

PRICE AGREEMENT NO. 14575

AMENDMENT NO. _____

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

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Johnstone Supply
2501 Phoenix Ave. NE
Albuquerque, NM 87107

SHIP TO

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

ATTENTION
OF

Mark Whitt (505) 345-5661
Melissa Sanchez (505) 345-5661

DATE	VENDOR NO.
10/20/2016	11328

MGS

The Procurement Code, Sections 13-1-28 through 13-1-189 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

Kitchen Parts & Supplies - Discount from List (Supplemental)

Contract Term: 10/20/2016 - 7/19/2020

Per terms and conditions of: Bid No. 17-013MS-KM

Board Approved: 10/19/2016

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. If a quote is based on a percentage discount, the quote should document the list price, discount percent, and final price. The invoice submitted for payment shall match the quote and shall note the purchase order number.

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

Reason for Amendment: New Price Agreement

Contact: Cliff Martin

Phone: (505) 328-1656

Email: clifford.martin@johnstonesupply.com

PROCUREMENT DIVISION AUTHORIZED SIGNATURE

Melissa Sanchez
Date

VENDOR AUTHORIZED SIGNATURE

[Signature]
Date

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 UGC 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 Charges 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 therefor from APS's Purchasing Department. Order is subject to termination for failure to make timely delivery.
 - 14. TAX STATUS.** APS holds a Class B 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.

TECHNICAL SPECIFICATIONS CONTINUED

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

11. **Purchase Orders and Invoicing Procedures:** Upon award, APS will issue a pricing agreement which will be in effect for the duration of the contract and which will accommodate multiple billings as work is completed.

Itemized invoices, clearly referencing appropriate pricing agreement number and bid number shall be submitted to APS Food and Nutrition Services, 800 Louisiana Blvd. NE, Albuquerque, NM, 87108. Copies of delivery tickets, signed by the receiving employees, and other information needed to substantiate charges shall be attached to the invoice for auditor tracking purposes.

Contractor's invoicing must be easily verifiable and traceable to the contract. Product numbers, brands, models, etc. must be clearly defined. Contractor must also be prepared to furnish copies of price lists to the users as necessary. Invoices must include pricing structure as defined in the contract (list price and discount).

As a minimum, the following information must appear on all Delivery Tickets and Invoices:

Price Agreement Number
Purchase Order Number or SPO Number
Work Order Number or Warehouse Stock Notation
Location Number
Craft Code
List Price
Discount Percent
Final Price
Recipient's Signature
Recipient's APS Employee Number

12. **Walk-In Trade:** A large portion of the trade will be "walk-in." Employees picking up materials must present proper identification. In addition, Food Services Maintenance workmen wear distinctive uniforms. Employees signing for materials which will be billed to APS must sign full name legibly and also write their employee number, location name, and work order number below the signature. Initials are not acceptable. Contractor must satisfy himself as to the validity of the transaction beyond a reasonable doubt. APS is not responsible for unauthorized purchases or those which cannot be identified. Credits will be issued to the APS account.

Specify the address for your company's Pick Up Order location: 2501 Phoenix Ave NE, Albuquerque NM 871

13. **Standards:** All materials shall comply with the recommendations and standards as set forth in the latest edition(s) of pertinent State, County, and Municipal Codes and Ordinances. Aggregates shall comply with applicable ASTM standards.

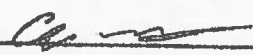
TECHNICAL SPECIFICATIONS CONTINUED

Lighting
 Conduit & Raceways
 Wires, Cords & Cables
 Valves
 Coil Cleaner, Ice Machine Cleaner/Sanitizers etc.
 Compressors
 Evaporators
 Copper Pipes
 Filters

Controls
 Indicators
 Probes
 Knobs
 Plumbing Supplies
 Condensers
 Refrigerant
 Copper Fittings
 Fan Accessories

Bid Form

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  Contractor's License #: _____ (If Applicable)

Type or print Name of above Cliff Martin

Name of Firm Johnstone Supply Address 2501 Phoenix Ave NE
 Telephone No. 505-328-1656 Albuquerque NM 87107

Veterans Preference Certification No. (if applicable)
 NO

Contact information for Sales Department		Contact information for POs/Invoicing/Etc.	
Name of Contact	<u>Cliff Martin</u>	Name of Contact	<u>Gary Russell</u>
Telephone No.	<u>505-328-1656</u>	Telephone No.	<u>505-884-4822</u>
Email Address	<u>clifford.martin@johnstonesupply.com</u>	Email Address	<u>gary.russell@johnstonesupply.com</u>

***** IF ANY OF THIS CONTACT INFORMATION CHANGES, IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO IMMEDIATELY NOTIFY APS. *****

Please submit your company(s) information with responses below. All additional categories not listed must be added on a separate sheet of paper referencing the manufacturer and discount.

KITCHEN PARTS & SUPPLIES

**Item
No. Description**

1. **Pricing:** Vendor shall ensure that pricing proposed in this Bid and in the future is equal or better than any established contracts (GSA, US Communities, TCPN, CES, etc.) the vendor might hold.

If awarded any quotes and payments shall reflect the price as awarded. If a quote is based on a percentage discount, the quote should document the list price, discount percent, and final price per line item. The invoice submitted for payment shall match the quote and shall note the purchase order number.

Vendors shall submit discount pricing on manufacturers/parts that they represent in the following format:

Manufacturer /Parts	Percentage Discount	List that discount is applied to
All Applicable	55%	2016-2017 Johnstone Supply List Price Catalog
Coleman	47%	Coleman Mfg List Price
Bollers	35%	Mfg List Price

2. **Excluded Discounts:** (Specify all manufacturer/items not to be discounted and /or are excluded from this contract:

Ice-O-Matic, Phoenix Manufacturing, Heat Craft, Imperial Mfg

3. **Special Order Cost and Shipping:** (what is the price mark up when ordering special order items and shipping charges if applicable?)

30% + actual incoming freight

4. **Special Order Discount:** (will your company offer discount(s) for these parts? If so, how much?)

Not Applicable

5. **What is your Return Policy?** (Specify your return goods policy, restocking charges, exchanges, etc.)

Stock items in new condition and original packaging returnable for full credit within 30 days.

Non-Stock items subjected to manufactures return policy. Some manufactures have a no return policy or restock charges that w

Discount from List - Kitchen Parts Supplies
Supplemental

Description	Overall Catalog Discounts	Excluded Discounts	Special Order Cost & Shipping	Special Order Discounts	Pick Up Order Address	Return Policy
Johnstone Supply	All Applicable 53% 2016-2017 Johnstone Supply List Price Catalog 47% Coleman Boilers 35%	Loc-O-Matic Phoenix Manufacturing, Heat Craft, Imperial Mfg.	30% + actual incoming freight	N/A	2301 Phoenix Ave. NE, Albuquerque, NM	Stock items in new condition and original packaging returnable for full credit within 30 days. Non-stock items subjected to manufactures return policy. Some manufactures have no return policy or restock charges.