



PRICE AGREEMENT NO. 14084
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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Ferguson Enterprises
801 Candelaria NE
Albuquerque, NM 87107

SHIP TO

Maintenance & Operations
Facilities Design & Construction

ATTENTION
OF

Frank Maes, Martin Romero

DATE	VENDOR CODE
7/19/2016	10933

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

Plumbing Supplies on Demand

Contract Term: August 20, 2015- August 19, 2018

Per terms and conditions of 15-004SC-SL

Board Approved: 8/19/2014

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.

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: Stacy Fugate

Phone: 505-345-0171

Email: stacy.fugate@ferguson.com

PROCUREMENT DIVISION AUTHORIZED SIGNATURE

[Signature]
Date 7/27/16

VENDOR AUTHORIZED SIGNATURE

[Signature] 8/1/2016
Brent Townsley
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 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 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 if 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.

Pricing

Contractor must submit a discount from list for all items listed below. This will allow the list to change as the manufacturer or supplier dictates as long as the discount remains constant. "Cost Plus" or multiplier pricing is not allowed. This will require that the list prices as published by the manufacturer must be furnished to APS as they are updated or replaced. "Lists" artificially generated by the contractor will not be accepted. Only domestic products will be accepted.

CATEGORIES	DISCOUNT FROM LIST (%)
1. PLUMBING FIXTURES AND ACCESSORIES	
CRANE	<u>40% L-.40</u>
KOHLER	<u>40% L-.40</u>
AMERICAN STANDARD	<u>See attached sheet</u>
ELKAY	<u>See attached sheet</u>
HALSEY TAYLOR	<u>43% L-.43</u>
ZURN	<u>See attached sheet</u>
SLOAN	<u>See attached sheet</u>
2. PIPE, GALVANIZED -SCHEDULE 40	<u>60% L-.60</u>
3. PIPE, GALVANIZED -FITTINGS SCHEDULE 40	<u>70% L-.70</u>
4. NIPPLES, GALVANIZED -FITTINGS SCHEDULE 40	<u>70% L-.70</u>
5. PIPE, BLACK (GAS) -SCHEDULE 40	<u>60% L-.60</u>
6. PIPE, BLACK (GAS) -FITTINGS SCHEDULE 40	<u>76% L-.76</u>
7. NIPPLES, BLACK PIPE (GAS) -SCHEDULE 40	<u>70% L-.70</u>
8. PIPE & FITTINGS, NO HUB	<u>50% L-.50</u>
9. PIPE, COPPER, RIGID AND TUBING	<u>50% L-.50</u>
10. FITTINGS, COPPER	<u>33% L-.67</u>
11. PIPE, PLASTIC, PVC -SCHEDULE 40, PE/BE	<u>50% L-.50</u>

Ferguson

PLUMBING SUPPLIES ON DEMAND

Bid No. 15-0045C-SL

In order to evaluate this bid the following is a sample of items most commonly ordered. Please quote your specific price on all of these items. Contractor must bid on all items or bid will be considered non-responsive.

	YOUR PRICE
1. PIPE: 1 1/2" BLACK T&C DOMESTIC, PER FOOT	#3.63 (At time of Quote)
2. PIPE: GALVANIZED, SCHEDULE 40, PER FOOT 1 1/2"	\$5.69 (At time of Quote)
3. PIPE: 2" ABS DWV, PER FOOT	Delete per Addenda!
4. INSIDE REPAIR KIT: URINAL. SLOAN A37A OR EQUAL A-1042	\$20.43
5. NIPPLE: 1/2" X 3", GALVANIZED	\$.93
6. DIELECTRIC UNION: 1" IRON X IRON	\$16.27
7. REDUCER: 1 1/2" X 3/4", GALVANIZED	\$7.15
8. TEE: COPPER 3/4"	\$2.09
9. BUSHING: 3/4" X 1/4", GALVANIZED	\$2.82
10. HOSE BIBB: 1/2" X MIP, ARROWHEAD 101 OR EQUAL JR Smith 5609QT 6"	\$87.80
11. P TRAP: 1 1/2" TUBULAR 17G	\$14.40
12. GAS COCK: 1" BRASS	\$15.93
13. PIPING: 4" DWV PVC BY FOOT	\$1.96 (At time of Quote)
14. SHARK BITE BALL VALVES-1/2", 3/4", 1"	1/2" = \$14.12 3/4" = \$17.98 1" = \$24.40
15. SHARK BITE TEES-1/2", 3/4", 1"	1/2" = \$10.27 3/4" = \$12.20 1" = \$25.36
16. SHARK BITE ELBOWS-1/2", 3/4", 1"	1/2" = \$7.38 3/4" = \$8.99 1" = \$18.62
17. SHARK BITE COUPLINGS-1/2", 3/4", 1"	1/2" = 6.74 3/4" = \$8.03 1" = \$17.01
18. GAS PRESSURE REGULATOR-1 1"	\$78.20
19. SENSORED LAVATORY FAUCET: SLOAN OR ZURN	Sloan #3315114 \$338.50 Delete!
20. FLUSH VALVES: SLOAN OR ZURN	See attache sheet



801 Candelaria N.E.
Albuquerque, NM 87107
Phone: (505) 345-0171
FAX: (505) 345-1558

www.ferguson.com

7/11/14

1. Plumbing Fixtures and Accessories

		<u>Discount from List</u>
American Standard	China Products	List less 40% (L-0.40)
	Brass Faucets	List less 40% (L-0.40)
	Flush Valve	List less 60% (L-0.60)
Elkay	Commercial Sink	List less 45% (L-0.45)
	Scullery Sink	List less 30% (L-0.30)
	Water Cooler	List less 40% (L-0.40)
Zurn	China Products	List less 51% (L-0.51)
	Aquaspec Facuets	List less 53% (L-0.53)
	Sensor Faucets	List less 43% (L-0.43)
	Manual Flush Valve	List less 40% (L-0.40)
Sloan	China Products	List less 40% (L-0.40)
	Manual Flush Valve	List less 40% (L-0.40)
	Sensor Faucets	List less 40% (L-0.40)

20. Standard Pipe Valves (Gate, Ball, Check)

Ball Valves	List less 62% (L-0.62)
Gate Valves	List less 56% (L-0.56)
Check Valves	List less 56% (L-0.56)

20. Flush Valves, Sloan and American Standard

Urinal, Sloan Royal #3010000	\$ 99.70
Urinal, Sloan Regal #3080053	\$ 69.55
Water Closet, Sloan Royal #3012636	\$ 99.70
Water Closet, Sloan Regal #3082675	\$ 69.55
Urinal, 1.0gpf American Standard	\$ 83.40
Water Closet, 1.28gpf American Std	\$ 83.40

PLUMBING SUPPLIES ON DEMAND

Bid No. 15-004SC-SL

In accordance with Sections 13-1-21 and 13-1-22 NMSA 1978 resident veterans businesses are to receive the following preferences:

1. Resident veterans businesses with annual revenues of \$1M or less are to receive a 10% preference discount on their bids and proposals.
2. Resident veterans businesses with annual revenues of more than \$1M but less than \$5M are to receive an 8% preference discount on their bids and proposals.
3. Resident veterans businesses with annual revenues of more than \$5M are to receive a 7% preference discount on their bids and proposals.

This preference is separate from the current in-state preference and is not cumulative with that preference. However, veteran businesses will still receive the in-state preference once the veteran's preference cap is exceeded.

All public solicitations must contain the attached "Resident Veterans Preference Certification". Also, please attach vendor preference certificate to your bid response.

RESIDENTIAL PREFERENCE

Policy effective January 1, 2012

GOVERNOR MARTINEZ SIGNS SB1 – IN-STATE PREFERENCES

As of October 5, 2011, applications for in-state preference will no longer be processed through the State Purchasing Division. Per Senate Bill 1, signed by Governor Martínez on October 5, 2011, all New Mexico resident businesses and contractors that wish to obtain a five percent bidding advantage on all state contracts are required to obtain a valid resident business certificate or resident contractor certificate issued by the NM Department of Taxation & Revenue. This policy is effective January 1, 2012. For additional information please call 505-827-0951.

Please attach resident certificate to bid response.

Delivery: Prompt delivery will be a factor in determining the successful bidder; therefore, delivery time after receipt of order must be stated in definite terms. *All orders must ship complete, no partial shipments will be accepted.*

Please ship to the following address Maintenance & Operations Warehouse Facility at 919 Locust SE, Albuquerque, New Mexico 87106, telephone number (505) 765-6950. This will be confirmed at time of order.

Delivery times quoted must be accurate. Failure to meet quoted times may result in cancellation of contract.

What is your current lead-time after receipt of order? *Dependent on product and/or manufacture. Item(s) may be in stock or, if not, will be subject to vendor production and lead time.*

Walk in Trade: A portion of the trade will be "walk-in." Employees picking up materials must present proper identification. In addition, Maintenance and Operations 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.

Contractor shall maintain at all times (or have access to) an ample stock of all product lines awarded to accommodate walk-in trade. Contract will be subject to cancellation if contractor must repeatedly special order items for over-the-counter sales.

Request(s) NOT Defined: Contractor shall be held accountable to NOT fill requests which are clearly beyond the defined scope of this contract. Should such requests occur, contractor has the responsibility of calling such violations to the attention of the APS Procurement Officer.

Quantities: Specify if your company will impose any minimum order quantity in either product or dollars.

What is your minimum order (quantities, dollars etc.)? No minimum order

Packaging: APS will not require a vendor to break even cartons at time of order. The required quantity will be adjusted +/- to accommodate the vendor's stated packaging. If no adjustments are noted, packaging will be assumed to be as specified with no deviations. Leave no reasonable doubt as to what you intend to furnish in satisfaction of any potential order.

Product: Brand names as may be noted are for bidders reference as to the level of quality or characteristics desired. This is not a preference or an endorsement on the part of APS. If you are quoting another model/manufacture, please include product literature and/or technical information adequate for APS to evaluate the quality and performance of the substitute product.

APS assumes a direct correlation between items bid and shipped. "As Specified" is defined as the exact brand and model referenced in the bid specifications. Product awarded based on bid results wherein actual shipment does not conform to the exact product or packaging quoted will be returned at the full expense of the seller, who shall be further liable for such excess costs as APS may incur in purchasing replacement materials elsewhere. Attempts to ship non-conforming merchandise and offer a later discount as an inducement to keep the product will be refused.

Samples/Product Literature/Technical Specifications: Please note the bid specifications carefully. If samples are required, please submit under separate cover unless item is very small and can be enclosed in your regular bid envelope. Sample product must reference the bid number, item number, and your company.

APS reserves the right to request additional samples at any time during the evaluation process. The samples received will be used to determine quality, durability and compliance with specifications. All samples are to be the same as those materials supplied by the successful bidder(s) upon bid award. Samples shall be provided free of charge and be delivered and removed by the bidder at his expense. Award samples may be held for comparison with deliveries. APS shall not be held responsible for any samples damaged or destroyed in examination or testing. If sample is being sent under separate cover, please so note on your bid documents. APS will not unduly delay testing procedures or award for lack of

PLUMBING SUPPLIES ON DEMAND

Bid No. 15-004SC-SL

sample product. Samples not removed within ten (10) days after notice to the bidder will be regarded as abandoned and APS shall have the right to dispose of them as its own property.

Successful bidder(s) must provide catalogs, brochures, cross-reference sheets and/or related literature if required by APS.

Warranty/Guarantee: All bidders must guarantee full satisfaction of their products' use or permit unsatisfactory products to be returned collect for full money refund. Bidders will replace damaged items at no cost to APS. This bid is for medical/training supplies.

Warranty terms shall be stated where requested on the bid and must be, as a minimum, the manufacturer's best-preferred warranty. Submit a copy of your warranty terms with your bid.

Basis of Award: Award(s) will be primarily based upon best bid price list and secondarily on the deepest discount pricing for comparable list/product or group of products. Delivery, comprehensiveness and currency of price list(s), walk-in trade and the best interests of the District may be factors in bid award

In the event APS receives comparable pricing structures and discount from list prices in the same categories, then APS may choose to (1) award to the vendor who submits the more comprehensive price list or (2) make multiple awards in that category. APS reserves the right to make **multiple awards** to insure adequate coverage of service/or in the best interest of the District.

Bidder's s signature on this form confirms that bidder is an authorized New Mexico dealer/distributor for items bid. Use the space below to indicate which manufacturers have **NOT** granted your company full dealership/distributorship rights.

No manufacture exclusions