



**ALBUQUERQUE
PUBLIC SCHOOLS**

**PRICE AGREEMENT NO. 14050
AMENDMENT NO. 2**

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

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Westwind Landscaping, Inc.
2739 Vassar Pl NE
Albuquerque, NM 87107

SHIP TO

Facilities, Design & Construction
915 Oak St NE
Albuquerque, NM 87106

**ATTENTION
OF**

Karen Alarid, John Dufay

DATE	VENDOR CODE
6/26/2015	12808

The Procurement Code, Sections 13-1-28 through 13-1-109 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

General Landscaping Services on Demand
Contract Term: June 18, 2015 - June 17, 2018
Per terms and conditions of: 14-048MM-SL
Board Approved;
Pricing Attached

SERVICES AND/OR GOODS TO BE PROVIDED: The Contractor shall provide the good(s) and/or service(s), as defined in this agreement, on an "as ordered" basis. This is not an order and no funds are obligated under this Pricing Agreement. Funds are obligated by approved purchase orders on an "as needed" basis. Contractor shall receive separate individual Purchase Orders for each individual requests.

MINIMUM AMOUNT: Albuquerque Public Schools does not guarantee a minimum amount of purchases in conjunction with this pricing agreement.

QUOTES AND PAYMENT: The Contractor shall include the APS Pricing Agreement Number on each quote and reflect the price as awarded. The invoice submitted for payment shall match the quote and shall note the purchase order number.

PRICING ESCALATION: Price escalation will be considered only at yearly observance of award and only upon receipt of written request from contractor stating reason for escalation and the amount being requested. Justifying documentation must accompany price escalation request.

Amendments: This Pricing Agreement shall not be altered, changed, or amended except by written agreement signed by both parties.

Reason for Amendment: Renewal of price agreement

Contact: Richard Brown

Phone: 505-881-8925

Email: rick@westwindlandscape.com

PROCUREMENT DIVISION AUTHORIZED SIGNATURE

[Signature]
5/26/16
Date

VENDOR AUTHORIZED SIGNATURE

[Signature] PRESIDENT
06/09/2016
Date
RICHARD BROWN

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.

PRICE PROPOSAL FORM

The Offeror understands that the contract will be awarded in accordance with the provisions of the Request for Proposals and that the Owner reserves the right to reject any or all proposals and to waive any technical irregularities.

And will become the property of the Owner in the event the contract and bonds are not executed within the time set forth herein, as liquidated damages for the delay and additional expenses to the Owner caused thereby.

Respectfully Submitted,

By: (Authorized Signature)  Date: April 25, 2014

By: (Same name, printed or typed) Richard G. Brown

Title: President

Company: Westwind Landscape Construction, Inc.

Address: 2739 Vassar Place NE Phone: 505-881-8925 (ext. 109)

Albuquerque, NM Zip: 87107

Fax: 505-883-7052 Email: rick@westwindlandscape.com

Affix Corporate Seal if proposal is by Corporation)

15	Concrete "Mow curb at existing chain link fence, per City Std. Dwg 2725 except 3500 psi. APS will remove and replace all fencing materials. Contractor will not be expected to provide any fencing materials. Complete and in place.	200	If	\$ 16.00	\$ 3,200.00
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* Starred items have specifications appearing in the section following this proposal section

ITEM	DESCRIPTION	EST.QTY.	UNIT	PRICE	TOTAL AMT.
28	Scotts ProTurf sports grass, seeded in prepared bed, less than 5,000 SF, complete and in place. Note: Bid does not include cost of water.)	5,000	SF	\$ 0.05	\$ 250.00
29	Scotts ProTurf sports grass, seeded in prepared bed, more than 5,000 SF, complete and in place. Note: Bid does not include cost of water.)	5,000	SF	\$ 0.50	\$ 2,500.00
30	Sodded Turf placed on prepared soil, less than 1,000 SY, complete and in place (Note: Bid does not include cost of water.)	100	SY	\$ 12.00	\$ 1,200.00
31	Sodded Turf placed on prepared soil, more than 1,000 SY, complete and in place (Note: Bid does not include cost of water.)	2,000	SY	\$ 9.00	\$ 18,000.00
32	Remove and replace existing sod on prepared soil, less than 1,000 SY, complete and in place (Note: Bid does not include cost of water.)	500	SY	\$ 12.50	\$ 6,250.00
33	Remove and replace existing sod on prepared soil, more than 1,000 SY, complete and in place (Note: Bid does not include cost of water.)	1,500	SY	\$ 11.00	\$ 16,500.00
<p>Items 34 - 36 shall be installed per APS Standards. The exact grass will be selected by APS at the time of the particular project. Contractor shall purchase from a local source acceptable to APS, transport to the site as necessary and install as above. APS shall reimburse the contractor at a designated Fixed Fee markup over invoice cost for all grass materials purchased for use in the district. Transportation, labor, equipment, etc. is to be included in the unit costs below. Documentation of invoices shall be required. In the space following, state the Firm Fixed Markup per Square Foot (SF) which shall apply to these items only.</p>					
34	Native Grasses. Buffalo Grass and Blue Gamma, seeded in prepared bed at a ratio of 1:1 at a rate of 4 pounds per 1,000 square feet. Less than 5,000 SF, complete and in place	2,500	SF	\$ 0.50	\$ 1,250.00
35	Native Grasses. Buffalo Grass and Blue Gamma, seeded in prepared bed at a ratio of 1:1 at a rate of 4 pounds per 1,000 square feet. More than 5,000 SF, complete and in place	20,000	SF	\$ 0.45	\$ 9,000.00
36	Buffalo Grass, Texoka, primed seed planted at a rate of 3 pounds per ¹⁰⁰⁰ square feet, complete and in place	20,000	SF	\$ 0.05	\$ 1,000.00

ITEM	DESCRIPTION	EST.QTY	UNIT	PRICE	TOTAL AMT.
<p>Items 47 through 49: APS has awarded a contract for purchase of a Motorola central irrigation controller system. Price these items as installation only. Bidder must be experienced and proficient in the successful installation of such systems. APS may require references and proof of existing work in this area.</p>					
47	Central control, 16 station, Motorola Scorpio in Strongbox Model SB-24DSS enclosure, installed complete and in place not to include primary 110V power source. Central control furnished by APS: Strongbox and installation to be furnished by contractor.	2	EA	\$1,200.00	\$ 2,400.00
48	Central control, 32 station, Motorola Irrinet in Strongbox Model SB-24DSS enclosure, installed complete and in place not to include primary 110V power source. Central control furnished by APS: Strongbox and installation to be furnished by contractor.	2	EA	\$1,200.00	\$ 2,400.00
49	Central control, 48 station, Motorola Irrinet in Strongbox Model SB-24DSS enclosure, installed complete and in place not to include primary 110V power source. Central control furnished by APS: Strongbox and installation to be furnished by contractor.	2	EA	\$1,200.00	\$ 2,400.00
<p>Items 50 through 56: Febco, these installations will typically be a new system and not piecemeal work.</p>					
50	Febco 825Y-1" Reduced pressure backflow preventer in a Strongbox Model No SBBC enclosure with Raychem pipe heating cable (electrical service not included), complete and in place	1	EA	\$2,100.00	\$ 2,100.00
51	Febco 825Y-1-1/2" Reduced pressure backflow preventer in a Strongbox Model No SBBC enclosure with Raychem pipe heating cable (electrical service not included), complete and in place	1	EA	\$2,450.00	\$ 2,450.00
52	Febco 825Y-2" Reduced pressure backflow preventer in a Strongbox Model No SBBC enclosure with Raychem pipe heating cable (electrical service not included), complete and in place	1	EA	\$2,500.00	\$ 2,500.00

ITEM	DESCRIPTION	EST. QTY.	UNIT	PRICE	TOTAL AMT.
66	3" Class 200 PVC mainline piping with ring and gasket fittings, installed complete and in place	1,000	LF	\$ 5.20	\$ 5,200.00
67	2" schedule 40 PVC mainline piping with slip and threaded fittings, installed complete and in place	1,000	LF	\$ 6.00	\$ 6,000.00
68	#10 direct burial, valve wiring, installed in trench with piping, complete and in place	5,000	LF	\$ 0.30	\$ 1,500.00
69	#12 direct burial, valve wiring, installed in trench with piping, complete and in place	10,000	LF	\$ 0.30	\$ 3,000.00
70	#14 direct burial, valve wiring, installed in trench with piping, complete and in place	20,000	LF	\$ 0.20	\$ 4,000.00
All PVC fittings to be installed per APS Standards. 2" detectable tracking tape is to be included as part of the installation.					
71	2-1/2" Schedule 40 PVC lateral piping with slip and threaded fittings. Complete and in place	1,000	LF	\$ 5.60	\$ 5,600.00
72	2" Schedule 40 PVC lateral piping with slip and threaded fittings. Complete and in place	1,000	LF	\$ 5.50	\$ 5,500.00
73	1-1/2" Schedule 40 PVC lateral piping with slip and threaded fittings. Complete and in place	2,500	LF	\$ 4.25	\$ 10,625.00
74	1-1/4" Schedule 40 PVC lateral piping with slip and threaded fittings. Complete and in place	2,500	LF	\$ 4.15	\$ 10,375.00
75	1" Schedule 40 PVC lateral piping with slip and threaded fittings. Complete and in place	3,000	LF	\$ 4.10	\$ 12,300.00
76	3/4" Schedule 40 PVC lateral piping with slip and threaded fittings. Complete and in place	5,000	LF	\$ 4.00	\$ 20,000.00
77	2-1/2" Class 200 PVC lateral piping with slip and threaded fittings, installed complete and in place	1,000	LF	\$ 3.00	\$ 3,000.00
78	2" Class 200 PVC lateral piping with slip and threaded fittings, installed complete and in place	1,000	LF	\$ 2.75	\$ 2,750.00
79	1-1/2" Class 200 PVC lateral piping with slip and threaded fittings, installed complete and in place	2,500	LF	\$ 2.50	\$ 6,250.00

ITEM	DESCRIPTION	EST.QTY.	UNIT	PRICE	TOTAL AMT.
94	Tree/shrub soil amendment, for applications less than 1,500 Square Feet, per APS Standards. Complete and in place	750	SF	\$ 0.05	\$ 37.50
95	Tree/shrub soil amendment, for applications more than 1,500 Square Feet, per APS Standards. Complete and in place	3,000	SF	\$ 0.05	\$ 150.00
96	2 x 6 3/8" crushed gravel border or washed crusher fines to be placed between edge of grass and pavement or walkway. Installation to include 3/16" Ryerson Steel edging and removal of existing grass or other material. Complete and in place	300	LF	\$ 3.00	\$ 900.00
97	2' x 1' 3/8" crushed gravel border as per bid item 96	300	LF	\$ 3.00	\$ 900.00
98	Irrigation design; Bidder must be experienced and proficient in the successful design of systems. APS shall require references and examine results of existing work in this area. (Bid shall be considered non-responsive if references are not provided and not found acceptable.)	100	HR	\$ 1.00	\$ 100.00
99	Survey work (to plan grading necessary for playing field, etc.) state whether work shall be performed by Bidder's staff or a sub-contractor.				
99a	Foreman (Survey work)	25	HR	\$ 60.00	\$ 1,500.00
99b	Additional man (Survey work)	35	HR	\$ 60.00	\$ 2,100.00
100	Licensed Landscape Architect. Requirement for this work to be determined at project meeting. State whether work shall be performed by Bidder's staff or a subcontractor.	25	HR	\$ 65.00	\$ 1,625.00
101	Electrical work (shall not be used in ITB evaluation)	15	HR	\$ 90.00	\$ 1,350.00
102	Fenced enclosure with locking gate, 3' x 3' x 6' high on average as per APS Standards. Due to varying sizes quote per linear foot.	60	LF	\$ 125.00	\$ 7,500.00