



**ALBUQUERQUE PUBLIC SCHOOLS**

Procurement

*Accelerate Progress for Students*

Winston Brooks  
SUPERINTENDENT

Mark Heckart, C.P.M.  
EXECUTIVE DIRECTOR

July 3, 2013

**BID NO:** 14-007MS-SL Produce Fresh Assorted

**DATE:** July 24, 2013

**TIME:** 10:00 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:** Melissa Sanchez, District Buyer  
[melissa.sanchez@aps.edu](mailto:melissa.sanchez@aps.edu), (505) 878-6117

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

sls

# **PRODUCE FRESH ASSORTED BID NO. 14-007MS-SL**

**INTENT:** Albuquerque Public Schools (APS) invites you to bid on Fresh Assorted Produce for Food & Nutrition Services in accordance with the specifications, terms, and conditions.

Senate Bill 90, for the Legislative Health and Human Services Committee, has made an appropriation of \$85,000.00, to provide New Mexico grown fresh fruits and vegetables to all Schools in the Valley Cluster, in the Albuquerque Public School District. APS will purchase fruits and vegetables from New Mexico distributor(s) for the schools in the Valley Cluster.

## **INFORMATION FOR BIDDER**

**1. 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 of this bid. The award shall be made by a Price Agreement issued by APS to the contractor and shall bind the contractor to the terms of the contract documents herein.

- Information for Bidders
- General Terms and Conditions
- General Conditions
- General Requirements
- Specifications and Pricing
- Campaign Contribution Disclosure Form
- Conflict of Interest and Debarment/Suspension Certificate Form
- Terms and Conditions.(Signature Page)

**2. Preparation of Bids:** Each bid must be submitted on the prescribed form. All blank spaces for bid prices must be filled in with ink or typewritten. Corrections shall be initialed in ink by the person signing the bid. Each bid must be submitted in a sealed envelope bearing on the outside the name and address of the bidder of, or failure to open bid. **An authorized representative of the company must sign the bid. Bids not signed will be deemed non-responsive and may be rejected.**

**3. 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 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.

# **PRODUCE FRESH ASSORTED BID NO. 14-007MS-SL**

## **INFORMATION FOR BIDDER CONTINUED**

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

Bidder shall also construe this provision to incorporate 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 that applies to APS personnel shall be deemed to be in force for contractor's work force occupying any work site.

- 5. Familiarity with Conditions:** Clarification of bidding procedures may be made by contacting APS Procurement Department, Melissa Sanchez, District Buyer, telephone number (505) 878-6117, e-mail: [melissa.sanchez@aps.edu](mailto:melissa.sanchez@aps.edu); for clarifications of technical aspects may be made by contacting APS Food and Nutrition Services, Juan Saiz, telephone number (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 the contractor for negligence, misunderstanding, or error in this regard.

Bidder shall carefully construe 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.

- 6. Conditional Bids:** Bids in which acceptance is in some manner restricted or conditioned by the bidder will be reviewed by APS. If the limitations imposed are not in the best interest of APS or are prejudicial to other bidders, the bid will be rejected.
- 7. Multiple Offers:** APS will not select from multiple offers on a single document. If bidder offers more than one brand and/or price per item, the 1) as specified or the 2) most expensive will be considered as the primary bid. Other offers will not be evaluated unless the primary bid is low bid in its own right. If you wish to offer an alternate bid in addition to your regular bid, make extra copies of the necessary pages (including the signature pages) and submit as Bid #2. Each bid must stand alone and comply with the terms and conditions of the contract.

# **PRODUCE FRESH ASSORTED BID NO. 14-007MS-SL**

## **INFORMATION FOR BIDDER CONTINUED**

- 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 in to 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. Tax Requirements:** 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. Bid for the product only.
  
- 11. Protest:** Any bidder, offeror, or contractor who is aggrieved in connection with a procurement issue may protest to the Procurement Department, 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. 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 Procurement Executive Director at (505) 878-6112 or the Director of Internal Audit at (505) 880-3727.
  
- 13. 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.
  
- 14. Use of Federal Funds:** Food Service revenues are derived primarily from federal sources. Federal law prohibits application of any residential and veteran's preferences when the expenditure of federal funds designated for specific purchase(s) is involved.

# **PRODUCE FRESH ASSORTED BID NO. 14-007MS-SL**

## **GENERAL TERMS AND CONDITIONS**

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

No contract exists on the part of Albuquerque Public Schools until a written Price Agreement (PA) is executed. Issuance of a PA will be considered sufficient notice of acceptance of contract. A Price Agreement (PA) issued as a result of this Bid has no dollar value associated with it and there are no guarantees that APS will require services or goods under the PA. The PA is an agreement on terms and conditions and pricing for possible future procurements based on the needs of APS during the contract period.

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 his 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.

Albuquerque Public Schools reserves the right to return produce items which do 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 Department.

Submit all questions about the proposed contract specifications including any discrepancies, omissions or ambiguities noted by any bidder to the appropriate contact person. If appropriate, APS Procurement Department 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 prior bid opening. All bids shall be responsive to and include any addenda issued prior to bid opening.

- 2. Cancellation of Contract:** 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 department, APS Procurement 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 will cease work immediately and shall submit an invoice for work satisfactorily completed to date. No allowance will be made for anticipated profits.

**PRODUCE FRESH ASSORTED  
BID NO. 14-007MS-SL**

**GENERAL CONDITIONS CONTINUED**

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 prorate 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.

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

Invoices must clearly state the "Price Agreement 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 invoices are not generated as per contract pricing, APS reserves the right to request corrected invoices or APS may correct invoices without notice to company.

APS Procurement 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. 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 Procurement Department and/or Food and Nutrition Services will have no liability for delayed payment or other consequences due to improper invoicing.**

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

- 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. 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.

# **PRODUCE FRESH ASSORTED BID NO. 14-007MS-SL**

## **GENERAL REQUIREMENTS**

- 1. Scope of Work:** APS is one of the nation's largest school districts. As the largest district in New Mexico, Albuquerque Public Schools provides educational services to nearly 90,000 students, and 140 schools, serving nearly a third of the state's students in Albuquerque, Rio Rancho, Corrales, Los Ranchos de Albuquerque, Tijeras, San Antonito, and Edgewood. The APS cafeteria services is 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.

APS Food & Nutrition Services is responsible for the Nutritional School Breakfast Program, the National School Lunch Program, the After School Snack program and the Summer Food Service Program. Therefore, fruits and vegetables are an integral part of menu planning and are purchased on a continuing basis.

The purpose of this bid is to establish pricing for an estimated quantity of fruits and vegetables.

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

**Note:** The Produce Bid is a yearly bid with price quotes submitted monthly. At the completion of the one year period, this contract is subject to review and may be extended for three (3) additional years. This entire bid package will not be mailed other than yearly, and price quotes must be submitted every 2<sup>nd</sup> Thursday of each month before 11:00 a.m., on a continuing basis. Prices quoted will be firm for one month. If the Procurement office is officially closed for an APS holiday on a Thursday, produce bid opening and awards will be delayed until the next open day at 11:00 a.m. Therefore, submit your price quotes before Thursday of a holiday closure, etc. Period of supply will then be for the remaining days of the week through the next Thursday when the regular schedule will resume. Specific dates for the monthly price quotes submittals are listed on page seventeen (17) of this document. Please make extra copies of the quotation sheets and signature page as needed and submit in a sealed envelope each month, with bid number, and bid name, listed on the outside of the sealed envelope.

Bid is divided into two (2) Lots – Lot 1, is for “Broad Line/Produce Distributors **ONLY**”, Lot 11, is for “Local New Mexico Growers” only.

## **VENDOR QUALIFICATIONS:**

### **Lot 1 – Broad Line/Produce Distributors:**

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

# **PRODUCE FRESH ASSORTED BID NO. 14-007MS-SL**

## **GENERAL REQUIREMENTS CONTINUED**

### **Lot 1- Continued**

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

- Bidder must have a current valid PACA license in place.
- Bidder must have or have access to and will utilize refrigerated warehouse facilities capable of holding temperatures at 35 degrees, or 50 degrees and 70 degrees F.
- Bidder must have or have access to and will utilize a fleet of mechanically refrigerated trucks compartments capable of holding air temperatures at 45 degrees minimum while on delivery routes.
- Bidder must have a HACCP plan in place. The district may require documentation verifying that a written HAACP plan is followed.

### **Lot 11 – Local Growers/ONLY**

Bids submitted under Lot 11 are for locally grown produce only. Then Bids will only be considered from commercial distributors who meet the qualifications listed below. Bidders must have adequate organization, facilities, equipment and personnel to ensure prompt and efficient service. Food and Nutrition Service and/or Procurement Department, reserves the right, before recommending any award, to inspect the facilities and organization or to take any other action necessary to determine ability to perform in accordance with specifications, terms and conditions.

The Food and Nutrition Service and/or Procurement Department, will determine whether the evidence of ability to perform is satisfactory and reserves the right to reject bids where evidence submitted or investigation and evaluation indicates inability of the bidder to perform.

The decision as to whether a bidder meets the qualifications stated below is at the discretion of Food and Nutrition Services and the Procurement Division.

The awarded vendor shall participate in an annual unannounced third party food safety inspection to assure the District that the perishable products distributed to the schools are handled in accordance with the latest USDA and industry food safety standards.

APS may or may not order all items on the product sheets each week nor does it guarantee to order any particular item only because it has been offered. The district will take advantage of seasonal specials and general availability as well as price. Menus are available for all interested bidders at least one week in advance. Copies of menus may be obtained from Food and Nutrition Service Department, Juan Saiz.



# **PRODUCE FRESH ASSORTED BID NO. 14-007MS-SL**

## **GENERAL REQUIREMENTS CONTINUED**

### **Lot II - Continued**

Food is not ordered or prepared on holidays, Christmas vacations etc. Bidders will be advised of APS closing by Cafeteria Services management and/or Procurement Division. Year round schools that are open will serve food as usual, although the numbers of lunches may be less than during the traditional August – May time period.

APS reserves the right to add produce products through amendment within each category with approved contractor(s) as they are introduced into the market with prior approval from APS Purchasing Department and APS Food and Nutrition Service.

2. **Contract Period:** Any contract issued as a result of this solicitation will be in effect for a one (1) year period after date of award will be in effect beginning August 1, 2013 thru July 31, 2014.. At the completion of the one year period, this contract is subject to review and may be extended for three (3) additional years, one year at a time. Pricing will be F.O.B. cafeteria destination.

Although this contract is being bid on behalf of Food & Nutrition Services, individual schools/departments, state agencies or local public bodies will be referred to the successful contractor in the event of requirements that can be adapted to the specific items awarded.

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

APS recognizes that produce can and does experience rapid fluctuations. It is assumed that the bidder will be aware of normal market trends, shortages, seasonal variations etc. and will price his/her quotation accordingly for the year. If prices should decrease in the market, APS must also benefit from any market fluctuation which would derive a savings.

4. **Specification Sheets:** Specification Sheets have been modified. Please review the specification sheets carefully; all produce listed is produce being served at the present time. Bids are to be submitted according to pricing structure.
5. **Bid Sheets/Electronic Copy:** Please review Bid Specification Sheets carefully and fill in all required information. Every cell in each column of the items that you are bidding must be filled in by the Corporate Office of the Processor. **Bid Specification Sheets must be typed, in order for accurate entry on bid analysis report. An electronic copy (excel file) is required.** Bidder will own goods during transit.

**PRODUCE FRESH ASSORTED  
BID NO. 14-007MS-SL**

**GENERAL REQUIREMENTS CONTINUED**

6. **Quantities:** The estimated quantities as shown are a projected/proportional annual usage based on historical data. This is not a commitment to purchase. The information is included to provide a potential bidder with some idea of possible contract activity.

What is your minimum order (quantity, dollars, etc.)? \_\_\_\_\_

7. **Quality:** Quality of all products shall be fresh and unspoiled, not wilted or otherwise deteriorated. Produce must be Grade 1 or better. We ask in the pricing structure to identify grade of produce. APS reserves the right to reject a shipment that does not meet reasonable standards of acceptable quality.
8. **Substitution of Produce for District:** Any substitution of produce bid must be approved by Juan Saiz, Food & Nutrition Services and Melissa Sanchez, District Buyer, prior to the bidder ordering product. A substitution, if approved, shall be billed at the same per unit cost as the original bid item. A substitution not approved will be refused at delivery and bidder will be responsible for return shipment.
9. **Method of Award:** A multiple award will be issued to bidders for adequate delivery and/or service. A multiple award will be based upon the lowest responsible and responsive bidder(s) providing the best service and product(s) for a one year period, with option of 3 year extensions, whose offer shall be most advantageous to the district.

Typically, awards will be based on the each line item bid by either the pound, case or serving as delivery is only to one location. If bidders cannot offer per pound cost on items, APS reserves the right to make multiple awards on those items to accommodate our menu needs.

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

10. **Letter of Withdrawal:** A letter of withdrawal will be required by bidders unable to honor pricing after bid has closed or after contract award, due to misquote by Broker, unavailability of product, unacceptable product upon delivery, etc. APS will go to the next low bidder to obtain goods in question and/or re-bid. "Letter of Withdrawal" to be addressed or e-mailed to, APS Purchasing Department, Attn: Melissa Sanchez, P.O. Box 25704, Albuquerque, NM 87125. Email address: [melissa.sanchez@aps.edu](mailto:melissa.sanchez@aps.edu)
11. **Monitoring Cost and Monthly Bids:** Bids will be received and opened every 2<sup>nd</sup> Thursday at 11:00 a.m. of each month unless otherwise noted. The previous month abstract of awards will be amended and Melissa

## **PRODUCE FRESH ASSORTED BID NO. 14-007MS-SL**

### **GENERAL REQUIREMENTS CONTINUED**

Sanchez, of the Procurement Department, will e-mail abstract of new awards to all contracted vendors who submitted their bid.

Vendors may petition at that time for an increase based on an emergency created by unusual market conditions, a freeze, fuel increase, etc. Approval or rejection will be based on third-party market bulletins.

- 12. Emergency Circumstances:** In the event of an **emergency circumstances** (such as freezes), which dramatically disrupt the availability and/or pricing of a significant portion of the supply, APS must be notified immediately. Written notice, fax (505-830-1661) or e-mail [melissa.sanchez@aps.edu](mailto:melissa.sanchez@aps.edu) shall be furnished to the Purchasing Division, Melissa Sanchez, District Buyer. Unless the District Buyer, and the Director of Food Services, shall determine otherwise, the policy is that APS will replace all orders for the item in question with something more readily available and less expensive, for example : Apples for oranges.
- 13. Negotiation of Related Items:** During the life of the contract APS, reserves the right to negotiate with successful bidder(s) for pricing on items related to this contract but not specifically named herein. In the event a purchase is made as a result of such negotiations, the contract shall be amended to reflect the new item(s) and pricing structure.
- 14. Pallet Requirements:** Any shipments received as a result of purchase orders generated as a result of awards on this solicitation shall be palletized if the quantity of cartons in the shipment is more than twenty (20) and/or if the total shipment weight exceeds four (4) feet in height.
- Palletized product must be shrink-wrapped to avoid shifting in transit and during unloading. Palletized product must not exceed four (4) feet in height.
- All palletize cartons must have externally facing labels identifying carton, contents and quantity. It is acceptable to mix products on a single pallet as long as smaller quantities of like items and smaller items are placed toward the top and the entire pallet is stacked as may be physically and commercially sensible.
- Purchase Orders will not specify palletizing requirements. Bidder's signature signifies understanding of these requirements. APS reserves the right to reject shipments which are not palletized.
- 15. Delivery:** Prompt delivery is of the essence and may be a factor in determining the successful bidder; therefore, delivery time after receipt of order must be stated in definite terms. **BIDDER OWNS GOODS IN TRANSIT.**

# PRODUCE FRESH ASSORTED BID NO. 14-007MS-SL

## GENERAL REQUIREMENTS CONTINUED

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

**What is your average lead time?** \_\_\_\_\_

If delivery or poor product problems arise, contractor will be notified and given the opportunity to correct the problems. APS Food & Nutrition Services and/or Procurement will make no more than one phone request. If within 5 days after phone notification, meeting and/or written letter expressing the problems and the problems have not been resolved, APS reserves the right to cancel the contract and award to the next low bidder or re-bid. In the event this should occur, APS Procurement and Food & Nutrition Service in conjunction with the contractor will determine a phase out period for ease of transition to a new contractor. At no time will APS be without service.

Each delivery to the "Central Kitchen Warehouse" shall be invoiced separately by contractor and the original copy shall be left at the "Central Kitchen Warehouse" showing the full signature of the authorized designee and the date of delivery.

Supplier will be required to call the listed location below 24 hours in advance to make delivery arrangements. Orders are placed "as needed" on a weekly basis for the following week. Generally, delivery for product is required 2-3 times per week.

- **Central Kitchen Warehouse** – 912 Oak Street which accepts deliveries between the hours of 7:30 a.m. – 12:00 p.m. This location accepts deliveries for frozen food products, Monday thru Friday.
- **Contacts:** Steve Carleton-Production Manager, 243-6685, x37625 and Zina Garcia, Central Production Manager, 243-6685 x37618

Size and frequency of orders vary according to number of meals to be served, special functions, volume of walk-in trade, whether or not a salad bar is offered and so on. Additionally, some schools operate year round, Cochiti ES, Duranes ES, Eugene Field ES, Mark Twain ES, Navajo ES, Mary Ann Binford ES, Susie Rayos ES and Onate ES. Others close for the summer.

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

# **PRODUCE FRESH ASSORTED BID NO. 14-007MS-SL**

## **GENERAL REQUIREMENTS CONTINUED**

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

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

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

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

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

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

**21. 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

**PRODUCE FRESH ASSORTED  
BID NO. 14-007MS-SL**

**GENERAL REQUIREMENTS CONTINUED**

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

**Public Liability Insurance Continued:**

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.

**22. 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:

**PRODUCE FRESH ASSORTED  
BID NO. 14-007MS-SL**

**GENERAL REQUIREMENTS CONTINUED**

- a) The sum of one hundred thousand dollars (\$100,000) for damage to or destruction of 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
- 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.

**23. 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.

**24. Contact Information:** Provide the following information. Include contact name.

**PRODUCE FRESH ASSORTED  
BID NO. 14-007MS-SL**

**GENERAL REQUIREMENTS CONTINUED**

**Payment/Invoice Information:**

Company: \_\_\_\_\_

Contact: \_\_\_\_\_

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

City, State ZIP Code: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**Product or Delivery Problems:**

Company: \_\_\_\_\_

Contact: \_\_\_\_\_

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

City, State ZIP Code: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-mail Address: \_\_\_\_\_



**PRODUCE FRESH ASSORTED  
BID NO. 14-007MS-SL**

**BID SUBMITTAL REQUIREMENT AND CHECKLIST**

Please, submit your completed proposal including the items listed below. Note that all requested information is mandatory (Except Attachment 2) and failure to submit them with your response may deem you bid non-responsive and will be disqualified. The check off list is for your convenience. Check off and sign that items are included in your response to this bid.

\_\_\_\_\_ Pricing Section (Page 8)

\_\_\_\_\_ What is your minimum order: (Page 9)

\_\_\_\_\_ What is your average lead time for Deliveries? (Page 11)

\_\_\_\_\_ Proof of Insurance – Current Certificate of Insurance (Pages 12 thru 14)

\_\_\_\_\_ Contact Information (Page 15)

\_\_\_\_\_ Product or Delivery Problems (Pages 15)

\_\_\_\_\_ Appendix A – Campaign Contribution Disclosure Form (Page 18 and 19)

\_\_\_\_\_ Appendix B – Conflict of Interest and Debarment / Suspension Form (Page 20 and 21)

\_\_\_\_\_ Signed Terms and Conditions (Page 22 thru 24)

\_\_\_\_\_ W-9

**PRODUCE FRESH ASSORTED  
BID NO. 14-007MS-SL**

Keep this page for your reference:

Submit each produce price quote on the dates specified below, before 11:00 a.m., every 2<sup>nd</sup> Thursday of the month. If any changes occur as to bid submittals due to holidays, etc. your company will be notified by Melissa Sanchez, District Buyer, APS.

Dates of monthly price quote submittals as follows:

**Quotes submitted:**

**August 8, 2013**

**September 12, 2013**

**October 10, 2013**

**November 7, 2013**

**December 12, 2013**

**January 9, 2014**

**February 13, 2014**

**March 13, 2014**

**April 10, 2014**

**May 8, 2014**

**June 12, 2014**

**Period of Supply:**

**August 8, 2013 --- September 12, 2013**

**September 12, 2013 --- October 10, 2013**

**October 10, 2013 --- November 7, 2013**

**November 7, 2013 --- December 12, 2013**

**December 12, 2013 --- January 9, 2014**

**January 9, 2014 --- February 13, 2014**

**February 13, 2014 --- March 13, 2014**

**March 13, 2014 --- April 10, 2014**

**April 10, 2014 --- May 8, 2014**

**May 8, 2014 --- June 12, 2014**

**June 12, 2014 --- July 31, 2014**

**PRODUCE FRESH ASSORTED  
BID NO. 14-007MS-SL**

**APPENDIX A**

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. 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.

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 either 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.

**“Contract”** means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

**“Family member”** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

**“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.

**PRODUCE FRESH ASSORTED  
BID NO. 14-007MS-SL**

“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): \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

**--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)

**PRODUCE FRESH ASSORTED  
BID NO. 14-007MS-SL**

**APPENDIX B**

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

**CONFLICT OF INTEREST**

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

**PRODUCE FRESH ASSORTED  
BID NO. 14-007MS-SL**

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

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

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

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

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

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

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

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

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

# PRODUCE FRESH ASSORTED BID NO. 14-007MS-SL

## 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. 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 NM Tax. & Rev. Dept. in the appropriate space. Provision of the number will be the responsibility of the contractor.

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

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

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

### Packing, Shipping and Invoicing

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

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

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

### Patent Indemnity

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

# PRODUCE FRESH ASSORTED

## BID NO. 14-007MS-SL

### 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 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.



**PRODUCE FRESH ASSORTED  
BID NO. 14-007MS-SL**

Signature of Authorized Representative \_\_\_\_\_ Contractor's License No: \_\_\_\_\_  
(If Applicable)  
Type or print name of above \_\_\_\_\_ NM Resident Cert. No \_\_\_\_\_  
(If Applicable. Issued by NMTRD)  
Name of Firm \_\_\_\_\_ Area Code and Telephone No. \_\_\_\_\_  
Address \_\_\_\_\_ Fax No: \_\_\_\_\_ Email: \_\_\_\_\_  
Federal ID No.: \_\_\_\_\_

## Request for Taxpayer Identification Number and Certification

Give Form to the  
 requester. Do not  
 send to the IRS.

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____  <input type="checkbox"/> Other (see instructions) ▶ _____	
	<input type="checkbox"/> Exempt payee	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code		
List account number(s) here (optional)		

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number									
Employer identification number									

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

**Sign Here**

Signature of  
 U.S. person ▶

Date ▶

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.