

ALBUQUERQUE PUBLIC SCHOOLS - PROCUREMENT DIVISION  
 PO BOX 25704  
 ALBUQUERQUE, NEW MEXICO 87125  
 PHONE (505) 881-8415  
 FAX (505) 830-1161

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Form Plastics Company  
 3825 Stern Ave.  
 St. Charles, IL 60174-5457

SHIP TO

APS Food & Nutrition Services  
 800 Louisiana Blvd NE  
 Albuquerque, NM 87108

ATTENTION OF

Juan Saiz (505) 345-5661  
 Melissa Sanchez (505) 345-5661

DATE	VENDOR CODE
4/26/2016	43255

The Procurement Code, Sections 13-1-28 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.

**PLEASE SHOW PRICE AGREEMENT NUMBER ON ALL INVOICES, SHIPPING PAPERS, PACKAGES, CORRESPONDENCE, ETC. INVOICE IN DUPLICATE.**

**ITEMS, TERMS, & CONDITIONS**

**PRICE AGREEMENT**  
**July 1, 2016 thru June 30, 2017**  
*Food and Non Food Products*  
*Amendment 1*

Per terms and conditions of Bid No. 16-027MS-AM  
 Board Approved: 4/20/2016

**Reason for Amendment: Remove line item #17 A, G, and H as vendor could not meet the required specifications for the products awarded. Email from Form Plastics attached along with justification letter to re-award. (see attached)**

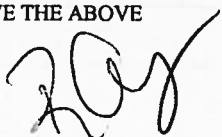
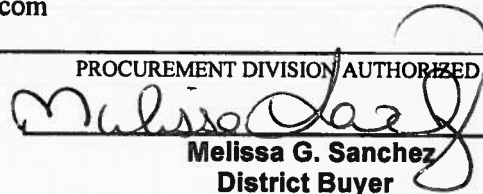
*APS reserves the right to add products within each category as they are introduced into the market with prior approval from APS Procurement Division and APS Food & Nutrition Services*

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 and/or goods under this PA. The PA is an agreement on terms and conditions and pricing for possible future purchases based on the needs of APS during the contract period.

Contact: James Pappas  
 Phone: (630) 443-1400 Fax: (630) 443-1492  
 Email: cs@formplastics.com

NOTE: THIS IS NOT AN ORDER BUT NOTIFICATION THAT THE BOARD OF EDUCATION HAS ENTERED INTO AN AGREEMENT TO RECEIVE THE ABOVE SERVICES AND/OR PRODUCTS AS REQUESTED

PROCUREMENT DIVISION AUTHORIZED SIGNATURE

**Melissa G. Sanchez**  
 District Buyer

## ALBUQUERQUE PUBLIC SCHOOLS (APS) GENERAL TERMS AND CONDITIONS

- 1. INSPECTION.** The materials, supplies or services furnished shall be exactly as specified in this order, free from defects in Seller's design, workmanship and materials, and, except as otherwise provided in this order, shall be subject to inspection and test by APS at all times and places. If, prior to final acceptance, any materials, supplies or services are found to be defective or not as specified, APS may reject them, require Seller to correct them without charge, or require delivery of such materials, supplies, or services at a reduction in price which is equitable under the circumstances. If Seller is unable or refuses to correct such defects 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 and services and, in addition to any other costs for which Seller may become liable to APS under other provisions of this order, shall reimburse APS for all transportation costs, other related costs incurred, or payments to Seller in accordance with the terms of this order 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's rights provided in this Paragraph.
- 2. WARRANTIES.** Seller warrants the materials, supplies or services furnished to be exactly as specified in this order, free from defects in Seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Seller. All applicable UCC warranties, express or implied are incorporated herein.
- 3. 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.
- 4. CHANGES.** APS may make changes within the general scope of this order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this order, an appropriate equitable adjustment shall be made. No change by Seller shall be recognized without written approval of APS. Any claim of Seller for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change unless APS waives this condition. Nothing in this Paragraph shall excuse Seller from proceeding with performance of the order as changed hereunder.
- 5. LABOR DISPUTES.** Seller shall give prompt notice to APS of any actual or potential labor dispute which delays or may delay timely performance of this order.
- 6. TERMINATION AND DELAYS.** 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 pro rata 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 this order; provided compensation hereunder shall in no event exceed the total order price. Such amount will be limited to the Seller's actual cost and shall not include anticipated profits.

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

If, after notice of termination for default, APS determines that the Seller was not in default or that the failure to perform this order is due to causes beyond the control and without the fault or negligence of Seller (including, but not restricted to, acts of God or of the public enemy, acts of APS, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor or supplier due to such causes and without the fault or negligence of the subcontractor or supplier), termination shall be deemed for the convenience of APS, unless it shall be determined that the items or services covered by this order were obtainable from other sources in sufficient time to meet the required delivery schedule.

If APS determines that Seller has been delayed in the work due to causes beyond the control and without the fault and negligence of the Seller, APS may extend the time for completion of the work called for by this order, when promptly applied for in writing by the Seller; and if such delay is due to failure of APS, not caused or contributed by Seller, to perform services or deliver property in accordance with the terms of the order, the time and price of the order shall be subject to change under the Changes Paragraph. Sole remedy of Seller in event of delay by failure of APS to perform shall, however, 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.

The rights and remedies of APS provided in this Paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order. As used in this Paragraph, the word "Seller" includes Seller and its sub suppliers at any tier.
- 7. AFFIRMATIVE ACTION.** Seller shall not maintain or provide racially segregated facilities for employees at any establishment under his control. Seller agrees to adhere to the principle set forth in Executive Order 11246 and 11375, and to undertake specifically to maintain employment policies and practices that affirmatively promote equality of opportunity for minority group persons and women; to take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment; to communicate this policy effectively to all persons concerned within Seller's company, with outside recruiting services and the minority community at large; to provide APS on request a breakdown of its labor force by ethnic group, sex, and job category; and to discuss with APS its policies and practices relating to its affirmative action program.
- 8. INDEMNIFICATION AND INSURANCE.** Seller assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the performance of the work by Seller, its agents, employees, subcontractors or consultants, except to the extent of liability arising out of the negligent performance of the work by or willful misconduct of APS. Seller shall indemnify and hold harmless APS, its officers, agents, and employees from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on any actual or alleged personal injury or damage and shall pay any damage costs and expenses including attorneys' fees, in connection with or resulting from such suit or action. Seller agrees that it and its subcontractors will maintain public liability and property damage insurance in reasonable amounts covering the above obligation and will maintain workers' compensation coverage covering all employees performing this order on premises occupied by or under the control of APS.
- 9. PATENT AND COPYRIGHT INDEMNITY.** Seller shall pay all royalty and license fees relating to deliverables and other items covered hereby. In the event any third party shall claim that the reproduction, manufacture, use or sale of goods or items covered hereby infringes any copyright, trademark, patent, or other intellectual property rights, Seller shall indemnify and hold APS harmless from any cost, expense, damage, or loss resulting therefrom.
- 10. DISCOUNTS.** APS will take advantage of prompt payment discounts whenever possible; however these will not be used as a means to determine the low responsive and responsible bidder. Any discount period will not begin until the materials, supplies or services have been received and accepted and a correct invoice submitted for payment. If testing is required, discount period will not begin until such tests are satisfactorily completed.
- 11. CONTINGENCY FEES.** 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.
- 12. PENALTIES.** The New Mexico Procurement Code (NMSA 1978) imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose penalties for bribes, gratuities and kickbacks.
- 13. TITLE AND DELIVERY.** Title to the materials and supplies passed hereunder shall pass to APS at the F.O.B. point specified subject to the right of APS to reject upon inspection. For any exception to the delivery date specified, Seller shall give prior notification and obtain approval thereto from APS's Purchasing Department. Order is subject to termination for failure to make timely delivery.
- 14. TAX STATUS.** APS holds a Class 9 Nontaxable Transaction Certificate and is exempt from payment of tax on the purchase of tangible personal property. This certificate will be issued upon request. It is not valid for the purchase of services including construction, or materials that become part of a construction project or for the lease of property. Seller is responsible for payment of all applicable taxes, which will be added to invoice as a separate item at the current rate.
- 15. APPLICABLE LAWS.** If this order is a subcontract under a U.S. Government Prime Contract, applicable clauses of the Federal Acquisition Regulations are incorporated herein by reference. Any provision 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 also shall be deemed to be incorporated herein. Any contract or litigation resulting from acceptance of this purchase order will be construed according to the laws of the State of New Mexico unless otherwise stated.

**Sanchez, Melissa G**

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**From:** Danette Schleining <d schleining@FormPlastics.com>  
**Sent:** Wednesday, May 18, 2016 10:45 AM  
**To:** Saiz, Juan V; CS  
**Cc:** Sanchez, Melissa G; Michael G. Anderson  
**Subject:** RE: Bid submission problems

Hello Juan;

I would like to apologize for the error for the 3 products listed in the attachment that we bid. We reviewed this bid and found out that these 3 containers do not meet the specifications listed in the bid.

If you have any questions please let me know.

*Danette Schleining*  
*Customer Service*  
*Form Plastics Company*  
[cs@formplastics.com](mailto:cs@formplastics.com)  
630-443-1400

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**From:** Saiz, Juan V [<mailto:juan.saiz@aps.edu>]  
**Sent:** Tuesday, May 17, 2016 11:02 AM  
**To:** CS  
**Cc:** Sanchez, Melissa G  
**Subject:** Bid submission problems

Good Morning Danette,

Attached is the award I was telling you about. If the dimensions you gave me are correct, none of the items awarded are correct and will need to be re-awarded. Please get back to me as soon as possible, as I am beginning to send out orders.

Thank you,

*Juan V. Saiz*  
505-345-5661 ext. 38207  
Procurement Manager  
Albuquerque Public Schools  
Food and Nutrition Services  
800 Louisiana Blvd. NE  
Albuquerque, NM 87108



**FOOD AND NUTRITION SERVICES**

# Food and Non Food Bid No. 16-027MS-AM

## Lot I

### Justification

The following items were awarded to Form Plastics as low bid:

1. 1 Cell Container 3-3/8 x 3-3/8 x 1-3/4 Clear OPS @ \$20.85/cs
2. 3 Cell Container 6.5x8.5x3# Hot CPT @ \$116.18/cs
3. 3 Cell Container 6.5x8.5x3" OPS @ \$118.86/cs

Upon requesting samples of awarded items from Form Plastics to verify accuracy of dimensions, Danette Schleining of Form Plastics verified product does not meet the required specifications listed in the bid. Email from Danette Schleining attached for verification.

Interstate Packaging is the next vendor to pick up the 3 items in question that were bid incorrectly by Form Plastics. Below is the award abstract for reference;

017 A.	1 CELL CONTAINER 3-3/8 X 3-3/8 X 1-3/4 CLEAR OPS. Approved brands; Plastic Packaging, 3314-1	Form Plastics	Form Plastics Company	5010-L18500	5010-128500 Bx7	1350				\$ 20.85	\$ 0.0154
		Interstate Packaging	Plastic Packaging	3314-1		3840	3840/cs			\$ 73.45	\$ 0.0191
G.	3 CELL CONTAINER 6.5x8.5x3#-1 Hot CPT Approved brands; Plastic Packaging, 3344-B	Form Plastics Company	Form Plastics Company	6547-404539	6547-404539 6x6	1100				\$ 116.18	\$ 0.1056
		Sysco	FORM PLASTIC	new item	6547-404539	600	600/ct			\$ 112.52	\$ 0.1875
		Interstate Packaging	Plastic Packaging	3344-B		900	900/cs			\$ 195.10	\$ 0.2168
H.	3 CELL CONTAINER 6.5x8.5x3" OPS. Approved brands; Plastic Packaging, 3345	Form Plastics Company	Form Plastics Company	6544-200201	6544-200201 6x3	1500				\$ 118.86	\$ 0.0792
		Interstate Packaging	Plastic Packaging	3345		600	600/ct			\$ 65.40	\$ 0.1090
		Sysco	FORM PLASTIC	new item	6544-200201	600	600/ct			\$ 115.11	\$ 0.1919

Interstate Packaging comes in second on A and H. Sysco comes in second on G with Form Plastics brand Item #6547-404539. This item number is the same product which vendor Form Plastics submitted in their bid submission that did not meet the required specifications. Award of G will go to Interstate Packaging by default.