



PRICE AGREEMENT NO. 13640

AMENDMENT NO. X Le MD

ALBUQUERQUE PUBLIC SCHOOLS – PROCUREMENT DIVISION
PO BOX 25704
ALBUQUERQUE, NM 87125
PHONE (505) 881-8415
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V E N D O R	Upstate Niagara Cooperative 25 Anderson Road Buffalo, NY 14225	SHIP TO	Various APS Locations
		ATTENTION	Juan Saiz (505) 345-5661
		OF	Melissa Sanchez (505) 345-5661

DATE	VENDOR NO.
6/15/2016	38875

MGS

The Procurement Code, Sections 13-1-48 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

Milk and Dairy Products for Food and Nutrition Services

Contract Term: August 1, 2016 - July 31, 2017

Per terms and conditions of Bid No. 13-054MS-SL

Board Approved: July 17, 2013

Final year

Amendment X Le MD

Reason for Amendment: Renewal of Price Agreement

All original terms and conditions remain unchanged

CONTACT: Jeff Waas

TELEPHONE: (866) 874-6455 / FAX: (716) 896-8752

EMAIL: jwaas@upstatenlagara.com

PROCUREMENT DIVISION AUTHORIZED SIGNATURE

Melissa DeJong 7.15.16
Date

VENDOR AUTHORIZED SIGNATURE

Mark A. Bell 7.22.16
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 or the time required for performance of this order, an appropriate equitable adjustment shall be made. No change by Seller shall be recognized with out 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 its control. Seller agrees to adhere to the principle set forth in Executive Order 11246 and 11575, 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 responsible 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.

**MILK AND DAIRY PRODUCTS
BID NO. 13-054MS-SL**

GENERAL REQUIREMENTS CONTINUED

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 Bidder, 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 to be addressed or e-mailed to APS Purchasing Department Attn: Melissa Sanchez, 6400 Uptown Blvd. NE, Suite 600E, Albuquerque, NM. 87110, E-mail: melissa.sanchez@aps.edu.

5. **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.
6. **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.

APS reserves the right to add new products within each category as they are introduced to the market.

7. **Deliveries:** All of our cafeterias require and expect "on time" and 'as ordered deliveries. Deliveries will be at the time specified by each Cafeteria Manager or School Principal. An authorized person will sign all delivery invoices. A late delivery or delivery of the wrong product(s) creates a stressful situation at our cafeterias. APS should not have to resolve a contractor's delivery problems. Moreover, for example, if a school needs product for the same day, contractor will be expected to accommodate the school's needs, even if a special delivery is required. Emergency needs that are no fault of the contractor will be resolved through cooperation between the contractor and Food Services.

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.

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? 2 weeks

If delivery or poor product problems arise, contractor will be notified and given the opportunity to correct those problems. APS Food & Nutrition Service and/or Purchasing 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 Purchasing and Food & Nutrition Service in

**MILK AND DAIRY PRODUCTS
BID NO. 13-054MS-SL**

GENERAL REQUIREMENTS CONTINUED

- 10. Invoicing:** 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. Authorized personnel will be identified at the beginning of the contract and Contractor shall exercise due care to ensure the proper receipt of product. All pricing will be F.O.B. destination, freight prepaid.
- 11. Specification Sheets:** Specification Sheets have been modified. Please review the specification sheets carefully, as to particular references are made to products. Bids are to be submitted according to pricing structure.
- 12. 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. A CD of the excel file is required along with a hard copy of the Specification Sheets.
- * *No excel file was provided for this bid. So not submitting CD.*
- 13. Approved List:** The approved products have been incorporated into the pricing sheets. Brand names as may be noted are for the bidder's reference as to level of quality or approved products which meet the New Mexico Nutrition Rules. This is not a preference or an endorsement on the part of APS. If you choose to offer another brand, please submit samples. Samples must be tested and approved prior to bid opening. Please supply the samples at no cost to APS, throughout the school year or 3-4 months in advance of bid. Submit samples to the attention of, Juan Saiz, (505) 345-5661, ext. 37027, at Food Services, 720 Rankin Rd., Albuquerque, NM 87107, for testing. If product sample(s) is approved, product will then be added to next years approved list.
- 14. 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.)?

*SEE ATTACHED NEXT PAGE FOR DELIVERY
MINIMUM INFO*

- 15. 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.

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.



Order Minimums for Delivery



Customer must fill 11 pallet spaces as follows:

Upstate Farms Nonfat Yogurt 4oz. 8/4's 80 cases per pallet. This item is double stacked, 160 cases per floor space.

Upstate Farms Greek Yogurt 6/2# 52 cases per pallet. This item is double stacked, 104 cases per floor space.

Customer could order one pallet of each of the above to fill a floor space.

Upstate Farms Lowfat "Parfait Style" Yogurt 4/5# 72 cases per pallet. One pallet of this item is a floor space.

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GENERAL REQUIREMENTS CONTINUED

- 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
- e) 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.

21. 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.

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

Payment/Invoice Information:

Company: Upstate Niagara Cooperative

Contact: Donna Neal

Address: 25 Anderson Rd.

City, State ZIP Code: Buffalo, NY, 14225

Phone No.: 866-876-6455 X2240

Fax No.: 716-892-5621

E-mail Address: dneale@upstateniagara.com

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GENERAL REQUIREMENTS CONTINUED

Product or Delivery Problems:

Company: Upstate Niagara Cooperative

Contact: Nancy Harvey - Customer Service

Address: 25 Anderson Road

City, State ZIP Code: Buffalo, NY, 14225

Phone No.: 866-874-6455

Fax No.: 716-896-4934

E-mail Address: nharvey@upstateniagara.com

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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 Gerard McDonald Contractor's License No: _____
(If Applicable)
Type or print name of above Gerard McDonald NM Resident Cert. No _____
(If Applicable, Issued by NMTRD)
Name of Firm Upstate Niagara Cooperative Area Code and Telephone No. 716-510-1543
Address 25 Anderson Road Fax No: 716-896-8752 Email: gmcDonald@upstate
Buffalo, NY, 14225 niagara.com.

ITEM DESCRIPTION	FIRM NAME	UNIT PRICE	LABEL	PRODUCT CODE	MINIMUM	COMMENTS
5. YOGURT FLAVORED 4 OZ.	UPSTATE NIAGRA	\$ 0.23	UPSTATE FARMS	9815-STRAWBERRY 9285-CERRY VANILLA 9826-PEACH 9827-RASPBERRY 9820-STRAWBERRY BANANA		DIRECT DELIVERY TO CK ONLY
5A. YOGURT PLAIN & VANILLA NONFAT - 32OZ	UPSTATE NIAGRA	\$ 2.72	UPSTATE FARMS			DIRECT DELIVERY TO CK ONLY