



REQUEST FOR PROPOSALS NO. 2017-001:

School Meals Program

By the:
San Mateo County Office of Education
101 Twin Dolphin Drive
Redwood City, CA 94065

Date: March 17, 2017

Responses Must be Received by 4:00 p.m. on April 28, 2017

**REQUEST FOR PROPOSALS
FOR
School Meals Programs**

Proposals must be submitted to:

San Mateo County Office of Education

Attn: Loriann Villanis
101 Twin Dolphin Drive
Redwood City, CA 94065

**By 4:00 P.M. Pacific Standard Time on
April 28, 2017**

PROPOSALS WILL NOT BE ACCEPTED AFTER THIS DATE AND TIME

Note regarding the Public Records Act:

Government Code Sections 6550 *et seq.*, the California Public Record Act, defines a public record as any writing containing information relating to the conduct of the public business. The Public Record Act provides that public records shall be disclosed upon written request and that any citizen has a right to inspect any public record unless the document is exempted from disclosure.

Be advised that any contract that eventually arises from this Request For Proposals is a public record in its entirety. Also, all information submitted in response to this Request For Proposals is itself a public record **without exception**. Submission of any materials in response to this Request For Proposals constitutes a waiver by the submitting party of any claim that the information is protected from disclosure. By submitting materials, (1) you are consenting to release of such materials by the County if requested under the Public Records Act without further notice to you and (2) you agree to indemnify and hold harmless the County for release of such information.

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SECTION I - GENERAL INFORMATION

STATEMENT OF INTENT

As outlined in more detail in Section IV, below, this Request for Proposals (RFP) seeks a provider of School Meals Program. The target commencement date and term for the proposed services is August 2017 through June 2018, subject to negotiation of a final agreement.

BACKGROUND

The San Mateo County Office of Education (SMCOE) operates Special Education programs for students with severe disabilities and Court and Community Schools for at-risk students.

Mission **Inspiring students, investing in teachers, invigorating leaders, and involving communities.**

- **Successful Students.** Champion student success by encouraging the development of learning environments and experiences where all students can imagine and achieve.
- **Inspired Teachers.** Foster an exceptional countywide climate for teachers and the teaching profession by innovatively using resources and by cultivating broad public will to advance the teaching profession.
- **Effective School Districts.** Encourage equitable academic outcomes across San Mateo County school districts through proactive outreach, responsive services, and collaboration.
- **Forward-Thinking Policies.** Initiate transformative conversations about public education and advocate for effective educational policies at regional, state, and national levels.
- **Continuous Learning.** Create an engaged, countywide "learning community" through continuous open-minded inquiry and rigorous evaluation.

THE REQUEST FOR PROPOSALS PROCESS

This RFP seeks the submission of proposals to provide services from any and all interested and qualified proposers. The San Mateo County Office of Education seeks by way of this RFP to obtain the listed services in a manner that maximizes the quality of services while also maximizing value. Proposers must be able to show that they are capable of performing the services requested. Such evidence includes, but is not limited to, the respondent's demonstrated competency and experience in delivering services of a similar scope and type and local availability of the proposer's personnel and equipment resources.

SECTION II - RFP PROCEDURE

This section describes the general RFP procedure used by the Department, and the remaining sections of this RFP list detailed requirements.

A. TENTATIVE SCHEDULE OF EVENTS

EVENT	TARGET DATE
1. RFP Release Date	March 17, 2017
2. Deadline to Submit Written Questions	April 7, 2017
3. Release of Responses to Written Questions	April 21, 2017
4. Proposal Deadline – Proposals Must be <u>RECEIVED</u> by 4:00 p.m. on This Date	April 28, 2017
5. Food Tasting/Sample at Gateway School	May 16, 2017 at 4:00 p.m., PST
6. Recommendation to Superintendent of Schools	June 7, 2017
7. First Day of School	on or around August 21, 2017

B. SUBMISSION OF PROPOSALS

Notice of Intent: SMCOE is requesting parties who are interested in submitting a response to this RFP to inform SMCOE in advance of their intent. However, providing a notice of intent is not required in order to submit a proposal. You may notify SMCOE of your intent to respond to this proposal by emailing lvillanis@smcoe.org prior to the proposal deadline date.

Proposal: One (1) original and five (5) copies must be received and date stamped by the Department no later than 4:00 p.m. on Friday, April 28, 2017 as listed in the TENTATIVE SCHEDULE OF EVENTS above. Proposals should be in the format required in Section V.A, below. There will be no public opening of proposals. All proposals shall be firm offers, and will so be considered by SMCOE, although the SMCOE reserves the right to negotiate terms upon evaluation of the proposals. Proposals will be considered valid offers for a period of ninety (90) days following the close of the RFP.

By submitting a proposal, each proposer certifies that its submission is not the result of collusion or any other activity which would tend to directly or indirectly influence the selection process. The proposal will be used to determine the proposer's capability of rendering the services to be provided. The failure of a proposer to comply fully with the instructions in this RFP may eliminate its proposal from further evaluation as determined in the sole discretion of the County. SMCOE reserves the sole right to evaluate the contents of proposals submitted in response to this RFP and to select a contractor, if any.

Proposals received late will not be opened or given any consideration for the proposed services unless doing so is deemed to be in the best interest of SMCOE, as determined in the sole discretion of SMCOE.

All proposals must be delivered as required by Section V.A, below, to:

Attn: Loriann Villanis
San Mateo County Office of Education
101 Twin Dolphin Drive
Redwood City, CA 94065
lvillanis@smcoe.org

Upon receipt by SMCOE, all proposals will be date/time stamped. All proposals received prior to the deadline for proposals will be kept in a secure place.

C. CONFIDENTIALITY OF PROPOSALS

California Government Code Sections 6250 *et seq.* (the "California Public Records Act" or the "Act") defines a public record as any writing containing information relating to the conduct of the public business. The Act provides that public records shall be disclosed upon written request and that any citizen has a right to inspect any public record unless the document is exempted from disclosure. The Department, which is part of the County of San Mateo, is subject to the California Public Records Act.

Be advised that any contract that eventually arises from this RFP is a public record in its entirety. Also, all information submitted in response to this RFP is itself a public record without exception. Submission of any materials in response to this RFP constitutes a waiver by the submitting party of any claim that the information is protected from disclosure. By submitting materials, (1) you are consenting to release of such materials by the County if requested under the Public Records Act without further notice to you and (2) you agree to indemnify and hold harmless the County for release of such information.

If SMCOE receives a request for any portion of a document submitted in response to this RFP, SMCOE will not assert any privileges that may exist on behalf of the person or entity submitting the proposal, and SMCOE reserves the right to disclose the requested materials without notice to the party who originally submitted the requested material. To the extent consistent with the Public Records Act and applicable case law interpreting those provisions, SMCOE and/or its officers, agents, and employees retain discretion to release or withhold any information submitted in response to this RFP.

Submission of a proposal constitutes a complete waiver of any claims whatsoever against SMCOE and/or its officers, agents, or employees that SMCOE has violated a proposer's right to privacy, disclosed trade secrets, or caused any damage by allowing the proposal to be inspected.

D. PROPOSAL EVALUATION

All proposals received will be evaluated by an RFP Evaluation Committee. During the evaluation process, SMCOE may require a proposer's representative to answer specific questions orally and/or in writing. SMCOE may also require a visit to the proposer's offices, other field visits or observations by SMCOE representatives, or demonstrations as part of the overall RFP evaluation. Once a finalist or group of finalists is selected, additional interactions or information may be required. The most qualified individual or firm will be recommended to the Superintendent of Schools by the RFP Evaluation Committee based on the overall strength of each proposal, and the evaluation is not restricted to considerations of any single factor such as cost. Execution of an agreement has been tentatively scheduled for July 20, 2017.

Responses to this RFP must adhere to the format for proposals detailed in **Section V - PROPOSAL SUBMISSION REQUIREMENTS**. The criteria used as a guideline in the evaluation will include, but not be limited to, the following:

1. Firm qualifications and experience, including capability and experience of key personnel and experience with other public or private agencies to provide these services
2. Proposed approach, including clarity of understanding of the scope of services to be provided and appropriateness of the proposed solution/services
3. Customer service
4. History of successfully managing other contracts with public or private agencies
5. Ability to meet any required timelines or other requirements
6. Claims and violations against you or your organization
7. Cost to SMCOE for the primary services described by this RFP
8. Cooperative purchasing options (if any) and cost of possible additional services
9. References
10. Compliance with SMCOE RFP & contractual requirements

SMCOE may consider any other criteria it deems relevant, and the Evaluation Committee is free to make any recommendations it deems to be in the best interest of SMCOE. Inaccuracy of any information supplied within a proposal or other errors constitute grounds for rejection of the proposal. However, SMCOE may, in its sole discretion, correct errors or contact a proposer for clarification.

Note that SMCOE reserves the right to evaluate proposals solely based on each vendor's written submission. In relation to written materials, evaluation will be performed only on the material included directly in the proposal itself unless otherwise

indicated or requested by SMCOE. The evaluation team will not access company web sites or read sales brochures, marketing materials, or white papers in evaluating vendor experience or proposed methodology unless doing so is in SMCOE's best interest. You may submit additional materials or reference on-line information in your proposal if you wish, but these will not necessarily be considered during the proposal evaluation process.

SMCOE reserves the right to accept other than the proposals with the lowest costs and to negotiate with proposers on a fair and equal basis when the best interests of the SMCOE are served by doing so.

E. PROPOSAL RECOMMENDATION

The Evaluation Committee will recommend a provider or providers to the Superintendent of Schools or may recommend that the proposals be rejected. The Superintendent of Schools will then make her own decision as to whether to accept or reject the Evaluation Committee's recommendations. Ultimate acceptance or rejection of the recommended proposal and execution of a contractual agreement is the independent prerogative of the Superintendent of Schools, notwithstanding any recommendations made by the Evaluation Committee. SMCOE reserves the right to negotiate with any provider in working to finalize an agreement in relation to the proposer's response.

F. NOTICE TO PROPOSERS

SMCOE is not required to give notice to proposers in any specific format or on any particular timeline. At some point prior to execution of a final agreement for the requested services, SMCOE will notify those who submitted proposals of their non-selection. Proposers may be notified a different time depending on the needs of SMCOE.

G. PROTEST PROCESS

If a proposer desires to protest the selection decision, the proposer must submit by facsimile or email a written protest within five (5) business days after the delivery of the notice about the decision. The written protest should be submitted to SMCOE, as outlined below. Protests received after the deadline will not be accepted. Protests must be in writing, must include the name and address of the Proposer and the Request for Proposals numbers, and must state all the specific ground(s) for the protest. A protest that merely addresses a single aspect of the selected proposal (for example, comparing the cost of the selected proposal in relation to the non-selected proposal) is not sufficient to support a protest. A successful protest will include sufficient evidence and analysis to support a conclusion that the selected proposal, taken as a whole, is an inferior proposal.

SMCOE legal counsel will respond to a protest within ten (10) business days of receiving it, and SMCOE legal counsel may, at its election, set up a meeting with the proposer to discuss the concerns raised by the protest. The decision of the SMCOE legal counsel will be final. The protest letter must be sent by facsimile and email to:

Claire Cunningham, Lead Deputy County Counsel
ccunningham@smcgov.org
Facsimile: 650-802-5564

SECTION III – GENERAL TERMS AND CONDITIONS

1. **Read all Instructions.** Please read the entire RFP and all enclosures before preparing your proposal.
2. **Proposal Includes the RFP.** This RFP constitutes part of each proposal and includes the explanation of SMCOE's needs, which must be met.
3. **Proposal Costs.** Costs for developing proposals are entirely the responsibility of the proposer and shall not be charged to SMCOE or otherwise reimbursed by SMCOE.
4. **Proposal Becomes SMCOE Property.** The RFP and all materials submitted in response to this RFP will become the property of SMCOE.
5. **Questions and Response Process.** Submit all questions relating to this RFP by one of three methods:
 - A. Mailed to: Loriann Villanis
San Mateo County Office of Education
101 Twin Dolphin Drive
Redwood City, CA 94065
 - B. E-mailed to: lvillanis@smcoe.org
 - C. Faxed to: 650-802-5503 Attn: Loriann Villanis

All questions must be received no later than 4:00 p.m. on Friday, April 7, 2017

All questions and answers will be posted on the SMCOE website at www.smcoe.org.

SMCOE may, at its option, email prospective proposers with the questions and answers in addition to posting them on the website listed above. If you wish to receive such notice, you may email Loriann Villanis at the email address above before you submit a proposal.

If changes to the RFP are warranted, they will be made in writing, clearly marked as addenda to the RFP, and posted to the website. It is the responsibility of each proposer to check the website listed above for changes and/or clarifications to

the RFP prior to submitting a response, and a proposer's failure to do so will not provide a ground for protest.

6. **Alteration of Terms and Clarifications.** No alteration or variation of the terms of this RFP is valid unless made or confirmed in writing by SMCOE. Likewise, oral understandings or agreements not incorporated into the final contract are not binding on SMCOE.

If a proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the proposer must immediately notify SMCOE of such error in writing and request modification or clarification of the document. If a proposer fails to notify SMCOE of an error in the RFP prior to the date fixed for submission, the proposer shall submit a response at his/her own risk, and if the proposer enters into a contract, the proposer shall not be entitled to additional compensation or time by reason of the error or its later correction.

Modifications or clarifications to the RFP will be posted to the SMCOE website as outlined in Section III.5, above, without divulging the source of the request for same. SMCOE, at its discretion, may also give electronic notice by email to all parties who have notified SMCOE of their electronic contact information in response to this RFP, but no party that fails to receive email notice has any basis for protest given that all clarifications will be available online. It is the obligation of all proposing parties to check the SMCOE website for updates regarding the RFP if they wish to be kept advised of clarifications prior to submitting a proposal.

7. **Selection of Vendor(s).** The selection of a vendor will be memorialized in the form of a contract or Memorandum of Understanding (MOU), authorized by the Superintendent of Schools and signed by both parties.

SMCOE reserves the right to reject any or all proposals without penalty. SMCOE's waiver of an immaterial deviation in the proposal shall in no way modify the RFP documents or excuse the proposer from full compliance with the specifications if the proposer enters into a contract.

Once a vendor is selected, the Agreement with that vendor must still be negotiated and submitted to the Superintendent of Schools for approval, and there is no contractual agreement between the selected vendor unless and until the Superintendent of Schools accepts and signs the Agreement. Selection of a proposal for negotiation of contract terms and eventual submission to the Superintendent of Schools by way of an Agreement does not constitute an offer, and proposers acknowledge by submission of a proposal that no agreement is final unless and until approved by the Superintendent of Schools.

8. **Insurance.** SMCOE has certain insurance requirements that must be met. In most situations those requirements include the following: the contractor must carry \$2,000,000 or more in comprehensive general liability insurance; the contractor must carry motor vehicle liability insurance, and if travel by car is a

part of the services being requested, the amount of such coverage must be at least \$2,000,000; if the contractor has two or more employees, the contractor must carry the statutory limit for workers' compensation insurance; if the contractor or its employees maintains a license to perform professional services (e.g., architectural, legal, medical, psychological, etc.), the contractor must carry professional liability insurance; and generally the contractor must name SMCOE and its officers, agents, employees, and servants as additional insured on any such policies (except workers compensation). Depending on the nature of the work being performed, additional requirements may need to be met.

9. **Incomplete Proposals May be Rejected.** If a proposer fails to satisfy any of the requirements identified in this RFP, the proposer may be considered non-responsive and the proposal may be rejected.
10. **Contact with SMCOE Employees.** As of the issuance date of this RFP and continuing until the final date for submission of proposals, all proposers are specifically directed not to hold meetings, conferences, or technical discussions with any SMCOE employee for purposes of responding to this RFP except as otherwise permitted by this RFP. Any proposer found to be acting in any way contrary to this directive may be disqualified from entering into any contract that may result from this RFP.

Proposers should submit questions or concerns about the process as outlined in Section III.5, above. The proposer should not otherwise ask any SMCOE employees questions about the RFP or related issues, either orally or by written communication, unless invited to do so.

11. **Group Purchasing Organization Participation.** Proposers should keep in mind that SMCOE is a participant in more than one Group Purchasing Organization (GPO), and this RFP is open to those who provide services under a GPO. Proposers should ensure their proposals are as competitive as possible while also providing the highest quality services in order to be considered a viable vendor for the listed services. SMCOE reserves the right to use a GPO vendor if doing so is in SMCOE's best interest, as determined solely by SMCOE, even if that vendor does not submit a proposal in response to this RFP.
12. **Miscellaneous.** This RFP is not a commitment or contract of any kind. SMCOE reserves the right to pursue any and/or all ideas generated by this RFP. SMCOE reserves the right to reject any and all proposals and/or terminate the RFP process if deemed in the best interest of SMCOE. Further, while every effort has been made to ensure the information presented in this RFP is accurate and thorough, SMCOE assumes no liability for any unintentional errors or omissions in this document. SMCOE reserves the right to waive or modify any requirements of this RFP when it determines that doing so is in the best interest of SMCOE.

SECTION IV – SCOPE OF WORK

Description:

Company shall provide healthy, nutritious meals and snacks that meet the National School Lunch Program requirement and comply with the nutritional standard for meals as established by the United States Department of Agriculture.

Meals should include fresh, seasonal fruits and vegetables when available.

Meals to be provided at or lower than the published reimbursable rates for breakfast, lunch, snack and supper meals.

Meals to meet the high school age student requirements for size and calories unless otherwise specified by school site.

Meals to be fully packaged in easy opened packages. No food prep to be completed at school sites.

Meals to include milk or approved milk substitute upon request.

Appropriate condiments for meals to be provided by company in an amount sufficient to constitute a serving.

Meals to include appropriate alternatives for allergies or special diets such as vegetarian choices. When requested by the school site, no peanuts, nuts or legumes will be served.

Meals to be provided for every day that students are in attendance at each of the identified school sites.

Company shall provide proof of Health Department Certification for the kitchen in which meals will be prepped.

Meals to be delivered daily to school site(s) no later than 10:00 a.m.

Meal order and counts to be provided no earlier than one week in advance.

Company shall provide the necessary eating utensil, plate/tray, straw and napkin.

Length of Agreement: The anticipated duration of the agreement will be for one (1) year, with renewal up to four (4) additional years.

Additional Requirements/Considerations:

Company will certify that all employees have been fingerprinted per Education Code 45125.1.

It is the intent of SMCOE to serve breakfast and lunch at the Gateway School site, located at 35 Tower Road, San Mateo, CA; a community school site. Enrollment fluctuates, however the average lunch count is 20 per day.

SMCOE is considering expanding the Early Learning Program.

Two (2) Special Education sites are included but all meals are to be delivered to the Gateway site.

All sites have small serving kitchens with warming ovens.

Taste testing and packaging demonstration to be held on May 16, 2017 at the Gateway School site. Time to be arranged with companies submitting RFPs by the submission deadline.

Contracting agency has the responsibility to ensure that the contract meets all of the requirements imposed by the California Department of Education.

SMCOE is considering adding two (2) additional schools; timeline to be determined.

SECTION V – PROPOSAL SUBMISSION REQUIREMENTS

The proposal should be submitted in the following format:

A. General Instructions

All proposals should be typewritten or prepared on a computer and have consecutively numbered pages, including any exhibits, charts, or other attachments.

All proposals should adhere to the specified content and sequence of information described by this RFP.

Submit one (1) original and five (5) copies. All printing shall be double-sided (duplex).

B. Cover Letter

Provide a one page cover letter on your letterhead which includes the address, voice and fax numbers, and e-mail address of the contact person or persons and an indication of who is authorized to represent the proposer in negotiations.

Unless the proposer is an individual, all proposals must be signed with a firm/company/partnership/entity name and by a responsible officer or employee indicating that officer or employee's authorization to commit the proposer to the terms of the proposal. Obligations assumed by such signature must be fulfilled.

C. Specified Content and Detailed Sequence of Information in the RFP

Each proposal should include sections addressing the following information in the listed order. The proposer should be sure to include all information that it feels will enable the Evaluation Committee and, ultimately, the Department to make a decision. Failure of the proposer to provide specific, detailed information may result in its proposal being rejected in favor of a sufficiently-detailed proposal. Any necessary exhibits or other information, including information not specifically requested by this RFP but that you feel would be helpful, should be attached to the end of the proposal. The party submitting the materials should keep in mind the limitations on confidential information described by Section II.C, above.

D. Tabbing of Sections

Be sure your proposal is properly tabbed using the following sections:

TAB 1 Firm Qualifications and Experience:

- a. Provide a statement of qualifications for your organization, including an organization chart, a statement of the size of firm, a description of services provided by your organization, and a statement of the extent of experience/history providing the services requested by this RFP.
- b. How many full time employees (FTEs) do you plan to assign to this project if you are selected?
- c. How many people in total are employed by your company? Please delineate between employees and consultants.
- d. If applicable, list the professional qualifications for each individual that would be assigned to provide services requested by this RFP, including date and school of any applicable degrees, additional applicable training, and any professional certifications/licensing. In lieu of listing this information, you may submit a resume or curriculum vitae for each such individual if the resume/CV includes all the requested information.

TAB 2 Proposed Approach:

This section describes your proposed approach for meeting the services required by SMCOE, as listed in Section IV, above. Relevant considerations include the quality and feasibility of your approach to meeting these needs, the manner in which you plan to provide adequate staffing (including planning for absences and back-up coverage, training, background checks, and monitoring, etc.), and equipment or other resources provided by you (if applicable). Keep these considerations in mind as you respond to the following:

- a. Describe how you will fulfill the needs of SMCOE included in this RFP. Please attach a project plan, if appropriate.
- b. List your needs for physical space and/or equipment at SMCOE school sites during this engagement, if any, aside from space or equipment that

would be provided by SMCOE as an obvious aspect of the requested services.

- c. Identify how you will meet all other aspects of the scope of work and related requirements listed in Section IV, above, and list any items you cannot provide.
- d. Describe the measurements/metrics/deliverables/assessments you will provide on at least an annual basis to allow the Department to assess the services you will provide.
- e. Provide information on any other pertinent services, if any, you can offer that will reduce costs or enhance the service provided to SMCOE.

TAB 3 Customer Service:

- a. How will your services meet the needs of the SMCOE students?
- b. In the event of a routine problem, who is to be contacted within your organization?
- c. In the event of the identification of a problem by SMCOE, its students or staff, and/or other applicable constituents, describe how you will address such problems and the timeframe for addressing them.

TAB 4 Claims and Violations Against Your Organization:

Please list any current violations or claims against you/your organization and those having occurred in the past five years, especially those resulting in claims or legal action against you.

TAB 5 Cost to SMCOE for Primary Services:

- a. Provide a detailed explanation for all costs associated with your providing the requested services if you are selected.
- b. Is travel time to SMCOE expected to be billable? If so, how will travel time invoices be calculated? Generally, proposals that do not include such travel time or expenses are preferred unless the services requested require travel as part of the service.

TAB 6 Cooperative Purchasing and Cost of Possible Additional Services:

- a. Indicate if the resultant contract can be extended to other San Mateo County school districts and/or public agencies in San Mateo County upon their request (Yes/No). Your response to this inquiry will not affect the selection decision unless other factors are deemed to be equal by SMCOE.
- b. List any additional services to the current service plan that you foresee could come up, if any, and list the proposed costs for such services.

TAB 7 References:

- a. List at least three business references for which you have recently provided similar services. Include contact names and phone numbers for all references provided.

In addition, the proposer should include a statement that it will agree to have any disputes regarding any contract venued in San Mateo County or the Northern District of California.

Proposals must advise SMCOE of any objections to any terms in the SMCOE's contract template and provide an explanation for the inability to comply with the required term(s). If no objections are stated, SMCOE will assume the proposer is prepared to sign the SMCOE contract as-is.

PLEASE NOTE: The sample standard contract attached to this RFP is a template and does not constitute the final agreement to be prepared for the vendor that is selected. Please do not attempt to insert missing information and complete the attached sample. Once a vendor is selected, SMCOE will work with the selected vendor to draft a vendor-specific contract using the template. However, each proposal should address the general terms of the standard contract as outlined in this section.

SAMPLE AGREEMENT TO PROVIDE MEALS

Between San Mateo County Office of Education and Food Vendor

This agreement made this Month XX, 20XX between the Food Vendor, hereinafter referred to as the Name Company, and the receiving sponsor, San Mateo County Office of Education, hereinafter referred to as SMCOE, is created for the purpose of providing:

Breakfast under the National School Lunch Program

Lunch under the National School Lunch Program

Snack under the National School Lunch Program

It is hereby agreed that:

I. Statement of Work

Food Vendor will provide meals to SMCOE that comply with the nutrition standards established by the United States Department of Agriculture (USDA) for the National School Lunch Program. SMCOE will be responsible for claiming reimbursement from the appropriate State agency for all meals served to children enrolled in SMCOE schools.

Food Vendor and SMCOE will comply with all applicable Federal, State and local statutes and regulations with regard to the preparation and consumption of meals which meet the National School Lunch Program meal requirements, including, but not limited to, all applicable regulations relating to the overt identification of needy pupils, the nutritional content of meals, and nondiscrimination. All records maintained by Food Vendor and SMCOE with bearing to the agreement will be open to inspection by proper Federal, State, and local authorities in accordance with applicable statutes and regulations.

A. Meal Ordering and Meal Components

The number of meals prepared by Food Vendor will be determined by the quantity ordered by SMCOE. SMCOE will notify Food Vendor of the quantity needed for each week no later than 5:00 p.m. of each Tuesday for the following week of service. SMCOE will place orders using Food Vendor's ordering system. Food Vendor will provide the necessary utensils and napkins, and menu'd condiments in sufficient quantity for the number of meals ordered.

1. Field Trips: Food Vendor will provide SMCOE with sack lunches for field trips when requested at the standard order time of no later than 5:00 p.m. of each Tuesday for the following week of service.
2. Offer vs. Serve: Food Vendor will provide lunch meals following the Offer platform of Offer vs. Serve (OVS), a system designed to reduce waste and give students greater flexibility and choice. SMCOE shall track the amount of

fruits and vegetables consumed by tracking waste each day. Food Vendor will provide the tools to assist in tracking. Food Vendor requires the tracking tools be submitted with weekly orders. Food Vendor reserves the right to re-negotiate price if there is excessive waste due to lack of tracking.

- 3 Special Scheduling: Special scheduling of meal serving times will require two weeks advance notice. Fees may apply.

B Delivery and Service of Meals

Food Vendor will transport meals from the preparation site to the school site. The delivery time to SMCOE will be agreed upon by both parties.

Delivery sites will include:

Food Vendor will provide all of the equipment necessary to transport the meals to SMCOE. SMCOE will provide all personnel necessary to accept delivery, serve, and supervise the consumption of meals.

SMCOE shall make available for next day pickup any and all property owned by Food Vendor.

C. Equipment and Care of Meals

Food Vendor will be responsible for the condition and care of meals until SMCOE accepts delivery and SMCOE will be responsible for maintaining the proper temperature of the meal components until they are consumed.

D. Holidays

Food Vendor will not provide hot food service for the following holidays. Food Vendor will notify SMCOE should 20XX holidays change. Food Vendor may offer a shelf stable meal for any or all of these listed holidays and will work with interested parties to make specific arrangements.

- Thanksgiving
- Winter Holiday
- New Year's Day
- Martin Luther King Jr. Day
- Presidents' Day
- Spring Break
- Memorial Day
- Independence Day

E. Monthly Menu Planning

No later than one (1) week prior to the end of each month, Food Vendor will provide to SMCOE a monthly menu covering the meals to be served for the following month. Food Vendor will provide nutritional data no later than one (1) week in advance of service upon written request. This will include:

- Monthly Menu Portion Detail to demonstrate compliance with Meal Patterns.
- Carbohydrate Report to assist parents and staff in ordering for students with diabetes.
- Allergen Report tracking the eight commonly recognized allergen components (wheat, dairy, eggs, soy, shellfish, fish, peanuts, tree nuts) as defined by the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) to assist staff in ordering for special meal accommodations.

Menu changes or substitutions may be required due to unforeseen circumstances; in the event a substitution is required, Food Vendor will communicate the need in writing.

F. Records and Audit

SMCOE will conduct the free and reduced-price application process, including the distribution, review, approval, and verification of applications for the sites belonging to SMCOE. All applications and eligibility requirements will be handled at the site by SMCOE. SMCOE is responsible for all point of service meal counts and completion of all documents required by the applicable Child Nutrition Program, including making claims for reimbursements.

Food Vendor will maintain all necessary records on the nutritional components and quantities of the meals delivered to SMCOE and make said records available for inspection by SMCOE, State and Federal authorities upon written request. Food Vendor will retain records for a period of three years from the date of final payment hereunder; except that if any audit finding has not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

Food Vendor will provide to SMCOE document requisition support in the event of an audit by the State Department of Education, or local governing entity for reimbursable Child Nutrition Programs, including School Meal Initiative and Coordinated Review Effort circumstances. SMCOE shall be responsible for notifying Food Vendor within three (3) business days of receiving notice of an audit. SMCOE shall be responsible for forwarding the written notification from the governing entity so that Food Vendor is positioned to best support the requisition request and tailor the support to exactly what is required. Typical document requisition in a formal audit includes support with menus, production records, recipes, labels and product formulation statements.

G. Licenses and Permits

Food Vendor will prepare meals at a site that maintains the appropriate state and local health certifications for the facility, and will maintain certification at all times.

SMCOE shall have state or local health certifications as needed for each of their school sites and shall maintain certification for the duration of the agreement.

II. Agreement Period

As allowed by Federal procurement guidelines, contracts may be renewed by mutual agreement for up to four additional one-year periods (a.k.a. Option Years) following the Base Year, with price negotiable. At time of renewal, both Food Vendor and SMCOE shall execute an agreement addendum/amendment stating the extended agreement period.

Base Year: Period beginning August 1, 20XX and ending July 31, 20XX.

III. Meal Price

Food Vendor will charge SMCOE the following:

Tier 1 Pricing			
Meal	# of Serving Days	Average Minimum # of Meals per Day	Price per Meal
Breakfast		<XX	
Lunch			
Snack			
Supper			

Tier 2 Pricing			
Meal	# of Serving Days	Average Minimum # of Meals per Day	Price per Meal
Breakfast		>XX	
Lunch			
Snack			
Supper			

Minimums will be evaluated at the end of each month and the appropriate pricing tier will be applied to the following month.

Food Vendor pricing is contingent upon SMCOE ordering from each of the meal platforms priced above, meeting the average daily minimum requirement(s) as listed. Should SMCOE not meet designated minimums, Food Vendor reserves the right to re-negotiate all prices. All pricing arrangements will remain confidential between SMCOE and Food Vendor.

Food Vendor meals are not intended or labeled for retail sale.

IV. Fees

A. Order Increase

As a valued partner, Food Vendor will do its best to accommodate the request. Order increases are subject to product availability - Food Vendor may suggest an alternative meal if the requested meal is not available.

Food Vendor reserves the right to charge up to a \$XX fee per late order increase after the stated deadline of Tuesday 5:00 p.m. Order increases will be charged the full applicable meal price listed in Section III.

B. Order Cancellation or Decrease

Because our food is prepared fresh daily, Food Vendor reserves the right to charge either a portion or the full price per meal for any order cancellations or decreases.

1. Food Vendor understands that extenuating circumstances may occur in which SMCOE shall have a need to decrease the number of meals ordered. We will partner with SMCOE to accommodate order decreases that occur after the stated deadline of Tuesday 5:00 p.m. in which meals are not needed within 48 hours. The order decrease shall not exceed 50% of the original order.

Order decreases occurring on/after the fourth incident will incur the full applicable meal price listed in Section III plus an additional 10% surcharge.

2. For cancellations and decreases that occur after the stated deadline of Tuesday 5:00 p.m., and within 48 hours of when meals are to be delivered:
 - a. First time order cancellations and decreases will be charged X% of the applicable meal price listed in Section III.
 - b. Second time order cancellations and decreases will be charged the full applicable meal price listed in Section III.
 - c. Order cancellations and decreases occurring on/after the third incident will incur the full applicable meal price listed in Section III plus an additional X% surcharge.

C. Convenience Fee

Food Vendor reserves the right to charge a convenience fee of up to X% per meal for changes after the stated deadline of Tuesday 5:00 p.m. that affect operations, but do not result in an increase or decrease in the number of meals originally ordered. An example of this may be changing regular lunch meals ordered to fieldtrip lunches.

D. Calendar Management

It is the responsibility of SMCOE to use the systems and tools provided by Food Vendor's ordering system to block out any additional holidays and non-service days in which meals are not needed, and order meals accordingly for each site. SMCOE shall block out non-service days by Month XX, 20XX, after which, Food Vendor may block out non-service days on behalf of SMCOE and charge a \$XX fee.

SMCOE shall notify Food Vendor at least one week in advance of minimum days, testing days, etc. in which meal times or normal operations may be affected. A convenience fee may be charged for failure to notify Food Vendor.

V. Payment Terms

Food Vendor will submit to SMCOE itemized invoices for breakfasts, lunches, snacks and/or suppers at the end of each month. The invoices will be for the full cost of the breakfast, lunch, snack and/or supper, plus any additional items ordered, including, but not limited to, milk, snack items, additional utensils, supplies, etc., and any other applicable fees. SMCOE shall submit payment to Food Vendor in such form as required by Food Vendor within XX (XX) days of receipt of Food Vendor invoice.

Food Vendor reserves the right to charge up to a XX percent interest rate (compounded monthly) on any balance left unpaid on an invoice. For avoidance of doubt, failure to pay an invoice is considered a material breach of this agreement.

No payment shall be made for meals that are spoiled or unwholesome at the time of delivery, do not meet the specifications, or do not otherwise meet the requirement of the agreement. However, no deduction will be made unless SMCOE provides to Food Vendor in writing of the meal service for which the deduction is to be made, specifying the number of meals for which SMCOE intends to deduct payment and setting forth the reasons for the deduction. SMCOE shall provide such notice no later than XX (X) business days after the date the meal was served.

VI. Confidentiality and Rights In Data

During the term of this agreement, Food Vendor may grant to SMCOE a nonexclusive right to access certain proprietary materials of Food Vendor, including signage, food service surveys and studies, allergen and carbohydrate reports, management guidelines and procedures, operating manuals, software (both owned by and licensed by Food Vendor), and similar compilations regularly used in Food Vendor business operations (trade secrets). SMCOE shall not disclose any of Food Vendor trade secrets or other confidential information, directly or indirectly, during or after the term of the agreement. SMCOE shall not photocopy or otherwise duplicate any such material without the prior written consent of Vendor. All trade secrets and other confidential information shall remain the exclusive property of Food Vendor and shall be returned to Food Vendor immediately upon termination of the agreement. SMCOE shall not use any confusingly similar names, marks,

systems, insignia, symbols, procedures, and methods. Without limiting the forgoing and except for software provided by SMCOE, SMCOE specifically agrees that all software associated with the operation of the service, including without limitation, menu systems, accounting systems, and other software, are owned by or licensed to Food Vendor and not SMCOE. Furthermore, SMCOE's access or use of such software shall not create any right, title interest, or copyright in such software and SMCOE shall not retain such software beyond the termination of the agreement. In the event of any breach of this provision, Food Vendor shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available.

Unless otherwise required by law, subpoena or court order, SMCOE shall not disclose any of Food Vendor trade secrets or other confidential information, directly or indirectly, during or after the term of the agreement. Unless otherwise required by law, subpoena or court order, SMCOE shall not photocopy or otherwise duplicate any such material without the prior written consent of Food Vendor.

Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure.

Any discovery, invention, software, or programs paid for by SMCOE shall be the property of SMCOE. This provision shall survive termination of this agreement.

VII. Indemnity

Food Vendor agrees to defend, indemnify and hold harmless SMCOE and its directors, officers and employees for claims for death, bodily injury and damage to tangible property caused by the sole negligence or a wrongful act of Food Vendor in the performance of this Agreement, and to pay all claims, damages, judgments, legal costs, adjuster fees and attorney fees related thereto.

SMCOE agrees to defend, indemnify and hold harmless Food Vendor and its directors, officers and employees for claims for death, bodily injury and damage to tangible property caused by the sole negligence or a wrongful act of SMCOE in the performance of this Agreement, and to pay all claims, damages, judgments, legal costs, adjuster fees and attorney fees related thereto.

VIII. Limitation of Liability

Excluding SMCOE's obligations in Section VII above, in the event a party incurs any expenses, damages or other liabilities in connection with the performance or non-performance of any term or provision hereof or otherwise incurs indemnification obligations

under this section, such party's liability to the other party shall not exceed the payments actually paid to Food Vendor. In no event will either party be liable for any special, incidental, consequential or indirect damages or damages for lost profits arising in any way out of this Agreement, however caused and on any theory of liability. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the failure of essential purpose of any remedies available to either party.

IX Insurance

SMCOE will keep and maintain commercial general liability insurance in an amount no less than one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate and will provide Food Vendor with proof evidencing insurance in the amount, and specifying that the coverage will not be canceled or modified without thirty (30) days prior written notice to Food Vendor. Food Vendor will keep and maintain commercial general liability insurance in an amount no less than one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate for any liability resulting from incidents of improper product preparation, contamination or transport and will provide SMCOE with a certificate evidencing insurance in the amount, naming SMCOE as an additional insured and specifying that the coverage will not be canceled or modified without thirty (30) days prior written notice to SMCOE.

X. Termination

A. Either party may terminate this agreement for cause:

1. Upon fifteen (15) days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or
2. Immediately if either party becomes insolvent or becomes the subject of any other proceeding, receivership, liquidation or assignment for the benefit of creditors.

B. SMCOE may terminate this agreement at any time by giving sixty (60) days written notification to Food Vendor setting forth the reason for and the effective date of termination. Upon such termination, SMCOE and Food Vendor shall make settlement of all amounts due hereunder as follows.

C. The following shall occur upon termination, whether by cause or convenience:

1. Food Vendor shall be paid according to the invoice issued to SMCOE for all meals and services provided through the effective termination date of service.
2. SMCOE shall pay Food Vendor all outstanding balances, not in dispute, within thirty (30) days of the effective date of termination.

3. For payments in dispute, SMCOE and Food Vendor shall determine on a case-by-case basis the most equitable solution to both parties.
4. The total sum to be paid to Food Vendor shall not exceed the total agreement price plus settlement costs, reduced by the amount of payments otherwise made, and the agreement price of work not terminated.
5. SMCOE will return all equipment owned by Food Vendor immediately upon stoppage of service.

XI. Force Majeure

Neither Food Vendor nor SMCOE shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this agreement, "force majeure" means acts of God; acts of the public enemy; acts of a governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes, freight embargoes, or illegality.

If any of the above causes an inability for Food Vendor to deliver meals, SMCOE will not be responsible for the cost of un-delivered meals. However, Food Vendor may suggest an alternative meal solution e.g. delivery from a local sandwich shop, in which case, SMCOE shall be fully responsible for payment of the alternate meal solution. SMCOE shall also be fully responsible for meals delivered but damaged by any of the above causes.

XII. Severability

To the extent that this agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the agreement, the terms of this agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

XIII. Survival of Certain Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this agreement and the exhibits and/or attachments hereto which may require continued performance, compliance, or effect beyond the termination or expiration date of the agreement shall survive such termination or expiration date and shall be enforceable as provided herein.

XIV. Modification and Amendment

This agreement is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations. Any such required modification shall

automatically be incorporated into and be part of this agreement on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this agreement shall be effective unless agreed to in writing by both parties in an amendment to this agreement that is properly executed and approved in accordance with applicable law.

XV. Cooperation of the Parties

Food Vendor and SMCOE agree to cooperate fully, to work in good faith, and to mutually assist each other in the performance of this agreement. In connection herewith, the parties shall meet to resolve problems associated with this agreement. Neither party will unreasonably withhold its approval of any act or request of the other to which the party's approval is necessary or desirable.

XVI. Assignment

In the event all or substantially all of Food Vendor assets are acquired by another company, Food Vendor shall notify SMCOE in writing. Within 30 days, SMCOE has the right to continue service under the guidance of the acquirer, or terminate the agreement, effective immediately.

XVII. Choice of Law

This agreement shall be construed under the laws of the State of California.

XVIII. Section Headings

The section headings or titles are for convenience only and shall have no substantive effect in the interpretation of the agreement.

The parties hereto are fully authorized and have executed this agreement: