



# ALBUQUERQUE PUBLIC SCHOOLS REQUEST FOR PROPOSAL

RFP # 20-004 DS

## RFP TITLE: Dance Technique and Instruction

### RFP Schedule

Action	Date & Time
RFP Issued	06/27/2019
Pre-proposal Meeting	N/A
Pre-proposal Location	N/A
Deadline for Questions	07/09/2019 @ 5:00pm (local time)
RFP Due Date and Time	07/18/2019 @ 3:00pm (local time)
<b>Proposals must be received by the due date and time. No late proposals 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.</b>	
Evaluation of Proposals	TBD
Contract Negotiations	TBD

### RFP Buyer Contact Information

Name	Dionne Nicole Sanchez
Phone Number	505-878-6116
E-Mail	Sanchez_di@aps@aps.edu
<i>Any inquiries or requests regarding clarification of this RFP document shall be submitted to the buyer in writing. Offerors may contact ONLY the buyer regarding the terminology stated in the procurement documents.</i>	

### RFP Submittal Location

Physical Address (No USPS Mail*) For Walk-in Delivery or Carrier Service (UPS, FedEx, etc.)	USPS Mailing Address Allow 5 additional business days for APS internal delivery
Albuquerque Public Schools ATTN: Procurement Department 6400 Uptown Blvd. NE, Suite 500E Albuquerque, NM 87110	Albuquerque Public Schools ATTN: Procurement Department, City Center, Suite 500E P.O. Box 25704 Albuquerque, NM 87124-0704
<p>Ensure that the following RFP information is clearly labeled on the <b>sealed package</b> containing the RFP submission. <b>Please note: if the sealed proposal 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:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Offeror's <b>Business</b> Name (not an individual's name)</li> <li><input type="checkbox"/> RFP Number &amp; Title</li> <li><input type="checkbox"/> RFP Due Date &amp; Time</li> </ul> <p><b>*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.</b></p>	

### RFP Term

APS intended to award a one (1) year contract with five (5) additional renewals by mutual consent.

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# **OFFEROR'S GENERAL INSTRUCTIONS**

1. **READ ALL DOCUMENTS:** Offerors 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 Request for Proposal. Offerors should promptly notify the Buyer of any ambiguity, inconsistency, error, or missing attachments which they may discover upon examination of the RFP.
2. **OFFICIAL CONTACT:** Offerors 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.  
  
Offerors **MAY NOT** contact other APS departments, employees or the evaluation committee. Any contact with an APS department, employee or evaluation committee may result in rejection of any proposal.  
  
Any other verbal communication will be deemed unofficial and non-binding. Communication directed to parties other than the Buyer will have no legal bearing on this RFP or the resulting contract(s). Any response made by APS will be provided in writing to all Offerors by addendum, no verbal responses shall be authoritative.
3. **WRITTEN QUESTIONS:** Potential Offerors may submit written questions to the Buyer as to the intent or clarity of this RFP. All written questions must be addressed and submitted to the Buyer **NO LATER** than the date and time specified in this RFP. All times are subject to the local time zone. The Buyer will respond in a timely manner subject to the complexity of the questions. Buyer will **ONLY** respond to the written questions submitted and receive on or prior to the deadline in this RFP.
4. **SUBMISSION:** The submission of a proposal constitutes a representation by the Offeror that the Offeror has made all appropriate examinations, investigations, and analysis and has made provision as to the cost thereof in submitted proposal. By responding to this RFP, Offerors acknowledge and agree to the terms and conditions set forth in this RFP.
5. **ELECTRONIC RFP DOCUMENTS:** This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by APS, the Offeror acknowledges that the version maintained by APS shall govern.
6. **INCURRING COSTS:** Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. If applicable, any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.
7. **PROPOSAL OFFER FIRM:** Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after due date. If a best and final offer is requested, the offer is good for ninety (90) days after receipt of best and final offer.
8. **FORMS AND ATTACHMENTS:** It is the responsibility of every Offeror to ensure they have downloaded the latest version of each RFP, including any addendum(s) which may have been issued and posted on the APS Procurement Department Website.
9. **ADDENDUM(S):** No Addendum will be issued later than **FIVE (5)** days prior to the date for receipt of proposals, except an Addendum withdrawing the RFP or one which extends the date for receipt of proposals.  
  
Offerors should revisit the website (<http://www.aps.edu/procurement>), then select, "See Current Bids and RFPs") prior to the due date before submitting their proposal to Albuquerque Public Schools. All addendums must be acknowledged in the submitted proposal.
10. **CORRECTIONS:** Corrections shall be initialed in ink by the Offeror signing the proposal. Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request to withdraw their proposal. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

11. **EXCEPTIONS:** Any exceptions to the scope of work and/or specifications shall be listed separately in the submitted proposal and unless otherwise stated, specifications and/or scope of work attached are the minimum requirements. Minor deviations to the specifications as listed, may be considered.

The Buyer, after review of the proposals may request clarifications on information submitted by any and all Offerors in a written format, with a specified deadline for response.

12. **DISTRICT DISCRETION:** The District hereafter referred to as APS reserves the right, pursuant NMSA 1978, §13-1-132, in its sole discretion to waive minor informalities in proposals submitted provided that such informalities have no effect on price, quality, quantity or any matter to be evaluated in making a selection and confer no material advantage on the Offeror whose nonconformity is waived. APS reserves the right to add to or delete from the Scope of Work set forth in this RFP.

13. **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

14. **OFFEROR QUALIFICATIONS:** The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirement specified within this RFP. The Evaluation Committee may reject the proposal of any potential Offeror who is deemed not to be a responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, §13-1-83 and §13-1-85.

15. **AWARD:** APS reserves the right to award all, part or none of the Scope of Work set forth in this RFP. This procurement in no manner obligates Albuquerque Public Schools until a valid signed contract and/or valid Purchase Order is executed.

16. **PREFERENCES:** RFPs may be awarded preference in compliance with NMSA 1978, §13-1-21 for New Mexico In-State Resident Business and Resident Veteran Business. Offerors shall include in their proposal a copy of the certificate issued by State of New Mexico Taxation & Revenue. If Proposal is Joint Venture, Offeror shall state in submitted offer the percentage of work that will be performed by Resident Business and/or Resident Veteran Business. **PLEASE NOTE: An Offeror cannot be awarded both a resident preference and a resident veteran business preference. The New Mexico Preferences shall not apply when the expenditures for this RFP includes federal funds.**

17. **TIMELY SUBMISSIONS:** All Offeror proposals must be received for review and evaluation no later than the time and date specified in this RFP. Time is subject to Mountain Standard Time. Albuquerque Public Schools does not accept proposals electronically, by fax, or email. **A hardcopy with an original signature MUST be submitted.**

It is the Offeror’s responsibility to ensure the proposal arrives before the due date and time. Offerors are cautioned that “late is late”. It is the responsibility of the Offerors to allow sufficient time for the hazards such as, traffic, weather, parking, locating the proper office, third party delivery, US Postal Service mail delivery, etc. Any and all proposals not received by the proposal submission due date and time shall be rejected. No late bids will be accepted under any circumstances, not even if the delivery service is late or at fault. It is recommended to send your proposal early.

APS may in its sole discretion extend the time for the submission of bids upon a finding that it is in the interest of APS to do so. Such extensions shall be by addendum(s), which may be issued before the submission due date.

18. **RFP CANCELLATION OR REJECTION:** In accordance with NMSA 1978, §13-1-131, this RFP may be canceled or proposals may be rejected in whole or in part when it is in the best interest of Albuquerque Public Schools.

19. **RFP OPENING:** Submitted proposals shall not be publicly opened. The contents of the proposals shall not be disclosed during any negotiations that may occur. A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to NMSA 1978, §13-1-116, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required APS signature on the contract(s) resulting from the procurement has been obtained.
20. **RESPONSIBLE AND RESPONSIVE OFFER:** APS may reject the proposal of any potential Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, §13-1-83 and §13-1-85.
21. **SOLE RESPONSE:** Any sole response that is received may be rejected by APS depending on available competition and timely needs of APS. APS reserves the right to award the contract to the responsible Offeror submitted responsive proposals most advantageous and in the best interest of APS.
22. **NEGOTIATIONS:** APS reserves the right to discontinue negotiations with any Offeror.
23. **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.
24. **AFTER AWARD:** After final contract is negotiated, approved and awarded, all proposal documents pertaining to this procurement will be open to the public, except for the material, which is proprietary or confidential. The Procurement Department will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted “**Proprietary**” or “**Confidential**” subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror’s organization and data that qualifies as trade secret in accordance with the Uniform Trade Act, NMSA 1978, §57-3A-7. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.
25. **ASSIGNMENT:** It is mutually understood and agreed that the successful Offeror(s) shall not assign, transfer, convey, sublet or otherwise dispose of the purchase order, contract, or his/her right, title of interest therein, or power to execute such purchase order or contract to any other person, company or corporation without the previous written consent of APS.
26. **APS SCHOOL BOARD APPROVAL:** The award of this contract is not final until approved by the APS School Board (if applicable) and/or contract is signed by both parties.
27. **DEFINITIONS:** Definition of Terminology: This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

“**Agency**” shall mean Albuquerque Public Schools (APS)

“**Award of Contract**” shall mean a formal written notice by APS that a firm(s) has/have been selected to enter into a contract for services.

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

“**Contractor**” shall mean the successful Offeror.

“**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.

**“Evaluation Committee”** shall mean a body constituted to evaluate proposals and make selection recommendation.

**“Finalist”** is defined as an Offeror who meets all the mandatory specifications of the RFP and whose score on evaluation factors is sufficiently high to qualify that Offeror for further consideration by the Evaluation Committee.

**“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.

**“Offer”** – the term means “proposal”, “solution”, means all documents submitted to APS responding to RFP.

**“Offeror”**, **“Bidder”**, or **“Proposer”** is any person, corporation, or partnership who chooses to submit a proposal in response to this RFP.

**“Owner”** shall be Albuquerque Public Schools.

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

**“Request for Proposal”** or **“RFP”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.

**“Responsible Offeror”** shall mean an Offeror 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 RFP.

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

# **TERMS AND CONDITIONS**

1. **TERM:** APS reserves the right to procure the services/goods as described in this RFP and enter into a contract as described on RFP 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:** Albuquerque Public Schools does not guarantee a minimum amount of purchases in conjunction with award of this request for proposals.
4. **PRICING ESCALATION (if applicable):** Price escalation may be considered only at yearly observance of award (anniversary date) and only upon receipt of written request from Contractor stating reason(s) for escalation and the amount being requested. Justifying documentation **MUST** accompany price escalation request.
5. **TAXES:** APS holds a Class 9 Nontaxable Transaction Certificate and is exempt from payment of taxes on tangible personal property. A NTTC will be issued upon request.
6. **NON-APPROPRIATION:** APS's obligation to make payment under the terms of this RFP 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 Contractor. 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, §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 directives, may contract for services with the awarded Offeror. Contractual engagements accomplished under this provision shall be solely between the awarded Offeror and the contracting entity with no obligation by Albuquerque Public Schools
9. **TERMINATION:** Either party may terminate this contract as follows:
  - A. Termination by the Contractor
    1. The Contractor may terminate this contract **only** if Albuquerque Public School District 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 in any substantial way of any provisions of this contract.
      - b. If either one of the events identified above occur, APS may, after giving Contractor (and the surety, if any) ten (10) days written 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 APS 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 Offeror shall be responsible for damage to persons or property that occurs as a result of Offeror's fault or negligence, or that of any of his/her employees, agents or subcontractors. Offeror shall save and hold harmless Albuquerque Public Schools against any and all losses, cost, damage, claims, expenses or liability in connection with the performance of the contract. Any equipment or facilities damaged by the Offeror's operation shall be repaired and/or restored to their original condition at the Offeror's expense.

11. **INSURANCE (If Applicable):** The successful Offeror shall purchase and maintain statutory limits of Worker's Compensation, Public Liability and Automobile Liability Insurance approved by APS at the time of contract award. Albuquerque Public Schools 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 General Aggregate - \$2,000,000 Product/completed operations aggregate \$1,000,000	\$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:** Board of Education  
Albuquerque Public Schools

**Certificate of Insurance forwarded to:** Albuquerque Public Schools- Procurement Department  
P.O. Box 25704  
Albuquerque, New Mexico 87125

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 RFP and any contract with an Offeror 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 proposal, the Offeror certifies that no relationship exists between the Offeror 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 Offeror 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 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 (APS'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 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:** 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. **PAYMENT:** Any invoice received and payment made shall be subject to APS's terms and conditions (NET 30) unless specifically waived by APS in a separate written document.
26. **ASSIGNMENTS:** The awarded contractor shall not assign nor delegate specific duties as part of this RFP not transfer any interest not assign any claims for money due or to become due under this RFP without the written consent of APS.

## **PROTESTS**

1. 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 twenty-four (24) hours after the facts or occurrences giving rise thereto, but **NO LATER THAN** fifteen (15) calendar days after the facts or occurrences giving rise thereto (NMSA1978, §13-1-172). The protest must be in writing and delivered to the Executive Director - Procurement Department, Albuquerque, New Mexico
2. 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).
3. The Purchasing Agent or his/her 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).
4. The Purchasing Agent or his/her Designee shall promptly issue a determination relating to the protest. The determination shall:
  - A. State the reasons for the action taken; and
  - B. Inform the protestant of the right to judicial review of the determination pursuant to NMSA 1978, §13-1-183.
5. A copy of the determination issued under NMSA 1978, §13-1-175 shall immediately be mailed to the protestant and other Offerors involved in the procurement in compliance with NMSA 1978, §13-1-176.

# **SCOPE OF WORK**

## **OVERVIEW**

Albuquerque Public Schools is the largest school district in New Mexico and one of the nation's largest school districts, covering more than 1,230 square mile geographical area. Currently, APS has 13 high schools, 2 K-8 schools, 12 schools of choice, 27 middle schools, 88 elementary schools plus 29 APS authorized Charter schools. APS has approximately 81,000 students and 12,000 employees. An elected Board of Education composed of seven members serving staggered terms of four years each governs APS. The Superintendent is Raquel Reedy.

## **RFP SCHEDULE**

The RFP Buyer will make every effort to adhere to the RFP Schedule as noted on front cover of this RFP. The schedule is subject to change by addendum. The evaluation committee **MAY** interview the Offeror(s) of the top rated proposals; however, contracts may be awarded without such interviews and based solely on written offers. Finalists will be contacted to schedule interviews if required. If an interview is requested, evaluation scores will be re-scored to reflect written response and interview response.

## **PURPOSE OF THIS REQUEST FOR PROPOSAL**

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of qualified on-site dance instruction.

### **Scope of Work**

Albuquerque Public Schools is seeking proposals from qualified vendors to provide dance instruction for all students.

The dance instruction will take place throughout the school year and at different APS school locations. Each class should be conducted by qualified instructor(s). The class length, class size, term of instruction shall be negotiated with each school site.

Background checks are required if a vendor will have unsupervised access to students.

**Insurance coverage is mandatory and must name APS as additionally insured.**

**An approved Purchase Order provided by APS Procurement Department is required before successful Offeror can provides services. If you do not obtain a PO, you will not be paid.**

Successful Offerors will sign APS Professional Services Agreement that is attached to this RFP.

# EVALUATION CRITERIA

## EVALUATION CRITERIA

Proposals must address each of the following criteria. Each proposal may be awarded points up to the numeric value listed. Points will be awarded in compliance with NMSA 1978, §13-1-21.

**\*\*\*The Offeror should contact Buyer for clarification of evaluation criteria or terminology\*\*\***

	Possible Points	Points This RFP
<b>Company Profile / Background</b> Submit company profile; Submit detailed information describing your company's qualifications providing services as requested in the Scope of Work. Provide information about the company that demonstrates the ability and capacity of the company expressed in terms of its Human Resources (number, quality, skills and experience) physical and material resources, financial resources and information resources (pool of knowledge) Demonstrate your company's competence as it relates to the competencies required to perform the requested services.	20	
<b>Experience / Qualifications and References</b> Submit a minimum of three (3) past and/or current customers that your company has provided similar services as the requested in the Scope of Work. Include number of years providing service, description of the service, contact person name, telephone number and email address.	20	
<b>Insurance Capacity</b> Submit proof of insurance as described in RFP	10	
<b>Dance Program Offered</b> Describe in detail the Dance Program your company will provide to APS Schools. Include goals of the program, Dance Instructors, musicians, etc	20	
<b>Price Proposal</b> Submit price per hour and price per class	30	
<b>Total Possible Points</b>	<b>100</b>	
<b>Interview ( if needed)</b>	<b>50</b>	
<b>Total Possible Awarded Points</b>	<b>100-150</b>	

**Note: FAILURE** to adequately address and meet the above requirements may be cause for the proposal to be deemed non-responsive by the Buyer.

## SUBMITTAL REQUIREMENTS

***(For ease of evaluation, Proposals should be formatted in the order as listed below)***

The Offeror is particularly encouraged to address all points that will be evaluated as described herein in each point of the evaluation criteria. If a factor of evaluation is not adequately responded to by the Offeror, the Offeror may be determined to be non-responsive.

Offeror shall submit one (1) original proposal clearly marked **ORIGINAL**, three (3) identical copies clearly marked **COPY** and one (1) identical electronic copy (flash drive labeled with your company name and RFP number). Email and fax copies are **NOT** an acceptable form of an electronic copy.

### **PROPOSAL – DETAILED REQUIREMENTS**

#### **1. Proposal Format**

Proposals shall be submitted in a three-ring binder. Page format shall be 8-1/2” x 11” with foldout sheets (if any) allowed up to 11” x 17” in size. Foldout pages shall be counted as two pages **and shall be numbered as such**. Text will be no smaller than 10 point.

Proposals shall not exceed 50 pages total for all of the tabbed sections listed below excluding Tab 1 and 7. Each sheet face that is printed with text or graphics counts as one page. Tab Dividers do not count as pages provided the only text or graphics on the dividers are the tab numbers and section titles: Front and Back cover do not count towards page count.

Tab 1 – Letter of Submittal

Tab 2 – Company Profile/Background

Tab 3 – Experience/Qualifications and References

Tab 4 – Insurance Capacity

Tab 5 – Dance Program Offered

Tab 6 – Price Proposal

Tab 7– Required Forms

# **FORMS & ATTACHMENTS**

LETTER OF TRANSMITTAL FORM  
**SUBMIT WITH YOUR PROPOSAL**

Items one (1) to four (4) each **MUST** have a response, failure to respond to all four items **WILL** result in the disqualification of your proposal.

1. Identity (Name) and Mailing Address of the submitting organization:


2. For the Person authorized by the organization to contractually obligate the organization:

Name	
Title	
E-Mail Address	
Telephone/Fax number	

3. For the person authorized to negotiate the contract on behalf of the organization:

Name	
Title	
E-Mail Address	
Telephone/Fax number	

4. For the person to be contacted for clarifications:

Name	
Title	
E-Mail Address	
Telephone/Fax number	

- On behalf of the submitting organization named in item one (1) above, I accept the Terms and Conditions governing the Procurement.
- I agree that submission of our proposal constitutes acceptance of the Evaluation Factors contained in this RFP.
- I acknowledge receipt of any and all amendments of this RFP.



Authorized Signature and Date (**Must be signed** by the person identified in Item #2, above.)

**Price Proposal (Submit with your offer)**

**Vendor Name:** \_\_\_\_\_

**Price per hour**                    \$ \_\_\_\_\_

**Price per class**                \$ \_\_\_\_\_

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**Signature**

**Date**

# COMPLIANCE

***(REQUIRED LEGAL FORMS)***

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

# CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person 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 shall void an executed contract or cancel a solicitation or proposed award for a proposed contract 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.

THIS FORM 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 federal, 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.

**“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.

**“Person”** means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“**Prospective Contractor**” means a person who 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 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.

DISCLOSURE OF CONTRIBUTIONS:

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

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

Name of Applicable Public Official: \_\_\_\_\_

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

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

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

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

\_\_\_\_\_  
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) Offeror Business Name



**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**

**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.**

**SIGN HERE** Signature: \_\_\_\_\_ Date \_\_\_\_\_

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

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

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

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

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

**ALBUQUERQUE PUBLIC SCHOOLS**  
**TERMS AND CONDITIONS**  
**STATEMENT OF CONFIDENTIALITY**

The undersigned employee of/subcontractor to \_\_\_\_\_, hereinafter referred to as "Offeror" and/or "Contractor", agrees, during the RFP process, and during the term of the Contract between Contractor and the Albuquerque Public Schools (APS) and forever thereafter, to keep confidential all information and material provided by APS or otherwise acquired by the Employee/Subcontractor, excepting only such information as is already known to the public, and including any such information and material relating to Attachments of this RFP, and relating to any client, vendor, or other party transacting business with APS, and not to release, use or disclose the same except with the prior written permission of APS. This obligation shall survive the termination or cancellation of the Contract between Contractor and APS or of the undersigned's employment or affiliation with Contractor, even if occasioned by Contractor's breach or wrongful termination.

The undersigned recognizes that the disclosure of information may give rise to irreparable injury to APS, a client or customer of APS, or to the owner of such information, inadequately compensable in damages and that, accordingly, APS or such other party may seek and obtain injunctive relief against the breach or threatened breach of the within undertakings, in addition to any other legal remedies which may be available. The undersigned acknowledges that he or she may be personally subject to civil and/or criminal proceedings for such breach or threatened breach.



\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Offeror Business Name

\_\_\_\_\_  
Date

## **PROPOSAL SUBMITTAL REQUIREMENTS AND CHECKLIST**

Please submit your completed proposal, 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.**

- Letter of transmittal, **SIGNED**
- Evaluation Criteria Documentation
- Price Proposal
- Completed Conflict of Interest and Debarment/Suspension Form, **SIGNED**
- Campaign Contributions Disclosure Form, **SIGNED**
- Statement of Confidentiality, **SIGNED**
- Addendums (if applicable) – **before** submitting your proposal, please check for addendums here:  
<http://www.aps.edu/procurement/current-bids-and-rfps>
  
- The following RFP information must be clearly labeled on the **outer envelope of your sealed proposal.**  
**Please note: If you put your sealed proposal inside a FedEx, UPS, etc. envelope, all of this information must also be written and visible on the outermost envelope** of your sealed proposal:
  - Offeror's Business Name** (not an individual's name)
  - RFP Number & Title
  - RFP Due Date & Time
  - Proper Delivery Address (see cover page)

*\* If items are not completed as required, your proposal may be deemed non-responsive.*

# Professional Services Agreement

(All spaces **MUST** be filled in)

Requisition # \_\_\_\_\_

**THIS AGREEMENT IS ENTERED INTO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, YEAR \_\_\_\_\_ BY AND BETWEEN THE BOARD OF EDUCATION, ALBUQUERQUE PUBLIC SCHOOLS, HEREAFTER REFERRED TO AS APS, AND \_\_\_\_\_ (CONTRACTOR).**

<b>CONTRACTOR INFORMATION</b>	<b>APS INFORMATION:</b>
Name: _____	Name: _____
Address: _____	School/Department: _____
_____	Address: _____
_____	_____

**IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

**1. SCOPE OF WORK:** The contractor will perform services as described in contractor's written proposal. (Provide this information as a separate attachment to this professional services agreement).

**2. DELIVERABLES:** The scope of work shall include, as a minimum: what are the services, how are services provided, performance measures, who is performing the service, roles and responsibilities for contractor, when are the services provided, and cost/fees of service.

**3. BACKGROUND CHECK: Please check appropriate box.**

- Contractor will **not** have unsupervised access to students. \_\_\_\_\_ (responsible APS employee's signature)
- Contractor will have unsupervised access to students. Fingerprints and funds for background check attached.
- Verification of background check results attached and Background check results on file as of \_\_\_\_\_ (responsible APS employee's signature)

**4. INSURANCE:** The contractor shall purchase and maintain statutory limits of Worker's Compensation, Public Liability and Automobile Liability Insurance approved by APS at the time of contract award. Albuquerque Public Schools 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:** Board of Education  
Albuquerque Public Schools

**Certificate of Insurance forwarded to:** Albuquerque Public Schools- Procurement Department  
P.O. Box 25704  
Albuquerque, New Mexico

**5. COORDINATION:** The Contractor shall work at the direction of \_\_\_\_\_, who may designate \_\_\_\_\_ to coordinate the work of the Contractor. Work shall only be performed according to a specific written assignment, as described above or as may be provided as an attachment.

**6. COMPENSATION AND TAXES:** APS shall pay the Contractor for services rendered. Fee: \$ \_\_\_\_\_ (hourly, weekly, etc.) Tax:  included or  add at current rate for Contractor's address  Tax exempt vendor. Contractor shall secure all licenses, permits, fees, registrations, etc., required for the performance of this work. Compensation will be paid based on services performed for authorized services. **Total amount including taxes billed against this Agreement shall not exceed \$ \_\_\_\_\_.** (CONTRACTOR IS RESPONSIBLE FOR NOT EXCEEDING THIS LIMIT.)

7. **INVOICING:** Processing of payment will begin upon receipt of a detailed, certified invoice for services, which shall include dates and hours reported for the period covered, along with details and percent of work expended, as described above or per attachment. **ALLOW 30 DAYS FOR PAYMENT TO BE MADE.**

8. **TERM:** The work shall begin on (Date) \_\_\_\_\_, and terminate on (Date) \_\_\_\_\_.

## ALBUQUERQUE PUBLIC SCHOOLS (APS) GENERAL TERMS AND CONDITIONS

1. **NO PAROL EVIDENCE:** This Professional Service Agreement is intended by the parties as a final and complete expression of their Agreement. No course of prior dealings between the parties and no usage of the trade shall supplement any terms used in this Agreement.
2. **DEFINITIONS:** Definition of Terminology: This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.
  - “**Agreement**” shall mean the binding contract between APS and Contractor, Vendor, Bidder, Seller etc.
  - “**Award of Agreement**” shall mean a formal written notice by APS that a firm(s) has/have been selected to enter into a contract for services.
  - “**Contractor**” shall mean the successful Offeror, Vendor, or Seller.
  - “**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.
  - “**District**” shall mean Albuquerque Public Schools (APS)
  - “**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.
  - “**Offer**” – the term means “proposal”, “solution”, means all documents submitted to APS responding to RFP.
  - “**Owner**” shall be Albuquerque Public Schools.
  - “**Purchase Order**” shall mean the document, which directs a Contractor to deliver items of tangible personal property or services pursuant to an existing Agreement.
  - “**Vendor**” shall mean but is not limited to Contractor, Subcontractor, Seller, Offeror, etc.
3. **AMENDMENT:** This Professional Service Agreement may be amended by mutual agreement of the APS Purchasing Agent or his/her designee and the Contractor upon written notice by either party to the other. An amendment to this Price Agreement shall not affect any outstanding orders issued prior to the effective date of the amendment as mutually agreed upon, and as published by the APS Purchasing Agent or his/her designee. Amendments affecting price adjustments and/or the extension of a price agreement expiration date are not allowed unless specifically provided Professional Service Agreement specifications.
4. **DISCOUNTS:** APS will take advantage of prompt payment discounts whenever possible. 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.
5. **PAYMENT:** Any invoices received and payment made shall be subject to APS’s Terms and Conditions (NET 30) unless specifically waived by APS in a separate written document.
6. **INVOICING:** The Contractor shall be paid for services rendered. Contractor shall provide detailed invoices to APS. In the event that APS disputes an invoice, APS shall notify the Contractor of the dispute and shall promptly pay the non-disputed portions of the invoice. Any invoice received and payment made shall be subject to APS’s Terms and Conditions unless specifically waived by APS in a separate written document.
7. **INVOICING PROCEDURES:** Itemized invoices, **MUST** clearly reference the appropriate Purchase Order (PO) number, description of supplies or services, correct quantities with matching unit price and extended

totals. **SEPARATE INVOICES SHALL BE RENDERED FOR EACH AND EVERY COMPLETE SHIPMENT.**

All invoice shall be submitted to APS Accounts Payable: P.O. Box 25704,  
Albuquerque, NM, 87125  
Via email to ([accounts.payable@aps.edu](mailto:accounts.payable@aps.edu))

8. **NON-APPROPRIATION:** APS's obligation to make payment under the terms of this Professional Service Agreement 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 Contractor. APS determination that sufficient funds have not been appropriated is firm, binding and not subject to review.
9. **PRICING ESCALATION (IF Applicable):** Price escalation may be considered only at the anniversary date of this Professional Service Agreement. 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.
10. **TAXES:** APS holds a Class 9 Nontaxable Transaction Certificate and is exempt from payment of taxes on tangible personal property. A NTTC will be issued upon request.
11. **ASSIGNMENTS:** The Contractor shall not assign nor delegate specific duties as part of this Professional Service Agreement nor transfer any interest nor assign any claims for money due or to become due under this agreement without the written consent of APS.
12. **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.
13. **SUBCONTRACTS:** The foregoing requirements for Contractor Personnel, Subcontracting, and Audit shall be inserted into all subcontracts from the prime contractor to the subcontractor.
14. **CONTRACTOR PERSONNEL:** Personnel proposed by Contractor's to APS are considered material to any work performed under this Professional Service Agreement. Once a Purchase Order or Agreement has been executed, no changes of personnel will be made by the Contractor without prior written consent of APS. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience, and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. APS shall retain the right to request the removal of any of the Contractor's personnel at any time.
15. **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 Professional Service Agreement. Should such requests occur, Contractor has the responsibility of calling such violations to the attention of the APS Procurement Officer.
16. **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.
17. **DEBARMENT OR SUSPENSION:** A business (Contractor, Subcontractor, Vendor, Seller 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 a Professional Service Agreement during the period for which it is debarred or suspended with APS.
18. **CONTINGENCY FEES:** Contractor 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 Contractor for the purpose of securing business. For violation or breach of this warranty, APS shall have the right to annul this Professional Service Agreement 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.

19. **INDEMNIFICATION:** Contractor assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the performances of the work by Contractor, 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. Contractor 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 and costs, in connection with or resulting from such suit or action.
20. **PATENT AND COPYRIGHT INDEMNITY:** Contractor 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, Contractor shall indemnify and hold APS harmless from any cost, expense, damage, or loss resulting therefrom.
21. **NO MINIMUM GUARANTEE:** 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.
22. **TITLE:** 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, Contractor shall give prior notification and obtain approval thereto from APS's Purchasing Department. Order is subject to termination for failure to make timely delivery.
23. **FOB:** Unless stated otherwise, the price for goods is FOB: Destination (APS's designated address).
24. **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 Contractor that the goods/services are conforming and fails to make an effective rejection.
25. **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 Professional Service Agreement shall be tendered in a single delivery and payment is due only upon such delivery (NET 30). For any exception to the delivery date specified, Contractor shall give prior notification and obtain approval thereto from APS's Purchasing Department. Order is subject to termination for failure to make timely delivery.
26. **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, Contractor must notify the APS Requesting Department of late delivery, cause of late delivery and remedy for late delivery.
27. **REVOCATION OF ACCEPTANCE:** The APS Requesting Department can revoke acceptance of goods when it is discovered, in a reasonable time, that the Contractor's nonconforming goods substantially impair the value of the goods.
28. **PACKING:** APS Purchase Order Number and the Contractor's name, User's name and location shall be shown on each packing and delivery ticket, package, bill and other correspondence in connection with the shipments.
29. **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.

30. **VARIATION IN QUANTITY:** No variation in the quantity of any item called for by this order will be accepted unless such variation has been caused by conditions of loading, shipping, packing or allowances in manufacturing process and then only to the extent, if any, specified in this order.
31. **CONTRACTOR'S RIGHT TO CURE A NONCONFORMING DELIVERY OF GOODS:** The Contractor, upon notice of revocation of acceptance, shall correct without charge and deliver conforming goods in a reasonable time.
32. **WARRANTIES:** Contractor warrants the materials, supplies or services furnished to be exactly as specified in this order, free from defects in Contractor's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Contractor. All applicable UCC warranties, express or implied are incorporated herein.
33. **INSPECTION:** The materials, supplies or services furnished shall be exactly as specified in this Professional Service Agreement, free from defects in Contractor's design, workmanship and materials, and, except as otherwise provided in this Professional Service Agreement, 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 Contractor 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 Contractor 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. Contractor shall bear all risks as to rejected materials, supplies and services and, in addition to any other costs for which Contractor may become liable to APS under other provisions of this Professional Service Agreement, shall reimburse APS for all transportation costs, other related costs incurred, or payments to Contractor in accordance with the terms of this order for unaccepted materials, supplies and services. Notwithstanding final acceptance and payment, Contractor 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.
34. **INSPECTION OF PLANT:** Any APS Agency or Entity that is a party to this Professional Service Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Professional Service Agreement.
35. **AUDIT:** APS reserves the right to audit the Contractor's records associated with this Professional Service Agreement at any time during the Term period and for a period of up to three (3) years following the expiration or termination of the agreement. Such audit may be conducted by APS personnel or a third party under Agreement with the 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 for Audit purposes.
36. **CHANGES:** APS may make changes within the general scope of this order by giving notice to Contractor 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 Contractor shall be recognized without written approval of APS. Any claim of Contractor for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Contractor of notification of such change unless APS waives this condition. Nothing in this Paragraph shall excuse Contractor from proceeding with performance of the order as changed hereunder.
37. **SEVERABILITY:** If any provision of this Professional Service Agreement is found invalid or unenforceable, the remainder of the Professional Service Agreement will be enforced to the maximum extent permissible and the legality and enforceability of the other provisions of the resultant agreement will not be affected.
38. **LABOR DISPUTES:** Contractor shall give prompt notice to APS of any actual or potential labor dispute which delays or may delay timely performance of this Professional Service Agreement.

39. **AFFIRMATIVE ACTION:** Contractor shall not maintain or provide racially segregated facilities for employees at any establishment under his/her 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.
40. **NONDISCRIMINATION:** Contractor doing business with the Albuquerque Public Schools must be in compliance with the Federal Civil Rights Act of 1964 and Title VII of the Act (rev. 1979) and the Americans with Disabilities Act of 1990 (public law 101-336).
41. **TERMINATION BY APS:**
- 2. 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 Agreement documents (including but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment).
    - ii. Contractor's violation in any substantial way of any provisions of this Agreement.
  - b. If either one of the events identified above occur, APS may, after giving Contractor (and the surety, if any) ten (10) days written 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 APS 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:**
- d. 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 Agreement.
  - e. 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 Agreement document in connection with uncompleted work.
  - f. 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.
42. **FORCE MAJEURE:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injections-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- a. Force Majeure shall **NOT** include the following occurrences:
    - i. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market; or
    - ii. Late performance by a Subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition; or
    - iii. Inability of either the Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.
  - b. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in

such notice. Such notice shall be delivered or mailed certified-return receipt requested, and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Agreement Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Agreement.

- c. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and that such delay or failure is caused by force majeure.

- 43. **NON-COLLUSION**: In signing this Professional Service Agreement, the Contractor certifies he/she has not, either directly or indirectly, entered into action to restraint competitive bidding in connection with this offer submitted to the APS Purchasing Agent or his/her designee.
- 44. **NON-DISCLOSURE**: The Contractor 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. The Contractor will ensure compliance with HIPPA and FERPA regulations as applicable. Contractor agrees to indemnify and hold harmless APS from any damages, claims, liabilities, and costs including reasonable attorney fees in the event any unauthorized release of such information occurs.
- 45. **CONFLICT OF INTEREST**: Contractor certifies that no relationship exists between the Contractor 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.
- 46. **APPLICABLE LAWS**: If this Professional Service Agreement results from Federal funding or Grants, applicable clauses of the Uniform Guidance Procurement Standards are incorporated herein by reference. Any provision required to be included in an Agreement 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 Agreement 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.
- 47. **GOVERNING LAW**: This Professional Service Agreement and any Agreement with a Contractor which may result from this procurement shall be governed by the laws of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this agreement.

By: \_\_\_\_\_  
CONTRACTOR TITLE DATE

By: \_\_\_\_\_  
APS SCHOOL/DEPARTMENT REPRESENTATIVE TITLE DATE

Mandatory Signature from Procurement in compliance with Board of Education Signature Authority.

By: \_\_\_\_\_  
APS PROCUREMENT TITLE DATE