

“I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate”

“In conjunction with this procurement and the requirements of this business” application for a Resident Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or a public works contract from a public body as the case may be.

“I understand that knowingly giving false or misleading information on this report constitutes a crime.”

I declare under penalty of perjury that the statement is true to the best of my knowledge. I understand that by giving false or misleading statements about material fact regarding this matter constitutes a crime.

\_\_\_\_\_  
(Signature of Business Representative) “

\_\_\_\_\_  
(Date)

\*Must be an authorized signatory for the Business.

The Representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or un-award of the procurement involved if the statements are proven to be incorrect.

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**Insurance** (mandatory. Must submit with bid)

The contractor shall, at his own expense, carry and maintain during the entire performance period of this contract at least the kinds and minimum amounts of liability insurance listed (submit with your bid a copy of certificate of insurance):

- A. Workers' Compensation Insurance: As required by the Labor Laws and the New Mexico Statutes.
  
- B. Public Liability Insurance: At the time of the Contractor's execution of the contract, Contractor shall deliver to Owner a certificate(s) of insurance testifying that he has obtained full Worker's Compensation and Employer's Liability insurance coverage for all persons whom he employs or may employ during the course of the project. Such coverage shall be maintained for the duration of the contract and the warranty period and shall meet the most current requirements.

Liability Insurance: The Contractor shall procure and maintain during the life of the contract, an Owner's Protective Liability Insurance Policy written with APS, its officers, agents and employees as named insured with the following limits.

\$1,000,000 Bodily Injury and Property Damage per occurrence  
\$1,000,000 Bodily Injury and Property Damage aggregate

General Liability Insurance shall be provided with the following limits.

\$1,000,000 General Aggregate  
\$1,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal Injury and Advertising Injury  
\$1,000,000 Each Occurrence  
\$50,000 Fire Damage (any one fire)  
\$5,000 Medical Expense (any one person)

If coverage is provided under Comprehensive General Liability prior to 11/85 ISO policy limits shall be:

\$1,000,000 Bodily Injury and Property Damage combined per occurrence  
\$1,000,000 Bodily Injury and Property Damage combined aggregate

This policy must include premises/operations, independent contractors, products and completed operations, contractual liability covering the contract, broad form property damage including completed operations, personal injury and underground coverage if project requires underground operations. The Contractor shall procure and maintain during the life of the contract, Automobile Liability Insurance with the following limits. Excess insurance or umbrella liability insurance will be acceptable in attaining the required limits.

\$1,000,000 combined single limit bodily injury or property damage per occurrence.

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**SCOPE OF WORK**

**Purpose of this Request for Bid**

The Procurement Department of the Albuquerque Public Schools is requesting bids for consideration to provide Photography Services for K-12 schools. This RFB is intended to solicit responses from qualified, experienced photographers that are interested in providing the services listed below from which any school may choose a vendor and the level of service desired

- Traditional individual and class photographs of students - offering various photo packages
- Yearbook and senior photography
- Special event or specialty photography. I.e. sports photography, fund raisers, awards ceremonies, individual or club sales, videos, panoramic pictures, et al.

Failure to respond to this RFB will exclude any potential Photography Services Offeror from working with any APS schools for the duration of the Price Agreements awarded as a result of this RFB (up to four years). APS may also issue new solicitations from time-to-time either for other areas of expertise or as may become necessary to handle additional demand. With the possible exception of very occasional or one-time highly specialized work, APS schools (the Principals) will draw exclusively from the pool of qualified photography services vendors established by this RFB for these services.

The scope of the procurement is to secure agreements with qualified providers of photography services who possess the ability and resources to provide suitable (school) photography services as needed by the district's schools.

**Background Information**

APS Procurement Department is taking the lead, on behalf of the district's schools and departments, for the coordination of the solicitation of this procurement and selection process of vendors with the purpose of 1) providing our school district with a qualified pool of capable, responsible vendors from which to choose from, 2) to be the central repository of contracts and photography services essential information, and 3) ensuring the services provided are done in a professional, propitious manner for all schools and departments.

APS is the largest school district in New Mexico and one of the nation's largest school districts covers more than 1,230 square mile geographical area that presently encompasses all the Albuquerque metro area in Bernalillo County and one school in Sandoval County. Currently, the district has 139 schools: 13 high schools, 11 alternative high schools, 27 middle schools, 89 elementary schools plus 33 Charter Schools in 2009-2010. Additional schools and/or departments may be added to APS during the life of any resulting contract. APS has approximately 89,500 students and 13,500 employees, 12,907 full time and 6,500 teachers, and 2,081 classroom educational assistants.

The successful offeror(s) must share the philosophy of and understand the legal obligation of APS to be a responsible steward of its students, public (and parent's) funds and the need to aggressively control costs in an innovative and effective manner while providing best value.

An elected Board of Education composed of seven members serving staggered terms of four years each governs the District. The Superintendent is Winston Brooks.

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**Service Capacity**

Vendor must have a minimum of three (3) years of verifiable successful experience providing Photography Services to K-12 schools, preferably in the State of New Mexico. Vendor must submit with their bid three (3) recent Letters of Recommendation from K-12 schools.

Vendor must utilize professional equipment (cameras, barcoding equipment, hardware/software, lightning, backgrounds, shredders, etc.) suitable for high-volume fast-turnover school photography. Vendor must possess specialized software to store / distribute images on CDs in PSPA format. Industry-standard methods for proper disposal of images and student information are required.

**Scope of Work**

**PLEASE, DO NOT BID UNLESS YOU HAVE AUTHORIZATION TO PROVIDE PHOTOGRAPHY SERVICES FOR K-12 SCHOOLS IN THE STATE OF NEW MEXICO AND ARE A LEGITIMATE PROVIDER OF THE SERVICES REQUESTED. MUST PROVIDE CURRENT, VALID BUSINESS CERTIFICATE WITH YOUR BID SUBMISSION.**

The Contractor can only accept assignments from APS` various schools and must only negotiate contract terms and conditions with the principals of each school they intend to service. Contractor **cannot** accept assignments directly given by school staff without the authorization and expressed consent of the school's principal.

The intent of this solicitation is to establish a pool of qualified photographers from which any school may choose the (photography) Contractor and level of service desired. Included in the scope of services are yearbook pictures, special event or specialty photography (i.e. sports, etc.), fund raisers, individual or club sales, videos, panoramic pictures, buddy pictures and various picture "packages".

This RFB will define the parameters of any photography contract with APS. Clarifications may be made at any time by mutual agreement between the Procurement Department, the school(s) and the photographer(s).

1. The photographer must respond to this or subsequent RFBs in order to be considered for work in the District. This is in accordance with Board of Education Directives. Failure to respond to this RFB will exclude any potential Photography Services Offeror from working with any APS school for the duration of the contracts awarded as a result of this RFB. With the possible exception of very occasional or one-time highly specialized work, APS will draw exclusively from the pool of qualified photography services vendors established by this RFB for these (Photography) services.
2. Assuming a Contractor (photographer) is approved for the pool, he/she will contact APS Procurement Department at any time there may be a change of ownership or similar occurrence of importance which could reasonably be expected to affect the performance of this contract.
3. Prior to the beginning of each school year, the photographer shall provide to the Procurement Department a list of all schools which he/she will be servicing. This will be concurrent with the intent to remain active and updating of any change in status.
4. The photographer's contact will be the school principal. Although other organizations such as the PTA/PTO as well as parents may take an active interest in the selection of

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the school photographer, the principal is ultimately responsible for selecting Contractor for the school and contracts signed by any other individual will not be considered valid.

5. Any contract presented to the principal must be reviewed and approved by the Procurement Department prior to signature. Contracts will be for a maximum of two (2) consecutive years, to be renewed yearly upon agreement from both parties. APS (Principals) reserve the right of not renewing a contract for second year for justifiable reasons. APS reserves the right to implement a standard contract form if that proposed by the photographer should prove to be unsatisfactory. *Provide a copy of the contract that you intend to provide to the schools for our review and evaluation.*
6. The standard "retake" policy for non-portrait photography is as follows. If the photographer is at fault for technical error or poor exposure, the photograph must be redone in a timely manner at no charge to the student or the school. If the student or parent is sincerely dissatisfied, the parties may agree to retake the picture. The replacement pictures may be taken, at no charge, during the established retake day at the school or the student may arrange for use of the photographer's studio.
7. Sitting fees will apply to Senior portrait photography only. This fee will be in proportion to the complexity of the work taking into consideration the length of the session, number of proofs, multiple poses and changes of clothing, requests for animals, props, etc. The photographer may choose to waive this fee as a matter of policy or business judgment or if the senior opts to purchase a package.
8. Photographers will advertise the specifics of the upcoming photography sessions in a prompt manner which will allow students and teachers to plan for the specified day and time. Flyers, posters, brochures, etc., appropriate for the student age group will be provided at the expense of the photographer and brought to the school in sufficient quantities to cover distribution to the population. The photographer will not mail this type of literature to the student. The school will make readily accessible space available for general distribution and/or allow handouts in the classroom. The provided information will specify that checks and money orders are to be made payable to the photographer. It will also include a thorough description of the various picture selections available, the cost of each as well as a definitive statement of the photographer's retake policy, sitting fees or any additional charges, etc. Note that it is not mandatory for any student to have his or her picture taken, whether for the yearbook or for any package.
9. Photographer will first meet with the school administration and any other involved parties (PTA, etc.) to establish ground rules for the photography sessions. Date(s) and time(s) will be mutually agreed upon between the parties. Set-up space with suitable electrical service which can accommodate the required number of cameras, lighting, computers, photographers, and students will be assigned. School is to have the photography area cleared and made ready for camera set up prior to the photographer's arrival on picture-taking day. Any additional photographers or studio personnel will be identified and cleared for access to the campus. Contact person(s) for student inquiries and volunteer(s) for the shoot date will also be identified.

This pre-session meeting is important. It is strongly suggested that all aspects of the picture-taking process be thoroughly discussed and agreed upon beforehand. Reorder

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dates, commission percentages, and provision for timely payment of commission check, refund policy, guaranteed delivery date of finished product, number of exposures to be taken of each student, yearbook deadlines (if applicable) and other considerations such as payment of associated late fees must all be addressed at the pre-session meeting. The photographer will also be provided with class lists, enrollment figures, scholarship or special award information, if needed, in a timely manner.

10. If a school or a photographer should have a complaint against the other, those concerns will be addressed by the Procurement Department with the photographer and school personnel equally represented.
11. Publishing fees, defined as the charge by the publisher to include a senior color section in the yearbook, may be collected by the photographer on behalf of the school and will be turned over to the school in a timely manner. This fee is separate and not to be considered a part of any commission or sitting fee.
12. **Commission** is defined as the percentage of the gross after the tax is deducted. This means that the photographer will not first deduct processing costs, profits or any other portion of the cost of the photography prior to computing any commission check. The photographer will be responsible for the payment of any taxes due as a result of this contract.
13. Photographers will not be expected to furnish free supplies for use in darkrooms, yearbook production, and the like. Photographers may offer to sell such items to a school at reduced cost, reimbursement for freight etc. or to add a nominal handling charge. The school may also purchase from other sources and is not limited to an exclusive agreement with any photographer for the purchase of these products.
14. No cameras or similar equipment are to be loaned to the school. Such items are expensive and there are no insurance provisions for loss or damage. If this provision is ignored, the loss or damage of any such item will be the personal responsibility of the individual involved. The photographer may purchase and sell equipment or film to the school at reduced cost, if desired. The school is not limited to an exclusive agreement with any photographer for the purchase of these products.
15. Some I.D. cameras, laminators, cutters, etc. may be at a school site as a result of previous contracts. As a part of this proposal, any photographer with such equipment still in the field will be asked to identify it by location, piece, and serial number, general condition and the supplies required to operate the item. Depending upon the condition of the equipment and the needs of the school, APS may wish to purchase the used equipment, purchase new equipment, rent the used equipment from the owner or rent from another source or use no equipment. APS will purchase supplies as needed.

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16. With regard to complimentary photography, please note the following. Color faculty photos for the high school yearbooks will be furnished at no charge by the photographer. “Principal Awards Certificates”, photographs for the student’s photo cumulative file, and / or free photography packages for volunteers is not mandatory, but may be offered at the discretion of the photographer as a form of appreciation. Schools may not demand free photography for staff members or any other school official(s). If these persons wish to have their pictures taken, the charge for photo packages will not exceed the student cost for the same selection, package etc.
  
17. Provide with your bid submission copy of current Fall and Spring price lists as they would be presented to APS schools in the Fall 2014 and Spring 2015.

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**COST**

<b>BID PROPOSAL FORM</b>							
<b><u>Group 1: Elementary Schools, Fall &amp; Spring Photography</u></b>							
<b>Vendor Name:</b>							
Package	8x10 (#)	5x7 (#)	3x5 (#)	2x3 (#)	Background Choice (Y/N)	Price per Pkg.	Commission (%)
A							
B							
C							
D							
Individual							
Classroom Photo							

*\*The package prices requested, however binding, are for evaluation purposes. APS understands vendor may have other packages and products available not listed above.*



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<b>BID PROPOSAL FORM</b>							
<b><u>Group 2: Middle Schools, Fall &amp; Spring Photography</u></b>							
<b>Vendor Name:</b>							
Package	8x10 (#)	5x7 (#)	3x5 (#)	2x3 (#)	Background Choice (Y/N)	Price per Pkg.	Commission (%)
A							
B							
C							
D							
Individual							
Classroom Photo							

*\*The package prices requested, however binding, are for evaluation purposes. APS understands vendor may have other packages and products available not listed above.*

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<b>BID PROPOSAL FORM</b>							
<b><u>Group 1: High Schools, Fall &amp; Spring Photography</u></b>							
<b>Vendor Name:</b>							
Package	8x10 (#)	5x7 (#)	3x5 (#)	2x3 (#)	Background Choice (Y/N)	Price per Pkg.	Commission (%)
A							
B							
C							
D							
Individual							
Classroom Photo							

*\*The package prices requested, however binding, are for evaluation purposes. APS understands vendor may have other packages and products available not listed above.*

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**APPENDIX A**

**STUDENT CONFIDENTIALITY FORM**

Dear vendor,

This appendix is to inform you of the following:

- 1) All confidential information provided to the contractor shall not be made available to **any** individual or organization, affiliated or not, without prior written approval by APS. Failure to comply with this directive will result in immediate termination of contract and it may carry legal actions against vendor.
- 2) This contract is for photography services only. In compliance with Federal Law and per directive from the APS' Superintendent's office and the Student Leadership Council, photography vendors may not request, or obtain, lists with student's names for any purpose including, but not limited to, the provision of photo student identification cards.
- 3) Vendors are required to and agree to immediately expunge any and all current and past student information they have received from the district or school and must sign and return this form to provide certification of its completion.
- 4) Vendors are not permitted to leave district property with any student information other than information that has been provided to them by parents/legal guardians.
- 5) Student information obtained from the district or school shall never be used for marketing or any other purpose(s) as per number 1 listed above.

Please sign and return this letter, with your bid submission, acknowledging acceptance of the aforementioned conditions for award and /or renewal. If you do not agree with the conditions set in this letter or do not return this original letter, with your bid submission, signed by an authorized representative of your company, your contract will not be awarded and or renewed and will not be permitted to conduct business with APS.

Thank you for your support of our students and you continued interest in our school district.

Sincerely,

Gustavo Rossell  
Senior Buyer

TERMS ACCEPTED

TERMS DENIED

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title of Company Official

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**APPENDIX B**

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person 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 shall void an executed contract or cancel a solicitation or proposed award for a proposed contract 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.

**THIS FORM 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 federal, 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.

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“**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.

“**Person**” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“**Prospective contractor**” means a person who 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 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.

**DISCLOSURE OF CONTRIBUTIONS:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Name of Applicable Public Official: \_\_\_\_\_

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)

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**--OR--**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (Position)

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**APPENDIX C**

**CONFLICT OF INTEREST AND  
DEBARMENT/SUSPENSION CERTIFICATION FORM**

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

**The authorized Person, Firm and/or Corporation states that to the best of his/her belief and knowledge:**

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

**DEBARMENT/SUSPENSION STATUS**

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

**CERTIFICATION**

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

Signature: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

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

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

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**APPENDIX D**

**BID SUBMITTAL REQUIREMENTS AND CHECK LIST**

Please submit your completed proposal, including the following items: Note that **the requested information is mandatory** and failure to submit them with your response will deem it non-responsive and will be disqualified. Check off and sign that items are included in your response to this RFB.

- \_\_\_\_\_ New Mexico Resident Veteran’s Preference Certification (pg. 8)
- \_\_\_\_\_ Insurance (pg. 9)
- \_\_\_\_\_ Valid Business License (pg. 11)
- \_\_\_\_\_ Letter of Recommendation by K-12 schools (pg. 11)
- \_\_\_\_\_ Copy of Vendor’s Contract for APS schools (pg. 12)
- \_\_\_\_\_ Copy(s) of Fall / Spring Price List(s) (pg. 14)
- \_\_\_\_\_ Cost Section (page 15-17)
- \_\_\_\_\_ Appendix A – Student Confidentiality Form (pg. 18)
- \_\_\_\_\_ Appendix B – Campaign Contribution Disclosure Form (pages 19-21)
- \_\_\_\_\_ Appendix C – Conflict of Interest and Debarment / Suspension Form (pg. 22)
- \_\_\_\_\_ Appendix D – Bid Submittal Requirements and Check List (pg. 24)
- \_\_\_\_\_ Terms and Conditions (pages 25, 26)



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## ALBUQUERQUE PUBLIC SCHOOLS - BOARD OF EDUCATION - TERMS AND CONDITIONS

### 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.

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 or a applicable if using Veteran Preference. This does not apply when federal funds are being used. Any New Mexico firm claiming preference will insert its residential reference number and copy of certificate as issued by New Mexico Taxation and Revenue 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 alleges 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,

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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 any time, 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 sub-suppliers 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_____	Contractor's License No. _____ (If Applicable)
Type or print name of above_____	Resident Certification No: _____ (as issued by NMTRD)
Name of Firm_____	
Address_____	Fax No. _____
_____	Email Address _____
Area Code and Telephone No. _____	Federal ID No. _____