



# ALBUQUERQUE PUBLIC SCHOOLS INVITATION TO BID

**BID # 20-006MS**

## NEW MEXICO PRODUCE GROWERS

**(Local Produce Growers ONLY)**

### BID SCHEDULE

Action	Date & Time
Bid Issued	07/12/2019
Non Mandatory Pre-Bid Meeting	N/A
Non-Mandatory Pre-Bid Meeting Location	N/A
Deadline for Questions	07/23/2019 @ 5:00 PM (local MST time)
Bid Due Date & Time	07/30/2019 @ 3:00 PM (local MST time)

BIDS MUST BE RECEIVED BY THE DUE DATE AND TIME. No late bids will be accepted. The only acceptable evidence to establish the time of receipt is the date/time stamp imprint from the APS Procurement bid clock.

### BUYER CONTACT INFORMATION

<b>Name</b>	Melissa Sanchez
<b>Phone Number</b>	505-345-5661 ext. 38241
<b>E-Mail</b>	Melissa.sanchez@aps.edu
Any inquiries or requests regarding clarification of Bid document shall be submitted to the buyer in writing. Bidders may contact ONLY the buyer regarding the terminology stated in the procurement documents.	

### BID SUBMITTAL LOCATION

Physical Address <b>(NO USPS MAIL)</b> (*For walk-in delivery or carrier service (UPS, FedEx, etc.))	US Postal Mail Address - (Allow 5 extra days for internal APS delivery)
Albuquerque Public Schools ATTN: Procurement Dept. 6400 Uptown Blvd NE Suite 500 E Albuquerque, NM 87110	Albuquerque Public Schools ATTN: Procurement Department, City Center, Suite 500E P.O. Box 25704 Albuquerque, NM 87125-0704

Ensure that the following Bid information is clearly labeled on the **sealed package** containing the Bid submission. **Please note: if the sealed bid is placed inside a carrier envelope or package for shipping, all of this information must be re-written and clearly visible on the outermost envelope or package containing the sealed bid:**

- Offeror's **Business** Name (not an individual's name)
- Bid Number & Title
- Bid Due Date & Time

**\*APS does not have a mailbox on site. US Postal Service Mail is accepted only at the PO Box address. If a letter or parcel is mailed via the USPS to the APS physical address, it will NOT reach our office**

### BID TERM

APS reserves to right to enter into a one (1) year indefinite quantity contract with awarded Bidder(s). At the completion of the one (1) year, this contract will be re-bid.

# SUBMISSION COVER SHEET

***(REQUIRED: Submit with your bid.)***



**BIDDER ACKNOWLEDGEMENT:** By responding to this Bid, the undersigned Bidder (1) acknowledges that he or she agrees to the terms and conditions set forth in this Bid; (2) certifies that the Bidder has not, either directly or indirectly, entered into action in restraint of full competition in connection with the bid submitted to the District; and (3) agrees to furnish the materials, supplies or services as required within the time specified under the conditions imposed at the price indicated.

Signature of Authorized Representative: \_\_\_\_\_ Contractor's License #: \_\_\_\_\_  
\_\_\_\_\_  
(If Applicable)

Type or print Name of above: \_\_\_\_\_ Address 1: \_\_\_\_\_  
\_\_\_\_\_

Name of Firm: \_\_\_\_\_ Address 2: \_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_ E-Mail: \_\_\_\_\_  
\_\_\_\_\_

Resident/Veterans Preference Certification No. (If applicable): \_\_\_\_\_  
\_\_\_\_\_

**Contact information for Sales Department:**                      **Contact information for POs/Invoicing/Etc.:**

Name of Contact: \_\_\_\_\_ Name of Contact: \_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_ Telephone No.: \_\_\_\_\_  
\_\_\_\_\_

Email Address: \_\_\_\_\_ Email Address: \_\_\_\_\_  
\_\_\_\_\_

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

## BID SUBMITTAL REQUIREMENTS AND CHECKLIST

Please submit your completed bid, including the following items. Note that the requested information is mandatory and **failure to submit these items with your response may deem it non-responsive and may be disqualified**. Submittals must be in the following order and all items must be included in your response to this bid.

### PRINTED SUBMITTALS:

- Submission Cover Sheet **SIGNED \*\*\*REQUIRED\*\*\***
- Bid Price Form (Thumb drive or CD and hard copy) **\*\*\*REQUIRED\*\*\***
- Specification Exception Form **SIGNED \*\*\*REQUIRED\*\*\***
- Completed Conflict of Interest and Debarment/Suspension Form **SIGNED \*\*\*REQUIRED\*\*\***
- Campaign Contributions Disclosure Form (see Compliance section) **SIGNED \*\*\*REQUIRED\*\*\***
- Pallet Requirement **SIGNED \*\*\*REQUIRED\*\*\***
- Buy American Provisions **SIGNED \*\*\*REQUIRED\*\*\***
- Addendums (if applicable) – **BEFORE** submitting your bid, please check for addendums here:  
<http://www.aps.edu/procurement/current-bids-and-rfps>

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# **INSTRUCTIONS FOR ALL BIDDERS**

1. **READ ALL DOCUMENTS:** Bidders must familiarize themselves with all documents contained herein; it is mandatory that all submitted offers be in compliance with all the provisions contained in the Invitation to Bid. Bidders should promptly notify the buyer of any ambiguity, inconsistency, error, or missing attachments which they may discover upon examination of the BID.
2. **OFFICIAL CONTACT:** Bidders may contact ONLY the Buyer regarding the terminology stated in the procurement documents. Other APS employees do not have the authority to respond on behalf of APS. Bidders **MAY NOT** contact other District departments or employees. Any contact with a district department or employee may result in rejection of any bid.  
Any other communication will be considered unofficial and non-binding. Communication directed to parties other than the buyer will have no legal bearing on this BID or the resulting contract(s). Any response made by the District will be provided in writing to all Bidders by addendum, no verbal responses shall be authoritative.
3. **TIMELY SUBMISSION:** Bids must be submitted by the due date and time. Any and all Bids not received by the submission date and time shall be rejected. No late bids will be accepted under any circumstances, not even if the delivery service or company is late. It is recommended to send the bid in early.  
Proposer shall submit one (1) original bid and one (1) identical electronic copy. Electronic copy is not email. A jump drive loaded with your bid and labeled with bid number and Bidders name should be submitted with hard copy of bid. Fax copies are not accepted.
4. **BIDDER ACKNOWLEDGMENT:** By responding to the bid, Bidders acknowledge and agrees to the terms and conditions set form in bid. The submission of a bid constitutes a representation by the Bidder that the Bidder has made all appropriate examinations, investigations, and analysis and has made provision as to the cost thereof in his bid. All costs incurred by a Bidder in connection with responding to this bid, the selection process undertaken in connection with this bid, and any negotiations with APS will be borne solely by the Bidder.
5. **ELECTRONIC BID DOCUMENTS:** This bid is being made available by electronic means. In the event of conflict between a version of the bid in the Bidder's possession and the version maintained by APS, the Bidder acknowledges that the version maintained by APS shall govern.
6. **FORMS AND ATTACHMENTS:** It is the responsibility of every Bidder to ensure they have downloaded the latest version of each bid, including any addendum(s) which may have been issued and posted on the APS Procurement Department Website. Bidders should revisit the website (<http://www.aps.edu/procurement> then select "See Current Bids and RFPs") prior to the due date before submitting their bid to Albuquerque Public Schools. All addendums must be acknowledged in the submitted bid.
7. **ADDENDUM(S):** No Addendum will be issued later than FIVE (5) days prior to the date for receipt of bids, except an Addendum withdrawing the bid or one which extends the date for receipt of bids.
8. **CORRECTION OR WITHDRAWAL OF BIDS:** Pursuant to NMSA 13-1-106, a bid containing a mistake discovered before bid opening may be modified or withdrawn by bidder prior to the time set for bid opening by delivering written notice to the location designated in the invitation for bids as the place where bids are to be received. After bid opening no modifications in bid prices or other provisions of bids shall be permitted. A low bidder alleging a material mistake of fact which makes his bid nonresponsive may be permitted to withdraw its bid. Any decision by Buyer to permit or deny the withdrawal of bid on the basis of a mistake contained shall be accordance with applicable procurement statutes.

9. **IRREGULARITIES IN BIDS:** Pursuant to NMSA 13-1-132, APS may waive minor informalities in bids submitted provided that such informalities have no effect on price, quality, or quantity.
10. **BIDDERS EXCEPTIONS:** Any exceptions to the Scope of Work and/or Specifications shall be listed separately in the submitted bid and unless otherwise stated, specifications attached are the minimum requirements. The Buyer, after review of the bids may request clarifications on information submitted by any and all bidders in a written format, with a specified deadline for response.
11. **BRAND NAMES:** Where a brand-name or equal specification is used in a solicitation, the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired, and is not intended to limit or restrict competition. If a vendor proposes an “equal” to scope of work/specifications, APS is the sole interpreter of the scope of work/specifications and sole judge as to whether the “equal” proposed complies with the scope of work/specifications.
12. **BIDDER SUBMITS MULTIPLE BRAND OR PRICE:** If Bidder offers more than one brand or price per item, APS shall evaluate bids and award the goods that are in APS’s best interest with regards to pricing and quality. Bidders offering other than specified goods must submit complete product data specification information for evaluation purposes.
13. **BID PRICING:** Responses, including bid prices, will be considered firm.
14. **PRICING ESCALATION:** Price escalation may be considered only at the anniversary date of the award. The Contractor must submit written documentation that adequately justifies need for pricing escalation, to include the proposed new pricing structure. APS will review the information and render a Determination accepting or rejecting the new proposed pricing.
15. **BID OPENING:** The contents of the bid will be available to the public at bid opening.
16. **BID CANCELLATION OR REJECTION:** This bid may be canceled or may be rejected in whole or in part when it is in the best interest of APS. Any sole response that is received may be rejected by APS depending on available competition and timely needs of APS.
17. **NON RESPONSIVE:** APS reserves the right to eliminate any Bidder who submits incomplete or inadequate responses or is not responsive to the requirements of this Invitation to Bid.
18. **AWARD CRITERIA:** The bid will be awarded to the lowest responsible and responsive Bidder that meets or exceeds the specifications/scope of work outlined in the Bid Documents. APS reserves the right to the sole judge to determine “meets or exceeds”.
19. **PREFERENCES:** Bids may be awarded preference in compliance with NMSA 1978, §13-1-21 for New Mexico In-State Resident Business and Resident Veteran Business. Bidders shall include in their bid a copy of the certificate issued by State of New Mexico Taxation & Revenue. If Bid is Joint Venture, Bidder shall state in submitted bid the percentage of work that will be performed by Resident Business and/or Resident Veteran Business. A bid cannot be awarded both a resident preference and a resident veteran business preference. Preferences are not applicable for federal fund purchases.
20. **MULTI-AWARD.** APS reserves the right to multi-award contracts as necessary for adequate delivery or service in accordance with NMSA 1978, §13-1-153. APS reserves the right to award by item, group of items, or total bids.

21. **AFTER AWARD.** APS reserves the right to increase or decrease the quantity of any item called for, add additional related items as APS deems necessary, or to eliminate any item entirely.
22. **NO MINIMUM GUARANTEE:** If this bid results in a non-exclusive discount pricing agreement, more than one award may be made. No commitment is made by APS as to quantity and frequency of purchase. APS reserves the right to purchase items referenced under this agreement using any other method and from any other Vendor as deemed necessary and in the best interest of APS.
23. **PURCHASE AFTER AWARD:** Any resulting purchases under the bid will be made by APS purchase order or procurement card. Quotes provided to APS personnel will be quoted per the awarded APS Price Agreement and will reference the APS Price Agreement number so verification of pricing can be made.
24. **CONFIDENTIAL INFORMATION:** The Procurement Department will not disclose or make public any pages of a bid on which the Bidder has stamped or imprinted “**Proprietary**” or “**Confidential**” subject to the following requirements.

Proprietary or Confidential data shall be readily separable from the bid in order to facilitate eventual public inspection of the non-confidential portion of the offer. Confidential data is normally restricted to confidential financial information concerning the Bidder’s organization and data that qualifies as trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978, §57-3A-1 to §57-3A-7. The price of products offered or the cost of services proposed shall not be designated as proprietary of confidential information.

25. **DEFINITIONS.** Definition of Terminology: This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

“**Contract**” shall mean an agreement for the procurement of items of tangible personal property or services.

“**Contractor**” shall mean the successful bidder

“**Determination**” shall mean the written documentation of a decision of a procurement manager including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

“**Desirable**” the terms “**may**”, “**can**”, “**should**”, or “**prefers**” identify a desirable or discretionary item or factor.

“**Invitation to Bid**” or “**Bid**” shall mean all documents, including those attached or incorporated by reference, used for soliciting bids.

“**Mandatory**” the terms “**must**”, “**shall**”, “**will**”, “**is required**”, or “**are required**”, identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Bidder’s bid.

“**Offeror**”, “**Bidder**”, or “**Proposer**” is any person, corporation, or partnership who chooses to submit a bid.

“**Purchase Order**” shall mean the document, which directs a contractor to deliver items of tangible personal property or services pursuant to an existing contract.

“**Responsible Bidder**” shall mean a Bidder who submits a responsive bid and who has furnished, when required, information and data to prove that its financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible property described in the bid.

“**Responsive Bid**” shall mean a bid, which conforms in all material respects to the requirements set forth in the Bid.

# **TERMS & CONDITIONS**



1. **TERM:** APS reserves the right to procure the services/goods as described in this Bid and enter into a contract as described on Bid front cover.
2. **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 this contract. Should such requests occur, Contractor has the responsibility of calling such violations to the attention of the APS Procurement Officer.
3. **NO MINIMUM GUARANTEE:** APS does not guarantee a minimum amount of purchases in conjunction with award of this invitation to bid.
4. **PRICING ESCALATION:** Price escalation will be considered only at the anniversary date of the award. The Contractor must submit written documentation that adequately justifies need for pricing escalation, to include the proposed new pricing structure. APS will review the information and render a Determination accepting or rejecting the new proposed pricing.
5. **TAXES:** APS holds a Class 9 Nontaxable Transaction Certificate and is exempt from payment of taxes on tangible personal property. A NTTTC will be issued upon request.
6. **NON-APPROPRIATION:** APS's obligation to make payment under the terms of this bid is contingent upon its appropriation of sufficient funds to make those payments. If APS does not appropriate funds for the continuation of this procurement, this procurement will terminate upon written notice of that effect to the Principal. APS determination that sufficient funds have not been appropriated is firm, binding and not subject to review.
7. **PROCUREMENT CODE:** The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico Criminal Statutes impose felony penalties for bribes, gratuities, and kickbacks.
8. **PROCUREMENT UNDER EXISTING CONTRACTS:** In accordance with NMSA 1978 13-1-129, Offerors are hereby notified that other governmental entities within the State of New Mexico, or as otherwise allowed by their respective governing directive, may contract for services with the awarded Offeror. Contractual engagements accomplished under this provision shall be solely between the awarded proposer and the contracting entity with no obligation by APS.
9. **TERMINATION:** Either party may terminate this contract as follows:
  - A. Termination by the Contractor
    1. The Contractor may terminate this contract only if APS fails to comply with any provisions of this contract and after receiving notice of the noncompliance APS fails to cure the noncompliance within ten (10) days, or
    2. By written mutual agreement between the Contractor and APS.
  - B. Termination by APS
    1. For Cause
      - a. The occurrence of either one of the following events will justify termination for cause:
        - i. Contractor's persistent failure to perform the work in accordance with the contract documents (including but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment).
        - ii. Contractor's violation(s) in any substantial way of any provisions of this contract.
      - b. If either one of the events identified above occur, the APS notice, terminate the service of Contractor, exclude Contractor from site, and take possession of the work. Contractor shall be paid for project costs incurred up to the date of termination but **SHALL NOT** be paid for loss of profits resulting from such termination.

- c. Where Contractor's services have been so terminated by APS, the termination will not affect any rights or remedies of District against contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the Contractor by APS will not release the Contractor from liability.

2. For Convenience

- a. Upon ten (10) days written notice to Contractor, APS may without cause and without prejudice to any other right or remedy of APS elect to terminate the contract.
- b. In such case, Contractor shall be paid (without duplication of any items):
  - i. For completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination,
  - ii. For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the contract document in connection with uncompleted work.
- c. Contractor **SHALL NOT** be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

**10. INDEMNIFICATION:** The Bidder shall be responsible for damage to persons or property that occurs as a result of his/her fault or negligence, or that of any of his/her employees, agents or subcontractors. Bidder shall save and hold harmless APS against any and all loss, cost, damage, claims, expense or liability in connection with the performance of the contract. Any equipment or facilities damaged by the Bidders' operation shall be repaired and/or restored to their original condition at the Bidder's expense.

**11. INSURANCE (If Applicable):** The successful Bidder shall (if applicable) purchase and maintain statutory limits of Worker's Compensation, and Public Liability and Automobile Liability insurance approved by APS at the time of contract award. APS shall be included as a loss payee and/or additional insured. Public Liability and Automobile Liability insurance shall include at least the following coverage:

General Liability Insurance – per occurrence	\$1,000,000
General Aggregate - \$2,000,000	
Product/completed operations aggregate \$1,000,000	
Bodily injury, per occurrence	\$1,000,000
Medical and medically-related expenses	\$5,000
Vehicle bodily injury, each occurrence, excluding medical and medically related expenses	\$750,000
Property Damage, per occurrence	\$1,000,000

Contractor shall furnish Owner with certificates of insurance with the contract documents and prior to the commencement of work.

**NOTE:** Certificate holder shall be:

Albuquerque Public Schools.

Certificate of Insurance forwarded to:

Albuquerque Public Schools  
 Procurement Department  
 6400 Uptown Blvd. NE, Suite 500E  
 Albuquerque, NM 87110

12. **AUDIT**: APS reserves the right to audit the Contractor's records associated with this contract at any time during the contract period and for a period of up to three years following the expiration or termination of the agreement. Such audit may be conducted by APS personnel or a third party under contract with APS. APS shall give the contractor reasonable notice prior to the conduct of any audit and upon receiving the notice from APS the Contractor agrees to fully cooperate with the auditors. If Contractor subcontracts any portion of its obligation to another party, Contractor shall guarantee APS's access to books and records of such party.
13. **GOVERNING LAW**: This Bid and any contract with a Bidder which may result from this procurement shall be governed by the laws of the State of New Mexico.
14. **INDEPENDENT CONTRACTOR**: The Contractor is an Independent Contractor performing services for APS. The Contractor shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of APS as a result of this procurement.
15. **DEBARMENT OR SUSPENSION**: A business (Contractor, Subcontractor or Supplier) that has either been debarred or suspended pursuant to the requirements of NMSA 1978, §13-1-177 through §13-1-180, and §13-4-11 through §13-4-17, as amended, shall not be permitted to do business with APS and shall not be considered for award of the contract during the period for which it is debarred or suspended with APS.
16. **CONFLICT OF INTEREST**: By submitting a bid, the Bidder certifies that no relationship exists between the Bidder and APS that interferes with fair competition or is a conflict of interest; and no relationship exists between such propose and another person or firm that constitutes a conflict of interest that is adverse to APS.
17. **NON-DISCLOSURE**: The Bidder shall not disclose any information relating to students, and employees of APS other than such information that may be authorized by the individual student or employee. Vendor agrees to indemnify and hold harmless APS from any damages, claims, liabilities, and costs including reasonable attorney fees and costs in the event any unauthorized release of such information occurs.
18. **DELIVERY**: The goods shall be delivered free of the rightful claim of any third person, any security interest or other lien. Unless otherwise agreed all goods called for in this Bid shall be tendered in a single delivery and payment is due only upon such delivery (NET 30).
19. **FOB**: Unless stated otherwise, the price for goods is FOB: Destination (District's designated address).
20. **DELAYS IN DELIVERY**: Time is of the essence and this purchase may be subject to termination for failure to deliver on time, unless delay was caused by APS. If delay in delivery is foreseen, Seller must notify the APS Requesting Department of late delivery, cause of late delivery and remedy for late delivery.
21. **INSPECTION**: Final inspection will be made at the destination upon completion of delivery of goods/services. Final inspection shall include any testing or inspection procedures required by the specifications.
22. **ACCEPTANCE**: Acceptance of delivery of goods/services shall not be considered acceptance of the goods/services furnished. Acceptance occurs when the APS Requesting Department, after a reasonable opportunity to inspect the goods/services, signifies to the Seller that are goods/services are conforming and fails to make an effective rejection.

- 23. BUYERS REVOCATION OF ACCEPTANCE:** The APS Requesting Department can revoke acceptance of goods when it is discovered, in a reasonable time, that the Sellers nonconforming goods substantially impair the value of the goods.
- 24. SELLERS RIGHT TO CURE A NONCONFORMING DELIVERY OF GOODS:** The Seller, upon notice of revocation of acceptance, shall correct without charge and deliver conforming goods in a reasonable time
- 25. ASSIGNMENTS:** The awarded Contractor shall not assign nor delegate specific duties as part of this Bid nor transfer any interest nor assign any claims for money due or to become due under this Bid without the written consent of APS.
- 26. PROMOTIONAL GIFTS AND ACTIVITIES:** APS policy prohibits the distribution of jackets, shirts, caps, or any other clothing items with company or product logo or any other form of advertising to its employees. Furthermore, APS employees are prohibited from entering drawings, contests, or other promotional/advertising activities with vendors or potential vendors in connection with a procurement action.
- 27. PAYMENT:** Any invoice receive and payment made shall be subject to APS's terms and conditions (NET 30) unless specifically waived by APS in a separate written document.

## **PROTEST**

Any Offeror who is aggrieved in connection with a solicitation or award of an Agreement may protest to the Purchasing Office in accordance with the requirements of the Contracting Procurement Regulations and the State Procurement Code. The protest should be made in writing within 24 hours after the facts or occurrences giving rise thereto, but in no case later than 15 calendar days after the facts or occurrences giving rise thereto (NMSA 1978, §13-1-172). The protest must be in writing and delivered to the Executive Director - Procurement Department, Albuquerque, New Mexico.

In the event of a timely protest under this section, the Purchasing Agent and the Contracting Agency shall not proceed further with the procurement unless the Purchasing Agent makes a determination that the award of Agreement is necessary to protect substantial interests of the Contracting Agency (NMSA 1978, §13-1-173).

The Purchasing Agent or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning a procurement. This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorneys' fees (NMSA 1978, §13-1-174).

The Purchasing Agent or his/her Designee shall promptly issue a determination relating to the protest.

The determination shall:

- I. State the reasons for the action taken; and
- II. Inform the protestant of the right to judicial review of the determination pursuant to NMSA 1978, §13-1-183.

A copy of the determination issued under NMSA 1978, §13-1-175 shall immediately be mailed to the protestant and other Bidders involved in the procurement (NMSA 1978, §13-1-176).

# **SPECIFICATIONS**

## **SPECIFICATIONS**

### **1. Scope of Work:**

Purpose of the bid is to establish pricing for New Mexico Grown Fresh Produce on an “as needed” basis. APS reserves the right to bid any item(s) separately whenever it may be in its best interest to do so. APS Food & Nutrition Services is responsible for the Nutritional Schools Breakfast Program, The National School Lunch Program, the After School Snack Program and the Summer Food Service Program. Fruits and vegetables are an integral part of the menu planning and are purchased on a continuing basis.

Delivered Fresh Fruit and Vegetables will be contracted through New Mexico Growers only. Only New Mexico Growers will be eligible to submit pricing.

Although this contract is being bid on behalf of Food & Nutrition Services, individual schools/departments, state agencies or local public bodies will be referred to the successful contractor in the event of requirements that can be adapted to the specific items awarded.

### **2. Vendor Qualifications – New Mexico Growers ONLY**

Bids will only be considered from local growers who meet the qualifications listed below. Bidders must have adequate organizations, facilities, equipment and personnel to ensure prompt and efficient service. Food and Nutrition Services and/or Procurement Department, reserves the right, before recommending any award, to inspect the facilities and organization or to take any other action necessary to determine ability to perform in accordance with specification, terms and conditions.

APS may or may not order all items on the pricing sheet nor does APS guarantee to order any particular item only because it has been offered. The district will take advantage of seasonal specials and general availability as well as price. Menus are available for all interested bidders at least one week in advance. Copies of menus may be obtained from Food and Nutrition Service Department, Juan Saiz, at 505-345-5661 ext. 38207.

Food is not ordered or prepared on holidays, Christmas vacations etc. Vendors will be advised of APS closing by Cafeteria Services management and/or Procurement Division. Year round schools that are open will serve food as usual, although, the numbers of lunches may be less than during school year.

APS reserves the right to add produce through amendment with approved contractor(s) as they are introduced into the market with prior approval from Food and Nutrition Services.

#### **Grower Requirements**

**Facilities and Farm Inspections:** The District reserves the right, prior to award of any contract and throughout the contract period, to request a third party food safety inspection of the prospective awardees facilities and/or farm to determine that the awarded vendor has a regular, bona fide establishment that meets the District’s requirements. The third party agent will be selected by the District. Areas of evaluation may include, but are not limited to fields, wash station, packing shed, and delivery vehicles. The food safety inspection is to assure the District that the perishable products distributed to the schools are handled in accordance with the latest USDA and industry food safety standards.

### **3. Traceability Summary:**

Bidders must provide the following documentations at the request of Food and Nutrition Services.

- **A map of the farm including list of vegetables and row feet/acreage per crop grown**
- **Harvest, washing and packing logs**

- **Handling of recalled product documentation**
- **Packing materials that meet District Requirements**
- **Box labels that meet District Requirements**
- **Invoices that meet District Requirements**

For information on Traceability Summary, go to:

<https://www.fns.usda.gov/ensuring-traceability-fresh-produce>

**Price Agreements in place may be cancelled for failure to provide documents at the request of APS.**

**4. City/County of Albuquerque Environmental Health Inspection Certificate:**

APS prefers to have a copy of your latest City of Albuquerque Environmental Health Inspection Certification submitted with your bid. If certificates are not submitted at time of bid opening, APS reserves the right to require them prior to award. All awarded bidders must submit certificates prior to award.

**5. Pricing:**

All prices quoted 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.

Prices artificially derived for APS will not be acceptable. Price increases will not be unique to APS. APS recognizes that produce can and does experience rapid fluctuations. It is assumed that the bidder will be aware of normal market trends, shortages, seasonal variation etc., and will price his/her quotation accordingly. If prices should decrease in the market, APS must also benefit from any market fluctuation which would derive a savings. The district will pay fair market value only.

**6. Pricing Sheets/Electronic Copy:**

Please review the pricing sheets carefully, all produce items listed is produce being served at the present time. Cells in each column of the items that you are bidding must be filled in. **Pricing Sheets must be typed, in order for accurate entry of price analysis report. A CD or Thumb Drive of the excel file is required along with a hard copy of the Pricing Sheets. If the following information is not submitted, your bid may be considered non-responsive and removed from evaluation.**

Please review the specifications for items carefully as to particular references are made to products. Bids submitted will be evaluated to determine which bidder(s) offer the best value to APS in accordance with quality, product availability, and accessibility.

The specifications listed abide by the New Mexico Nutrition Rules for Competitive Foods. No substitutions of product are allowed unless **“written prior approval”** by APS Procurement Department and Food & Nutrition Services. A Substitution, if approved, shall be billed at the same per unit cost as the original bid item.

Bidding on items just to secure an award **will not be accepted** and may result your company from doing business with APS.

7. **Quality:**

Quality of all products shall be fresh and unspoiled, not wilted or otherwise deteriorated. Produce must be U.S. No.1 Grade Standard or better. We ask in the pricing structure to identify grade of produce. APS reserves the right to reject a shipment that does not meet reasonable standards or acceptable quality.

8. **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, store, 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 140 degrees F. (60 degrees C) or above, except during necessary period of preparation.

Frozen product should be frozen solid when being received at a temperature of 0 degrees. Refrigerated trucks are required for delivery of all frozen foods.

It is crucial that all products be delivered on time and at the appropriate temperatures to meet health code requirements. Foods received at the wrong temperature **will not be accepted.**

9. **Order Placement:**

Orders will be placed by the Purchasing Department. A purchase order will be issued referencing the Price Agreement number. Do not accept telephone/facsimile orders from school/departments without prior approval from the Purchasing Department. **APS will not pay for unauthorized purchases.**

No goods/services shall be provided or be in production until the vendor receives the official Purchase Order document from APS Procurement Department via e-mail.

10. **Emergency Circumstances:**

In the event of an emergency circumstances (such as freezes, floods), which dramatically disrupt the availability and/or pricing of a significant portion of the supply, APS must be notified immediately. Written notice or email to [Melissa.sanchez@aps.edu](mailto:Melissa.sanchez@aps.edu) shall be furnished to the Purchasing Division, Melissa Sanchez, District Buyer and Juan Saiz, Procurement Manager, email [juan.saiz@aps.edu](mailto:juan.saiz@aps.edu), unless Food & Nutrition Services shall determine otherwise. The policy is that APS will replace all orders for the item in question with something more readily available and less expensive, for example: Apples for oranges.

11. **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.

12. **Delivery:**

Prompt delivery is of the essence and is a factor in determining the successful Bidder(s). Delivery time after placement 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 Offeror will be assigned at the discretion of APS.



Awarded Contractor shall ship all orders in a single shipment whenever possible. Partial shipment of less than 25% of the ordered quantity for any line item will **not** be accepted and will be returned to shipper at shipper's expense.

Juan Saiz at Food & Nutrition Services will coordinate the placing of orders with the successful contractor or designee.

Successful contractors must call or email Warehouse Manager, Richard Gonzales, (505) 345-5661 ext. 38236, email [Gonzales\\_ric@aps.edu](mailto:Gonzales_ric@aps.edu) or Manager of Kitchen Operations, Steve Carleton, (505) 345-5661 ext. 38232 or cell (505) 307-0815, email [carleton@aps.edu](mailto:carleton@aps.edu) three (3) days in advance to make delivery arrangements.

Successful contractor(s) are required to deliver to Food & Nutrition Services central warehouse location only. **(One way to access loading dock, Enter off Chama, 1 block East of Louisiana)**

- **Food & Nutrition Services Warehouse** – 800 Louisiana Blvd. NE, Albuquerque NM 87108 which accepts deliveries Monday thru Friday only.
- **Local and over the Road Driver(s)** – Deliveries will be accepted between 8:00 am – 1:30 pm.
- **UPS & Fed Ex** – Deliveries will be accepted between 8:00 am – 1:30 pm

**All deliveries are required to schedule a delivery time to limit the wait and back up at the loading dock. Deliveries that have scheduled time will have priority. NO EXCEPTIONS**

### **13. Protection of Adjacent Surfaces:**

The contractor shall take all measures necessary during the course of delivery to protect existing property including adjacent surfaces, equipment, electrical systems, piping, sidewalks, and landscaping from damage and shall repair promptly any such damage at his own expense and to the satisfaction of APS.

### **14. Purchase Order and Invoicing Procedures:**

Price Agreement (PA) will be issued to the successful contractor(s) for all awarded items for the duration of the contract. A single Blanket Purchase Order referencing the Pricing Agreement will be issued to the awarded contractor for the duration of the contract.

Proof of delivery document, showing the APS Purchase Order, delivery location, and the full signature with printed name underneath of employee receiving the item(s) must be submitted to APS Food and Nutrition. Initials are not acceptable and will not be processed for payment. APS will not pay for unauthorized purchases.

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

APS will make a good faith effort to work with your company to remedy any problems with invoices. If invoices are not generated as per contract pricing and invoiced properly, APS reserves the right to request corrected invoices.

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

- a. Price Agreement Number
- b. Purchase Order Number
- c. Invoice Number
- d. Order Date
- e. Delivery Date
- f. Item Number
- g. Item Description
- h. Quantity Shipped
- i. Lot/Batch #'s
- j. Unit Price
- k. Total Invoice
- l. Recipient's Signature
- m. Company Header

**15. Use of Federal Funds:**

Food Services revenues are derived primarily from Federal sources. Federal Law prohibits application of any residential preference when the expenditure of federal funds designated for specific purchase(s) is involved.

**16. 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 request occur, contractor has the responsibility of calling such violations to the attention of the APS Procurement Buyer.

**17. Guarantee:**

All Offerors must guarantee full satisfaction of their products use or permit unsatisfactory product to be returned **collect** for full money refund. Bidders will replace damaged items at no cost to APS.

**18. Promotional Gifts and Activities:**

APS Policy prohibits the distribution of jackets, shirts, caps or any other clothing items with company or product logo or any other form of advertising to its employees. Furthermore, APS employees are prohibited from entering drawings, contest or other promotional/advertising activities with vendors or potential vendors in connection with a procurement action.

**19. Letter of Withdrawal:**

Contractor may decline a renewal with no penalty by submitting a "Letter of Withdrawal" to the Procurement Office. 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 Broker, 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 of Withdrawal" to be addressed or emailed to, APS Purchasing Department, Attn: Melissa Sanchez, P.O. Box 22704, Albuquerque, NM 87125. Email address, [Melissa.sanchez@aps.edu](mailto:Melissa.sanchez@aps.edu)

**20. The Agriculture Appropriations Act for Fiscal Year:**

**Buy American Provision of the Law:** Section 104(d) of the William F. Goodling Child Nutrition Reauthorization of 1998 requires schools and institutions participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) in the contiguous United States to purchase, to the maximum extent practicable, “domestic commodities or products” for use in meals served under the NSLP and SBP. The legislation defines “domestic” commodities or products for use in meals served under the NSLP and SBP. The legislation defines “domestic” commodity or product as one that is produced and/or processed in the United States substantially using domestic agricultural commodities. “Substantially” means that over 51% of the final processed products consist of agricultural commodities that were grown in the United States.

It is essential that all purchases of agricultural commodities and food products comply with this statutory provision on page 22 of this RFP.

**21. Basis of Award:**

A multiple award will be issued to bidders for adequate delivery and/or service. A multiple award will be based upon the lowest responsible and responsive bidder(s) providing the best service and product(s).

Typically, awards will be based on the each line item bid by either the pound, case or serving as delivery is only to one location. If bidders cannot offer per pound cost on items, APS reserves the right to make multiple awards on those items to accommodate our menu needs.

APS reserves the right to award to a single contractor, or an “All or None” basis. Awards will be based as, best prices overall. In this instance, award will be made to the lowest total bidder based on per lb., or each cost, of the commodity and by the APS school weekly menu plan.

**22. Awarded Pricing Agreements:**

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.

# Pricing periods and submittal dates

**Keep this page for your reference**

Awarded vendors, please make copies of the blank specification sheet as this will be your copy to submit for your monthly price changes. Food & Nutrition Services will **ONLY** send revised spreadsheets as new items are added. Please **do not** send other versions of pricing submittals as they **will not** be accepted.

Submit each produce price changes on the dates specified below, before 11:00 a.m., on the last Thursday of the month. Monthly price changes must be delivered in a sealed envelope specifying company name, bid name and bid number. Please deliver monthly price changes to the Food and Nutrition Services Complex, located at 800 Louisiana Blvd, NE, Albuquerque NM 87108. Attn: Melissa Sanchez. Note: Due to ordering cycle, new pricing will start at the beginning of the following week on Monday. Please reference the second column referencing the dates for the pricing period. These dates reference the start of the pricing period and the end of the pricing period. All invoices must reference the **date of the order** in order for accurate pricing. **Orders placed prior to monthly price changes must be invoiced at the contracted price at time of order.**

**Note: All Awarded vendors must submit monthly pricing with or without price changes to ensure correct pricing for that pricing period. No Exceptions!!!**

Dates of monthly pricing submittals as follows:

<b><u>Pricing Submitted:</u></b>	<b><u>Pricing Period</u></b>
August 29, 2019	September 2, 2019 -- September 29, 2019
September 26, 2019	September 30, 2019--- November 3, 2019
October 31, 2019	November 4, 2019 --- December 1, 2019
November 28, 2019	December 2, 2019 -- December 29, 2019
December 26, 2019	December 30, 2019 --- February 2, 2020
January 30, 2020	February 3, 2020 --- March 1, 2020
February 27, 2020	March 2, 2020 --- March 29, 2020
March 26, 2020	March 30, 2020 --- May 3, 2020
April 30, 2020	May 4, 2020 --- May 31, 2020
May 28, 2020	June 1, 2020 --- June 28, 2020
June 25, 2020	June 29, 2020 --- August 2, 2020
July 30, 2020	August 3, 2020 ---August 19, 2020

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

Contact for Payment/Invoice Information:

Company: \_\_\_\_\_

Contact: \_\_\_\_\_

Address: \_\_\_\_\_

City, State ZIP Code: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**Contact for Product or Delivery Problems:**

Company: \_\_\_\_\_

Contact: \_\_\_\_\_

Address: \_\_\_\_\_

City, State ZIP Code: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**Delivery**

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?** \_\_\_\_\_

**Quantities**

**What is your minimum order (quantity, dollars, etc.)?** \_\_\_\_\_

**Traceability**

Bidder **must initial** the list below acknowledging you are verifying you have completed all the District Requirements and that you are willing to present the following documentations at the request of the District.

\_\_\_\_\_ **A map of the farm including list of vegetables and row feet/acreage per crop grown**

\_\_\_\_\_ **Harvest, washing and packing logs**

\_\_\_\_\_ **Handling of recalled product documentation**

\_\_\_\_\_ **Packing materials that meet District Requirements**

\_\_\_\_\_ **Box labels that meet district Requirements**

\_\_\_\_\_ **Invoices that meet District requirements**

**A CD or Thumb Drive of the excel file is required along with a hard copy of the Pricing Sheets. If the following information is not submitted, your bid may be considered non-responsive and removed from further evaluation.**

## Buy American Requirements

The following three documents (hyperlinks) are consistent in defining the Buy American requirements.

1. [Richard B Russell National School Lunch Act \(n\)1 \(A\) and \(B\)](#)
2. [7 CFR 210.21 Procurement, \(3\)d and](#)
3. [SP 20-2006: Procurement questions related to the Buy American Provision](#)

The Richard B. Russell National School Lunch Act provides in Section 12(n) the Buy American provision which requires that school food authorities (SFAs) operating school meals programs purchase domestically produced (grown) and processed foods, to the maximum extent practicable. The Buy American provision was codified in the National School Lunch Program regulations at 7 CFR 210.21(d). A “domestic commodity or product” is defined in the Federal regulations as:

- (i) an agricultural commodity that is produced in the United States (U.S.); and
- (ii) a food product that is processed in the U.S., substantially using agricultural commodities that are produced in the U.S., 7 CFR 210.21(d).

The language about ‘*substantially*’ using U.S., agricultural commodities is referring to products that are processed in the U.S., comprised of at least 51% domestic ingredients. According to the regulations, a food product must meet a two part test to be considered a domestic commodity or product: (1) the food product must be processed in the U.S.; and (2) the food product must be processed substantially using agricultural commodities that are produced in the U.S. There is no further need to determine whether 51% of a foreign product consists substantially of agricultural commodities that are produced in the U.S., because the product does not meet the first part of the test as it is not processed in the U.S.

Waivers to the Buy American provision are rare. While the Food and Nutrition Service (FNS) sets the Buy American requirements by which States and SFAs must abide, keep in mind that USDA is not a part to the contract between the SFA and its food supplier. It is the responsibility of the SFA to document that there is basis for allowing an exception (waiver); it is unacceptable for exceptions to be granted without substantial evidence that either of the two following situations have occurred:

- 1) The product is not produced or manufactured in the U.S., in sufficient and reasonable available quantities of a satisfactory quality; **and**
- 2) Competitive bids reveal the costs of a U.S., product is significantly higher than the foreign product.

Availability, cost, and quality are factors an SFA must weigh when considering the purchase of non-domestic products. The SFA needs to review current market information to determine if purchasing a specific non-domestic product meets one or more of the exceptions to the Buy American provision.

SFAs are encouraged to include in their bidding process a requirement for certification similar to: “We require that suppliers certify the percentage of U.S., content in products supplied to us. If you are unable or unwilling to make such certification, we will not purchase from you.” Appearing under this statement could be the sentence, “We certify that our U.S., processed \_\_\_\_ have at least \_\_\_\_% U.S., content,” with space for the supplier to fill in the name of the product and its percentage of domestic content. The SFA’s active role in clarifying the Buy American provision to all contractors in the bidding process helps ensure that contractors have a clear understanding of the Federal requirements and the ingredients contained in a product during the manufacturing process do not contain significant foreign content. Additionally, the best tool an SFA has to ensure that the Buy American provision is being followed is its contract with the distributor. If an SFA writes a contract with specific provisions and administers its contract properly, many conflicts or issues with the distributor can be avoided.

It is important for both SFAs and distributors to recognize that the determination as to whether a product meets the requirements of the Buy American Contractual provision rests with the SFA; it is not enough to assume that a product with a well-recognized American brand name or a product supplied by a domestic foodservice distributor complies with the Buy American provision. Distributors/suppliers should, in good faith, facilitate this process and provide the SFA with sufficient information regarding the country of origin for each end product in order for the SFA to make a determination. These efforts will enable distributors and suppliers to provide SFAs with products that meet the specifications of their contract. A brief description of the Buy American Requirement is printed behind the front cover of the Food Buying Guide for Child Nutrition Programs.

# PRICING SHEET

*\*An electronic version of the price form can be found at:\**

<http://www.aps.edu/procurement/current-bids-and-rfps>



# COMPLIANCE

*(REQUIRED LEGAL FORMS)*

*All of the following forms must be signed and submitted with your bid or your bid may be rejected*



# CONFLICT OF INTEREST, NON-COLLUSION AND DEBARMENT/SUSPENSION CERTIFICATION FORM

## CONFLICT OF INTEREST

As utilized herein, the term “Vendor” shall mean that entity submitting a proposal to Albuquerque Public Schools in response to the above referenced bids/request for proposals.

**The authorized Person, Firm and/or Corporation states that to the best of his/her belief and knowledge:**

No employee or board member of Albuquerque Public Schools (or close relative), with the exception of the person(s) identified below, has a direct or indirect financial interest in the Vendor or in the proposed transaction. Vendor neither employs, nor is negotiating to employ, any Albuquerque Public Schools employee, board member or close relative, with the exception of the person(s) identified below. Vendor did not participate, directly or indirectly, in the preparation of specifications upon which the quote or offer is made. If the Vendor is a New Mexico State Legislator or if a New Mexico State Legislator holds a controlling interest in Vendor, please identify the legislator: \_\_\_\_\_ List below the name(s) of any Albuquerque Public Schools employee, board member or close relative who now or within the preceding 12 months (1) works for the Vendor; (2) has an ownership interest in the Vendor (other than as an owner of less than 1% of Vendor’s stock, if Vendor is a publicly traded corporation); (3) is a partner, officer, director, trustee or consultant to the Vendor; (4) has received grant, travel, honoraria or other similar support from Vendor; or (5) has a right to receive royalties from the vendor.

### CERTIFICATION OF NON-COLLUSION STATEMENT

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity. Does vendor agree? **YES Initials of Authorized Representative of vendor** \_\_\_\_\_

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### DEBARMENT/SUSPENSION STATUS

The Vendor certifies that it is not suspended, debarred or ineligible from entering into contracts with the Federal Government, or any State agency or local public body, or in receipt of a notice or proposed debarment from any Federal or State agency or local public body. The vendor agrees to provide immediate notice to Albuquerque Public School’s Purchasing Department in the event of being suspended, debarred or declared ineligible by any department or agency of the Federal government, or any agency of local public body of the State of New Mexico, or upon receipt of a notice of proposed debarment that is received after the submission of the quote or offer but prior to the award of the purchase order or contract.

### CERTIFICATION

The undersigned hereby certifies that he/she has read the above CONFLICT OF INTEREST , NON-COLLUSION and DEBARMENT/SUSPENSION Status requirements and that he/she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the vendor named **and that the information contained in this document is true and accurate to the best of their knowledge.**



**Signature:** \_\_\_\_\_ **Date** \_\_\_\_\_

Name of Person Signing (typed or printed) \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Name of Company (typed or printed): \_\_\_\_\_

Address: \_\_\_\_\_ City/State: \_\_\_\_\_

## CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

**THIS FORM MUST BE INCLUDED IN THE INVITATION TO BIDS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

**“Applicable public official”** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

**“Campaign Contribution”** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**“Family member”** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

**“Pendency of the procurement process”** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**“Prospective contractor”** means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

**“Representative of a prospective contractor”** means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any:

\_\_\_\_\_  
(Completed by State Agency or Local Public Body)

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_  
\_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

Purpose of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature Date Title (position)

--OR--

**NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE** to an applicable public official by me, a family member or representative.

\_\_\_\_\_  
Signature Date Title (Position)



**Pallet Requirements Form - Submit with your Proposal**

Any shipments received shall be palletized and/or if the total shipment weight exceeds 200 pounds. The integrity of the product/case must withstand the pallet configuration to avoid cases splitting/collapsing.

Palletized product must be tied and shrink wrapped to avoid shifting in transit and during unloading. Air Dunnage Bags must be in place of gaps between pallets to avoid shifting and falling over during transportation. Palletized product must fit through a 90” clearance with pallet included.

All palletized cartons must have externally facing labels identifying carton contents and quantity. It is acceptable to mix product on a single pallet as long as smaller quantities of like items are placed toward the top and the entire pallet is stacked as may be physically and commercially sensible.

Adhering to the pallet requirements will limit your time at the receiving dock and will keep all incoming deliveries on schedule.

Purchase Order will not specify palletizing requirements. Offeror’s signature signifies understanding of these requirements. APS reserves the right to reject shipments which are not tied, shrink wrapped, palletized and the use of Air dunnage Bags.

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Print name:** \_\_\_\_\_

## **BUY AMERICAN PROVISION FORM – Submit with your Proposal**

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

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

### **THE BUY AMERICAN PROVISION SUPPORTS LOCAL AND SMALL BUSINESSES**

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

### **LIMITED EXCEPTIONS**

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

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

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

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

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

### **Buy American**

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

**Signature of Company Representative:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**(Company Name /Certifying Official Signature)**