



Check out, C.P.M.
PROCUREMENT MANAGER Things!

October 15, 2012

Bid: 13-009PS-AM Plastic Utensil & Napkin Sets

DATE: November 5, 2012

TIME: 1:00 p.m.

LOCATION: Albuquerque Public Schools
(Address for Procurement Department
Hand or Courier 6400 Uptown Blvd NE Suite 500 E
Delivery) Albuquerque, NM 87106

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.)

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 un-opened. 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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**PLASTIC UTENSIL & NAPKIN SETS
BID NO. 13-009PS-AM**

INTENT: Albuquerque Public Schools (APS) invites you to bid on a supply of Plastic Utensil & Napkin Sets, to be delivered to the Food & Nutrition Complex, located at, 800 Louisiana Blvd. NE, 87108. Specifications and a sample of the APS logo are attached. Terms and conditions follow.

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.

- Bid Information
- Information for Bidders
- General Terms and Conditions
- General Conditions
- General Requirements
- Specifications and Pricing
- Conflict of Interest and Debarment Suspension Certifications Form
- Copy of APS Logo
- Terms and Conditions (Signature Page -2)

2. **Preparation of Bids:** Each bid must be submitted on the prescribed forms. Bidders are to comply with all instructions and provide the information requested into the appropriate spaces. Bid prices must be entered in **black ink** or type written. 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. 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 rejected.**

All cost incurred by the bidding company in the preparation, transmittal or presentation of any proposed or material submitted in response to this Bid will be borne solely by the bidding company.

3. **Receipt and Opening of Bids:** Bids must be prepared and submitted in accordance with the provisions hereof. The owner 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 by delivering written notice to the location designated as the place where bids are to be

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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 for 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 carefully examine the proposed contract documents to obtain first-hand knowledge of all proposed work. Contractors will not be entitled to any compensation or any extension of the contract time for conditions which can be determined by examining current work requirements 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 analyses and has made provision as to the cost thereof in their bid.

5. **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, the bid will be rejected.
6. **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.
7. **Familiarity with Conditions:** Clarification of bidding procedures for this contract may be made by contacting Priscilla A. Saavedra, District Buyer at (505) 878-6117, e-mail: saavedra_pr@aps.edu. Clarification of the specifications or other technical aspects of this may be made by contacting Juan Saiz, Food & Nutrition Services, at (505) 345-5661 ext. 37027. **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.

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Bidder 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 current work requirements 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 analyses and has made provision as to the cost thereof in his bid.

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 of all 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 or personnel, conditions of employment or any other such data as may be pertinent.
9. **Awards:** APS reserves the right 1) to award the contract 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.**
10. **Taxes:** APS holds a Class 9 Nontaxable Transaction Certificate and is exempt from payment of taxes on tangible personal property. A NTTTC will be issued on request. Bid is for product only.
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. **Use of Federal Funds:** Food Service revenues are derived primarily from federal sources. Federal law prohibits application of any residential preference when the expenditure of federal funds designated for specific purchase(s) is involved.

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

If your company is approached by any person seeking to receive favors, gratuities, kickbacks, either monetary or in kind, in connection with the performance of this contract, please contact the Purchasing Director at 505-878-6112 or the Director of Internal audit at 505-842-3685.

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 item(s) perform work as specified.

No contract exists on the part of Albuquerque Public Schools until a written Purchase 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 or contract with any other person, company or corporation to perform the contract without the previous written consent of Albuquerque Public Schools.

Albuquerque Public Schools reserves the right to return product which does not meet specifications indicated in bid at bidder's expense.

Failure to examine any specifications 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 the 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 Priscilla Saavedra, District Buyer. If appropriate, APS Procurement Division will issue a written addendum which 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

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prior bid opening. All bids shall be responsive to and include any addenda issued prior to bid opening.

2. **Cancellation:** Failure to comply with the terms of the contract documents and/or unsatisfactory performance with delivery or product will constitute grounds for cancellation of the contract. If, after consultation between APS using department, APS Procurement Division and the Contractor 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. Speculation
3. **Purchase Agreement (PA) and Invoicing Procedures:** Invoices must clearly state the Purchase Agreement Number assigned to your company for this fiscal year bidding, the quantity, description, individual prices and total. All information on invoice(s) must be filled out in black ink or typed and readable. APS will make a good faith effort to work with your company to remedy the problems with invoices. If a problem with invoicing cannot be rectified within a two week period after notification by telephone and letter the contract may be cancelled.

APS Purchasing and/or Food & Nutrition Services reserve the right to refuse to process or honor invoices in which quantity, description, individual prices and totals are left blank. Payments will not be made with respect to such invoices until such invoices are returned to APS in proper understandable form. APS will have no liability for delayed payment or other consequence due to improper invoicing.

Each delivery at each site shall be invoiced separately by contractor and the original copy shall be left at the site, showing the full signature of the receiving clerk. Initials only are not acceptable and delivery tickets showing only initials will not be processed for payment.

4. **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 rate of one and one-half percent (1.5%) per month. The 60 days does not go into effect until a proper invoice is submitted. 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 schedule will be 30-45 days.

GENERAL REQUIREMENTS

1. **Scope of Work:** APS is one of the nation's largest school districts. It comprises an area of approximately 1300 square mile geographical area that encompasses all

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of the Albuquerque metro area in Bernalillo County and one location in Sandoval County, New Mexico. At the present time there are nearly 90,000 students attending 140 schools. The APS cafeteria services are the largest food operation in the state providing low-cost nutritional meals to students and staff at each school site and appropriate administrative sites throughout the district.

The first specification listed is for a School Pack, Spork & Napkin Set. Each individual package set to be imprinted with a logo developed for Albuquerque Public Schools, and, sample must be included in bid. A copy of the APS logo is attached.

The second specification is for a Holiday(s) School Pack, Fork/Spoon and Napkin Sets. Samples of your holiday napkins must be included with bid.

Contractor shall hold APS harmless from any cost, expense, damage or loss incurred in any manner because of any alleged or actual infringements of copyright, trademark or patent. Award of contract will be based on total price and quality of product. APS reserves the right to award "individually" or on an "all or non" basis, or by awarding only one specification.

APS reserves the right to add new products within each category as they are introduced to the market.

2. **Contract Period:** Any contract issued as a result of this solicitation will be in effect from date of award through a four b year period, with option to renew each year.
3. **Pricing:** All prices quoted will be F.O.B. destination including freight. APS will require a 30 day written notice for any request for price escalations/decreases. **Price escalation will not be allowed for any reason other than Market-related issue.**
4. **Escalation Clause: Prices must remain firm.** In other words, only in the event of a fuel price increase or, if successful contractor cannot honor pricing due to a Market related issues that will result in a price increase for packer to APS, or an "Act of God.: or similar catastrophe and/or unusual event beyond the control of the bidder during the life of the contract, then price escalation may be allowed.

A request for price escalation must be supported with price documentation specifying the circumstances relied upon for escalation. Any such approved increase will be confirmed by amendment. No substitutions of product are allowed unless approved by APS Purchasing Department and Food & Nutrition Services.

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Contractor may decline renewal with no penalty and APS will either award to the next low bidder or re-bid. If prices should decrease in the market, APS must also benefit from any market fluctuation which would derive a savings.

APS will require a 30 day notice for any request for price escalations/decreases.

A letter of withdrawal will be required by Bidders unable to honor pricing after bid has closed or after contract award, due to misquote by Broker, unavailability of product, unacceptable product upon delivery, etc. APS will go to the next low bidder to obtain goods in question and/or re-bid.

5. **Request(s) NOT Defined in Scope of Work:** Contractor shall be held responsible to **NOT** fill requests which are clearly beyond the defined scope of the proposed contract. Should such requests occur, contractor has the responsibility of calling such violations to the attention of the APS Procurement Officer.
6. **Negotiation of Related Items:** APS does, however, reserve the right to negotiate with successful bidder(s) for pricing on items related to this contract but not specifically named herein. In the event a purchase is made as a result of such negotiations, the contract shall be amended to reflect the new item(s) and pricing structure.
7. **INSURANCE:** 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 insurance listed:

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.

\$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

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\$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.

Auto Insurance: Coverage must be on an “any Auto” basis or must include owned, hired and non-owned automobile coverage.

Contractor shall carry automobile liability insurance up to the limits of the Tort Claim Act. to-wit: Contractor must submit proof of auto insurance prior to services to the Albuquerque Public Schools. In any action for damages against a government entity or a public employee while acting within the scope of his duties as provided in the Tort Claims Act (41-4-1 to 41-4-27 NMSA 1978), the liability shall not exceed:

- a) .The sum of one hundred thousand dollars (\$100,000) for damage to or destruction or property arising out of a single occurrence; and
- b) The sum of three hundred thousand dollars (\$300,000) for all past and future medical and medically-related expenses arising out of a single occurrence, and
- c) The sum of four hundred thousand dollars ((\$400,000) to any person for any number of claims arising out of a single occurrence for all damages other than property damage and medical and medically-related expenses as permitted under the Tort Claims: or

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- d) The sum of seven hundred fifty thousand (\$750,000) for all claims other than medical or medically related expenses arising out of a single occurrence.

Contractor will provide to APS proof of such insurance prior to the execution of a contract. Contractor also agrees to keep such insurance in force throughout the term of the contract, including any renewals, and to notify APS immediately if such insurance is not in force. Failure to comply with this provision may result in immediate cancellation of the contract. APS recommends that professional liability insurance be maintained at a level of \$1,150,000 which exceeds the limit of the Tort claims Act. In addition, the contractor's employees shall be insured for Worker's Compensation if applicable.

Successful contractor **must** furnish proof of coverage to the APS Procurement Officer **prior** to official award.

If any policy changes occur during the life of the contract, it is the contractor's responsibility to provide updated proof of coverage to the APS Procurement Department.

8. **Quantities:** The estimated quantities as shown on the pricing sheets 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.
9. **Samples, Product Information and Technical Data:** Samples, product information and/or technical data are required when submitting a bid for items other than as specified. All samples will be furnished at the expense of the bidder including any freight charges. Samples which are not depleted or destroyed by testing procedures will be returned at bidder's expense if so requested. Samples with no return instructions will be disposed of ten (10) calendar days after bid award. APS does not provide written request for samples other than this bid. The burden of proof shall lie with the bidder.

If necessary, send samples under separate cover clearly identified with this bid number. APS will not delay evaluation or award when samples are not present.

10. **Shipments:** United Postal Services (UPS) shipments do not always prove to be satisfactory for school deliveries. If your firm uses UPS you may be required to provide an alternate delivery method or furnish proof that the carrier will respond to and be aware of school scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the specified time for the opening of bids shall not be considered. Any bid received after the specified time for the opening of bid shall not be considered.

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

It is essential that all purchases of agricultural commodities and food products comply with this statutory provision.

12. **Warranty/Guarantee:** All bidders must guarantee full satisfaction of their products’ and permit unsatisfactory product to be returned collect for full money refund.

Specify if your company will impose any minimum order quantity in either product or dollars.

What is your minimum? _____

Average lead time? _____

Identify a contact person(s) for product or delivery problems.

NAME: _____ PHONE: _____

NAME: _____ PHONE: _____

Identify a contact person(s) for invoice problems.

NAME: _____ PHONE: _____

NAME: _____ PHONE: _____

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Item No.	Description
01.	School Pack Spork & Napkin Set – Medium weight, polypropylene. Each individual package set to be imprinted with a logo developed for Albuquerque Public Schools. Film grade to be a barrier to bacteria, dirt and contaminants. Napkin to be 13” x 17” single ply.
	Quantity <u>7500 cases per year</u>
	Brand/Manufacturer _____
	Qty per case _____
	Case Price _____
02.	School Pack Holiday Spoon/Fork & Napkin Sets - Medium weight, polypropylene kit with large dinner napkin. To include salt & pepper packet, Film grade to be a barrier to bacteria, dirt and contaminants. Napkin to be 13” x 17” single ply.
	Quantity <u>500 cases per year</u>
	Brand/Manufacturer _____
	Qty per case _____
	Case Price _____

All bidders must submit samples and logo with bid. A copy of the APS approved logo is enclosed.

Approved products must be labeled, “Made in the USA”.

**CONFLICT OF INTEREST AND
DEBARMENT/SUSPENSION CERTIFICATION FORM
BID NO. 13-009PS-AM**

CONFLICT OF INTEREST

As utilized herein, the term "Vendor" shall mean that entity submitting a proposal to Albuquerque Public Schools in response to the above referenced 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 _____

DEBARMENT/SUSPENSION STATUS

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

CERTIFICATION

The undersigned hereby certifies that he/she has read the above CONFLICT OF INTEREST and DEBARMENT/SUSPENSION Status requirements and that he/she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the vendor named **and that the**

information contained in this document is true and accurate to the best of their knowledge.

Signature:

Name of Person Signing (typed or printed):

Title:

Date:

Name of Company (typed or printed):

Address:

City/State/Zip:

Telephone No:

Fax No.

Email Address



www.aps.edu



ALBUQUERQUE PUBLIC SCHOOLS
Expect great things!

 Red 193

 Black

 White Background



Please refer to your Pantone color book for an exact color match.

**ALBUQUERQUE PUBLIC SCHOOLS
BOARD OF EDUCATION
TERMS AND CONDITIONS
Bid No: 13-009PS-AM**

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 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, 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) _____