

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

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Mrs. Clark's Foods
 740 SE Dalbey Drive
 Ankeny, IA 50021

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
4/21/2016	16664

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

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

**Minimum Order: 4 pallets combined
 Delivery Lead Time: 21 days**

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

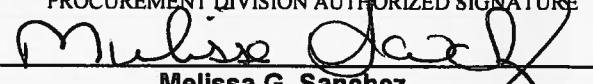
Price Agreement (PA) issued as a result of this bid has no dollar value associated with it and there are no guarantees that APS will require services and/or goods under this PA. The PA is an agreement on terms and conditions and pricing for possible future purchases based on the needs of APS during the contract period.

Contact: Cynthia R. Dewald
 Phone: (515) 964-8100 Fax: (515) 964-0697
 Email: amartin@mrsclarks.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


 Renette Apodaca

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 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 performances 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.

**FOOD AND NON-FOOD PRODUCTS
BID NO. 16-027MS-AM**

GENERAL REQUIREMENTS CONTINUED

What is your minimum order (quantity, dollars, etc.)? 4 pallets combined

- 11. 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.

- 12. 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**

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? 21 days

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.

Food & Nutrition Service is no longer requesting delivery to various APS school sites. Food & Nutrition Services will be warehousing all the products listed in this bid. The department will deliver the food and non-food products to the schools from our warehouse. Successful contractor may obtain weekly orders from Juan Saiz for food service locations. The sites utilize shipping-list ordering and also perform end of the month physical inventory counts.

**FOOD AND NON-FOOD PRODUCTS
BID NO. 16-027MS-AM**

GENERAL REQUIREMENTS CONTINUED

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.

20. 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.

21. Contact Information: Provide the following information. Include contact name.

Payment/Invoice Information:

Company: Mrs. Clark's Foods

Contact: Allison Martin

Address: 740 S.E. Dalbey Drive

City, State ZIP Code: Ankeny, IA 50021-3908

Phone No.: 515-964-8100

Fax No.: 515-964-0697

E-mail Address: mcfcommodities@mrsclarks.com

Product or Delivery Problems:

Company: McLean Marketing

Contact: Cynthia Dewald

**FOOD AND NON-FOOD PRODUCTS
BID NO. 16-027MS-AM**

GENERAL REQUIREMENTS CONTINUED

Address: 128 Sage Oaks Trail

City, State ZIP Code: Boerne, Texas 78006

Phone No.: 830-336-2130

Fax No.: 830-336-2208

E-mail Address: cindy@mcleanmktg.com

IMPLEMENTING THE BUY AMERICAN PROVISION

The Buy American provision supports the mission of the Child Nutrition Programs, which is to serve children nutritious meals and support American agriculture. SFAs are reminded that when funds are used from the nonprofit food service account, procurement transactions for food products on the commercial market must comply with the Buy American provision, whether food products are purchased by SFAs or entities that are purchasing on their behalf.

Some examples of entities purchasing on the behalf of SFAs include: food service management companies, group purchasing organizations, or cooperatives of schools purchasing shared goods and services, or through an inter-entity agreement, etc. If SFAs have difficulty ensuring that food products meet this regulation, FNS encourages a specification to be included in solicitations and contracts that only 100% domestically grown and processed products are approved for purchase.

THE BUY AMERICAN PROVISION SUPPORTS LOCAL AND SMALL BUSINESSES

Using food products from local sources supports small local farmers and provides healthy choices for children in the school meal programs. Purchasing from these entities also supports the local economy. Compliance with the Buy American provision may also encourage SFAs to work with local, or small, minority, and women-owned businesses. Federal regulations require SFAs to take all necessary affirmative steps, when possible, to assure that small, minority, and women-owned business enterprises are used (2 CFR Part 200.321). These entities may also be good sources for products of the United States, or its territories. FNS encourages purchasing food products from local and regional sources when expanding farm to school efforts as well.

**FOOD AND NON-FOOD PRODUCTS
BID NO. 16-027MS-AM**

GENERAL REQUIREMENTS CONTINUED

LIMITED EXCEPTIONS

There are limited exceptions to the Buy American provision which allow for the purchase of products not meeting the "domestic" standard as described above ("non-domestic") in circumstances when use of the domestic products is truly not practicable. However, before utilizing an exception, alternatives to purchasing non-domestic food product should be considered. For example, SFAs should ask:

- Are there other domestic sources for this product?
- Is there a domestic product that could be easily substituted, if the non-domestic product is less expensive (e.g. substitute domestic pears for non-domestic apples)?
- Am I soliciting bids for this product at the best time of year? If I contracted earlier or later in the season, would prices and /or availability change?

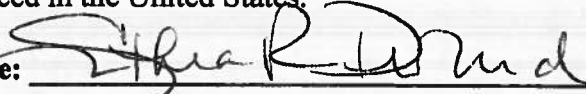
Again, although exceptions to the Buy American provision exist, they are to be used as a last resort. These exceptions, as originally outlined in the 2012 guidance, are:

- The product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

If a SFA is using one of the above exceptions, there is no requirement to request a waiver in order to purchase a non-domestic product. SFAs must, however, keep documentation justifying the exception(s).

Buy American

Contractor must comply with the Buy American Act (7 C.F.R. 210.21), which states that a school food authority purchase, to the maximum extent practicable, domestic commodities or products. Pursuant to the Buy American Act, the term "domestic commodity of product" means; (i) an agricultural commodity that is produced in the United States; and (ii) a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

Signature of Company Representative:  Date: 03/15/16
(Company Name /Certifying Official Signature)

FOOD AND NON-FOOD PRODUCTS

BID NO. 16-027MS-AM

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.

Bid No. 16-027MS-AM

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.

Signature of Authorized Representative

Cynthia R. Dewald

Contractor's License No:

N/A
(If Applicable)

Resident Certification No:

N/A
(If Applicable)

**FOOD AND NON-FOOD PRODUCTS
BID NO. 16-027MS-AM**

Name of Firm Mrs. Clark's Foods

Address 740 S.E. Dalbey Drive

Ankeny, IA 50021-3908

Area Code and Telephone No. 515-964-8100
Revised 6/91

Veterans Preference No. N/A

Fax No: 515-964-0697 (If Applicable)

Email Address amartin@mrsclarks.com

Federal ID No.: [REDACTED]

