

REQUEST FOR PROPOSALS

for

Food and Non-Food Products
RFP24-004

Submittal Due on or Before:

May 15, 2024, at 9:00 AM

Berkeley Unified School District
Nutrition Services
2020 Bonar St
Berkeley, CA 94702

NOTICE OF REQUEST FOR PROPOSALS (RFP)

NOTICE IS HEREBY GIVEN that Berkeley Unified School District of Alameda County, California, acting by and through its Governing Board, hereinafter referred to as the District, will receive on or before **9:00 a.m. on May 15, 2024** sealed proposals for the award of contract for the following:

Food and Non-Food Products

Such proposals shall be received in the District Office of Berkeley Unified School District, Nutrition Services and shall be opened at the stated time and place. Facsimile, or digital responses will not be accepted. RFPs received later than the designated time and specified date will be returned to the bidder unopened. It is the responsibility of the Proposer to ensure that any proposal delivered via the U.S. Mail or other courier reaches the designated location for receipt of proposals prior to or by the designated time.

All requests for interpretation of proposal documents must be in writing and emailed to Rickeley@berkeley.net. Questions are due no later than 11:00 a.m. on April 24, 2024. No other questions or requests for information will be accepted after the deadline. Answers to questions and all related RFP documents will be posted online at School District's website:

<https://www.berkeleyschools.net/departments/purchasing/>

It is the sole responsibility of the Bidder/Proposer to monitor the website and ensure that they have reviewed all documents, addenda, and/or clarifications prior to submitting a response. Failure to acknowledge changes to the bid or RFP may result in a determination that the bidder is nonresponsive.

Each proposal must conform and be responsive to this Notice, the Proposal Instructions and Conditions, and all other documents related to this solicitation.

The District reserves the right to reject any or all proposals, to accept or reject any one or more items of a proposal, or to waive any irregularities or informalities in the proposals or in the bidding.

No proposer may withdraw their proposal for a period of sixty (60) days after the date set for the opening of the proposals.

Published: April 5 & 12, 2024

RFP SCHEDULE

Advertisement Dates	April 5 & 12, 2024
RFP Available and Posted on Website	April 17, 2024
Sample Taste Test	N/A
Submittal of Requests for Information & Substitution Requests Due	April 24, 2024 (11:00 a.m.)
Final Addendum Issued and Posted on Website	May 8, 2024
RFP Response Due Date	May 15, 2024 (9:00 a.m.)
Board Approval (District reserves the right to extend)	June 12, 2024

PROPOSAL INSTRUCTIONS AND CONDITIONS

1. **INTRODUCTION:** Berkeley USD has two (2) high schools, three (3) middle schools and eleven (11) elementary schools. The District serves approximately 6000 breakfast, 2500 lunches on a daily basis. This District is committed to serving nutritious, made from scratch meals in support of education. All Meals are reimbursable and we do not offer an ala carte program.

The District is seeking proposals in response to this Request for Proposals (“RFP”) from vendors to provide Dairy products for the upcoming school year 2024-2025. The contract awarded (if any) will be for one (1) year and renewable for one (1)-year terms up to three (3) years.

The District will choose the vendor that meets the objectives of the solicitation and can provide the greatest overall benefit to the District for each line item or category, based upon the information presented in the proposals and any supplemental responses. While price alone is not the sole basis for award, it remains the primary consideration when awarding a contract under this procurement method pursuant to subsection (c) of 20111 of the California Public Contract Code.

A complete response is required in order to be considered. Vendors are required to comply with applicable laws and regulations as well as the District’s insurance requirements. The District reserves the right to reject any and all submissions and seek additional responses if the number or quality of responses does not meet the stated criteria.

2. **SCOPE OF SERVICES:** Although the full scope of services shall be stated in the final Purchase Agreement, the form of which is attached to this RFP (“Agreement”), the vendor will be expected to be capable of fulfilling, at a minimum, quantities of the line items for the District’s Child Nutrition Program requested by the District in order to meet the District’s needs. Delivery locations are set forth on page 31.
3. **SECURING DOCUMENTS:** Specifications and all other solicitation documents will be available online to maximize fair and open competition at <https://www.berkeleyschools.net/departments/purchasing/>
4. **STANDARDS OF CONDUCT:** Berkeley Unified School District expects respondents to maintain high ethical standards throughout the competitive solicitation process. Vendors will operate with integrity, in an ethical manner and in compliance with all applicable laws, rules and regulations applicable to their industry and place of business. Vendors will not engage in bribery, corruption, embezzlement, extortion, kickbacks, excessive commission, inducements or fees and any other prohibited business practices. District will consider any respondent found to be engaging in such practices to be a non-responsible proposer/bidder and may reject its proposal on that ground.

5. **REQUESTS FOR INFORMATION:** Any questions regarding this solicitation process must be in writing and emailed to Rickeeley@berkeley.net . Questions are due no later than April 24, 2024 by 11 am. Responses to questions will be uploaded as an addendum on the district website at <https://www.berkeleyschools.net/departments/purchasing/> . Only questions answered by formal written addenda will be binding.
6. **SUBMITTING PROPOSALS:** Proposal must be received in the Nutrition Services Department at Berkeley Unified School District, located at [2020 Bonar St. Berkeley, CA, 94702](#) by the time prescribed in the Request for Proposal (RFP). All proposals shall be enclosed in a sealed envelope bearing the name of the proposer, RFP date and RFP number. Proposals received will be time stamped according to the Receiving Clock at Bonar St School District Office. All proposals received after the stated due date and time will be returned, unopened to the proposing vendor.
7. **NUMBER OF COPIES:** Each vendor must submit Four (4) copies of its proposal to the District. Three hard copies and one digital. One hard copy must have a wet signature. Faxed or emailed responses will not be accepted.
8. **PREPARATION OF PROPOSAL:** Proposals shall be made upon the forms obtained from the District, properly executed. Proposals shall be written in ink or by typewriter before submission and must be made on the item pricing pages. All items on the form must be filled out. Proposals are to be verified, as they cannot be corrected after the Proposals are opened. The signature of all persons signing shall be in longhand. The completed forms must not contain any erasures, interlineations, or corrections unless each such correction is suitably authenticated with the initials of the person signing the bid. Alternative proposals will not be considered unless requested in the specifications. No oral or telegraphic Proposals or modifications will be considered. Each bid submitted must give the full business address of the bidder and must be signed by the bidder with his or her usual signature. The name of each person signing shall also be typed or printed below the signature.

Prices shall be stated in units specified. The District will not be responsible for errors in extensions. The right is reserved to reject any and/or all proposals; to waive any irregularities or informalities in any proposal; and to accept or reject any items in the proposal. The term “proposal” shall also mean bid, quotation, and offer.

Proposers should provide a pricing quote on all items appearing in the Item List and Price Form in each grouping. Proposers may opt-out of providing a quote for any grouping that they do not carry. Proposers shall insert “0” in the Unit/Pack Price and Price Extension Columns for items a quote is not provided for. Price will be evaluated for like items for all proposers.

Respondents shall be solely responsible for examining the RFP Documents, including any addenda issued during the bidding period. Failure of respondent to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be given except as required under State law.

Proposals should clearly state the method of delivering food and non-food products on time, safely, and deliver high quality products. All bid prices must be quoted FOB destination to the location specified. All costs including, but not limited to, uncontrollable costs; for example: labor cost, fuel cost, container cost, utility cost, handling cost. Also, the prices offered must include offloading and inside delivery.

No bid shall include California sales or use tax, or Federal excise tax unless otherwise specified.

9. **ERRORS AND OMISSIONS:** It shall be the responsibility of the proposing vendor to acquaint themselves with the contract documents before submitting a proposal. The proposer shall assume full liability for any errors or omissions in its proposal.
10. **WITHDRAWAL OF PROPOSALS:** Any bidder may withdraw their bid, either personally or by written request, at any time prior to the scheduled time for opening of Proposals. No bidder may withdraw their bid for a period of sixty (60) days after the date set for the opening thereof.
11. **TIE PROPOSALS:** When proposals are scored equally according to the RFP scoring rubric, the District will determine which proposal will be accepted pursuant to California Public Contract Code Section 20117.
12. **ADDENDA:** Any Addenda issued by the District during the time of solicitation shall be posted online at: <https://www.berkeleyschools.net/departments/purchasing/> incorporated into contract documents. Proposers shall be responsible for monitoring the website to obtain information regarding any revisions for this solicitation. Failure to respond to required updates may result in a determination of a nonresponsive proposal.
13. **INTERPRETATION OF PROPOSAL DOCUMENTS:** If a proposing vendor is in doubt as to the true meaning of any part of the contract documents or finds discrepancies in, or omissions from the specifications or terms, he or she may submit to a written request for interpretation or correction thereof. Any interpretation will be made only by written addendum. Interpretation of RFI will be posted online as an addendum at <https://www.berkeleyschools.net/departments/purchasing/>. No oral interpretation will be provided to any proposing vendor.
14. **SAMPLES AND TESTING:** Samples of items, if required, shall be furnished free of expense to the Bid Administrator and may be retained for the purpose of comparing against material delivered by the successful proposer. The final decision as to whether the product is equal to that specified shall be made by the Bid Administrator.
 - a. Delivery location for samples is N/A (not applicable).
 - b. Samples will be returned upon request at proposing vendor's expense if not destroyed by testing.

15. **NUTRIENT ANALYSIS:** For any packaged item proposing vendor shall provide a complete nutrient analysis of the product with proposal documents. BUSD Wellness Policy does not allow any product that contains High Fructose Corn Syrup (HFCS).
16. **ESTIMATED USAGE QUANTITIES:** The quantities indicated on the item pricing pages are the District's best estimates as determined from the previous purchases and projected usages and do not obligate the District to purchase the indicated quantities. Order minimums and minimum delivery schedules are outlined in this solicitation document.
17. **METHOD OF AWARD:** Pursuant to Section 200.320 of Title 2 of the Code of Federal Regulations, the award of the contract, if made by the District, will be to the responsive and responsible proposer whose proposal has been determined to be the most advantageous to the District with price and other factors considered. Proposers are responsible for providing all materials to meet specifications as presented unless otherwise outlined within this RFP.
- Award shall be based on the highest number of points given during the evaluation process based on the weighted factors indicated in the RFP Scoring Rubric included in this RFP. The decision resulting from the evaluation process as to which proposal best meets the needs of the District remains the sole responsibility of the District and is final.
18. **MULTIPLE AWARDS:** The District intends to award one contract for this RFP. However, the District reserves the right to award this contract to multiple vendors on a category basis.

END OF PROPOSAL INSTRUCTIONS AND CONDITIONS

PROPOSAL CHECKLIST AND SIGNATURE PAGE

Proposal recipient: Berkeley Unified School District, acting by and through its Governing Board, hereafter called District.

1. I, the undersigned representative of the proposing vendor, have thoroughly familiarized myself with the terms, conditions, and requirements of this solicitation document. I have received all contract documents including addenda numbers _____, _____, and _____.
2. I understand that _____ the District reserves the right to reject this proposal in whole or in part; to waive informalities in the proposals or bidding; and that this proposal shall remain open and not be withdrawn for a period of sixty (60) days from the proposal opening date and time for this proposal.
3. Upon award, the successful proposing vendor(s) adhere to all the terms and conditions outlined in the RFP for the duration of one year. The District retains the right to offer renewal of one year for a total maximum length of up to three (3) years.
4. I have read, completed, and certified all required documents in this solicitation. I understand this solicitation is subject to public record requests upon award as specified in California Government Code 6250-6270.
5. Federal and State Certifications as required in the RFP documents.

I, _____, the _____ of the bidding vendor, hereby certify under penalty of perjury under the laws of the State of California, that all of the information submitted by the bidding vendor in connection with this solicitation document and all of the representations and information provided herein are true and correct.

Executed on this _____ day of _____ at _____ County, California

By: _____
Authorized Signatory for Vendor

Legal Name of Vendor

Vendor's Mailing Address

By: _____
Representative Printed Name

Vendor City, State, Zip Code

Representative Title

E-mail for order entry or Website URL

Representative E-mail Address

Vendor Phone Number

NOTE: If Bidding vendor is a corporation, the legal name of the corporation shall be set forth above together with the signatures of authorized officers or agents and the document shall bear the corporate seal; if Bidding vendor is a partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if Bidding vendor is an individual, his/her signature shall be placed above.

ATTACHMENTS

Vendor must acknowledge each attachment by making a checkmark.

LIST OF ATTACHMENTS CHECKLIST

- Attachment A References Form (page 19)
- Attachment B Vendor Questionnaire (pages 20-21)
- Attachment C HACCP and Food Safety Protocols (page 22)

END OF PROPOSAL CHECKLIST AND SIGNATURE PAGE

CONTRACT TERMS AND CONDITIONS

1. **CONTRACT DURATION:** Contract will commence July 1, 2024 and end, on June 30, 2025 with the possible renewal of SY 2025-26 and SY 2026-27.
2. **AUDITS AND INSPECTIONS:** The successful proposer shall submit to third party audits and/or inspections initiated by the District during the term of the contract and for one year following the end of the contract. Audits and/or inspections will serve to ensure compliance with contract terms, food safety guidelines, pricing, and billing. Successful vendor must take steps to correct findings identified during audits and/or inspections, including financial restitution for any pricing or billing errors which may have occurred during the length of the contract period.
3. **LEGAL REQUIREMENTS:** All vendors are required to comply with and be bound by all applicable provisions of law whether or not referred to herein.
4. **PERMITS/LICENSES.** Contractor and all Contractor's employees or agents shall secure and maintain in force such permits, and licenses as are required by law in connection with the furnishing of services pursuant to this Contract.
5. **IRS REQUIREMENTS:** District views proposing/bidding vendors as independent contractors. Awarded vendor(s) must supply each member district with a complete IRS Form W-9 via U.S. Mail, Courier, encrypted email, or hand-delivery (Civil Code TITLE 1.81.1. Service persons providing products under this contract are considered employees of the vendor(s).
6. **INSURANCE:** On or before beginning any of the services or work called for by any term of this Agreement, Consultant, at its own cost and expense, shall carry, maintain for the duration of the agreement, and provide proof thereof that is acceptable to the District, the insurance specified below with insurers and under forms of insurance satisfactory in all respects to the District. Consultant shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Consultant has also been obtained for the subcontractor.

Insurance required herein shall be provided by Admitted Insurers in good standing with the State of California and having a minimum Best's Guide Rating of A- Class VII or better.

6.1	<p>Comprehensive General Liability</p> <p>Throughout the term of this Agreement, Consultant shall maintain in full force and effect Comprehensive General Liability coverage in an amount not less than One Million per occurrence (\$1,000,000.00), combined single limit coverage for risks associated with the work contemplated by this agreement. For Commercial General Liability Insurance submittal of a standard ISO CG 00 01 occurrence form, is required that includes operations, products and completed operations and contractual liability with limits not less than \$2,000,000.00 per occurrence, \$1,000,000.00 General Aggregate and \$2,000,000.00 Products-Completed Operations Aggregate for bodily injury, personal injury, and property damage.</p> <p>The Commercial General Liability Coverage shall include the following endorsements:</p> <p>Aggregate Limit Per Location endorsement;</p> <p>The District, its Board, officers, agents and employees shall be included as Additional Insureds using ISO Additional Insured endorsements CG 20 10 and CG 20 37 or a blanket additional insured endorsement applicable “when required by written contract or agreement”.</p>
6.2	<p>Automobile Liability</p> <p>Throughout the term of this Agreement, Consultant shall maintain in full force and effect Automobile Liability coverage, including owned, hired and non-owned automobiles in an amount not less than one million dollars per occurrence (\$1,000,000.00).</p>
6.3	<p>Worker's Compensation</p> <p>If Consultant intends to employ employees to perform services under this Agreement, Consultant shall obtain and maintain, during the term of this Agreement, Worker's Compensation Employer's Liability Insurance in the statutory coverage as required by the State of California and including Employers' Liability with limits not less than \$1,000,000.00 each accident; \$1,000,000.00 policy limit bodily injury by disease; \$1,000,000.00 each employee bodily injury by accident.</p>
6.4	<p>Proof of Insurance Requirements/Endorsement</p> <p>Prior to beginning any work under this Agreement, Vendor shall furnish the District with original certificates of insurance and amendatory endorsements effecting coverage required by this Agreement and indicating a thirty (30) day cancellation notice or notice of reduction in coverage. The coverage shall contain no special limitations on the scope of protection afforded District, its officers, employees, agents, or volunteers.</p>

7. SPECIFICATIONS AND CONDITION: All products shall be delivered as fresh as possible. All suppliers shall comply with the U.S. Pure Food and Drug Act, California Department of Agriculture requirements, county and city laws and ordinances for their production handling,

processing, marking and labeling. As well as a commitment to Good Food Purchasing accordance with BUSD Good Food Purchasing Policy (GFPP) (Attachment C)

8. **PACKAGING:** Packages shall be so construed as to ensure safe and sanitary transportation to the point of delivery. Damaged containers may be rejected and returned for credit or immediate replacement to the original site at no cost to the District for product or delivery. All packaging materials shall be FDA approved and meet all pertinent state and federal regulations for safe use with foods. Packaging materials shall impart no odor, flavor, or color to the product. Cases or products shall be clearly and legibly labeled with product name, code, weight, and count. All costs for containers shall be borne by the vendor.
9. **PRICING:** All products price quotations will be based on a fixed price. Prices must be firm from July 1, 2024 to June 30, 2025. Contract prices awarded as a result of this price request shall remain firm through the duration of the contract period. Any changes (up or down) in price must be announced to the Child Nutrition Services Director and Nutrition Purchaser Thirty (30) days preceding the effective price change. This District reserves the right to request verification of any change in prices.
19. **ORDERING:** The District prefers to place orders online and receive an email confirmation, however, if an order needs to be placed manually with the delivery driver or over the telephone, a written copy of the order must be left with the person in charge at Child Nutrition or a follow up email confirmation must be received. The District reserves the right to add, remove or delete product based on school needs. Only vendors with no minimum order requirements will be considered for award. The District will make every effort to ensure orders are greater than \$250 each.
10. **SUBSTITUTIONS AND DISCONTINUED ITEMS:** Substitutions in quality or quantity must receive prior approval from the Child Nutrition Services Department to qualify for payment. Under PCC 20118.4 the authorization to make changes to a contract is limited to ten percent (10%). The District will not allow substitutions in quality or quantity without prior approval from Nutrition Services Department in order to qualify for payment. In the event the vendor is unable to deliver an item as specified in this contract, notification of shortage must be made orally, by facsimile or by electronic mail at least 24 hours prior to scheduled delivery to the Nutrition Services Department.

When substitutions do occur, the vendor shall provide nutritional statements and ingredient listings of the replacement product to the Nutrition Services Department. An equal or better substitute product must immediately be made available to the District for approval and subsequent distribution to the sites, at no additional charge to the District. Authorization of a substitute product shall be at the sole discretion of the District.

In the event an item awarded under this contract is discontinued, vendor is required to notify the Nutrition Services Department immediately. Contract items that are discontinued by their manufacturer during the term of the contract may be substituted with a same or similar item only if it equals or exceeds the specifications of the original item. Written documentation from the manufacturer of product discontinuation shall be submitted directly to the Department. The vendor may not discontinue any items from inventory which are not

discontinued by their manufacturer, without providing advance written notification and receiving District approval for discontinuation.

Vendor shall notify the Nutrition Services Department whenever there is a product/ingredient change in any item provided to the District. If any product changes occur, new ingredient statements and nutritional information shall be provided to the Nutrition Services Department prior to shipment.

11. **DELIVERY:** The District reserves the right to make additions to, or deletions from, the list of delivery locations included in these RFP Documents to be served at any time during the period of the contract, and revise delivery times as required. Dark drops will not be accepted unless mutually agreed upon by both parties. If a scheduled delivery day is a holiday, deliveries will occur on the next business day after the holiday or on a mutually agreed upon alternate delivery day. Delivery vehicles are to be cleaned on a regular basis, free of excessive dirt and debris and clearly labeled with the name of the vendor.

All deliveries are to be placed into the designated storage/cooler area, at the delivery site, by the delivery driver. Delivery schedule is to be pre-scheduled to coincide with school and existing route flow for responder's best reduction of expenses, mileage, and time.

All deliveries must be accompanied by an invoice. Invoice is to include, for each item: item identification, unit price, price extension and total price of delivery. Sufficient time must be allowed at time of delivery for adequate inspection of product, not only for quantity, but also quality of product. Invoice will be signed only after inspection of product. The District reserves the right to reject products delivered in error, not delivered according to specifications, of sub- standard quality or unusable due to code date.

The District will not pay shipping and handling charges, nor shall the District pay for any fuel surcharges. Additionally, all prices offered by bidders, must include on site off loading and inside delivery.

12. **SAFETY AND SANITATION:** District Child Nutrition Services staff will receive only product that meets all local, state, and federal health and food safety requirements. To ascertain compliance with these requirements, district Nutrition Services staff may:
 - a) Inspect delivery vehicle for any sign of contamination
 - b) Check all expiration and "best if used by" dates
 - c) Use thermometers to check temperatures
 - d) Reject any physically damaged or leaking product(s)
 - e) Accept product only at standardized acceptable temperature ranges. Reference guidelines are available at www.foodsafety.gov
13. **LIQUIDATED DAMAGES:** In the event that the vendor fails to deliver the ordered products by the time specified in the contract, the District may impose a late delivery penalty charge of no more than 5% per day of order total. This penalty shall be taken as a credit against vendor's invoice to the district. Should late delivery(ies) impact a district's ability to

obtain federal and/or state reimbursement for meals because product was not delivered on time, the district shall have the right to charge vendor the full value of lost revenue.

If the successful proposer/bidder fails to furnish or deliver any material, supplies, equipment, or services at the prices quoted, or at the times and places stated, or otherwise fails to comply with terms of the documents in their entirety, the District may purchase the items herein specified elsewhere, without notice to the successful proposer/bidder.

14. **DE-ESCALATION:** The vendor warrants that unit price is an established catalog or market price for a commercial product sold in substantial quantities to the general public. The Contractor shall promptly notify the District any decrease in any applicable established price. Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased.
15. **ESCALATION:** Any changes (up or down) in price must be announced to the Nutrition Services Director or Purchaser 30 days preceding the effective price change. Vendor shall provide documentation justifying any increase in price including but not limited to market price fluctuations or CPI index data. Price increases must be approved in writing by the District prior to implementing the change.
16. **LATE FEES:** Refer to Item 31: LIQUIDATED DAMAGES.
17. **PRODUCT RECALL:** In the event a product is recalled, vendor will immediately notify the Child Nutrition Services Director. Vendor will be responsible for picking up the product and providing a replacement or credit for the recalled item(s) at the district's discretion.
18. **MONTHLY USAGE REPORTS:** The awarded vendor will supply monthly usage report or make available to the District upon request.
19. **BONDING:** All drivers must be bonded. Keys and alarm codes will be provided to drivers as needed for the completion of services related to this contract.
20. **CRIMINAL-HISTORY BACKGROUND CHECKS:** Education Code section 45125.1, subdivision (a), requires that entities under contract with the District shall ensure that each employee who interacts with a student outside the immediate supervision and control of the student's parent or guardian, or of a District employee, shall have a valid criminal records summary as described in Education Code section 44237. Education Code section 45125.1, subdivision (c), authorizes the District to require compliance with the foregoing requirements with respect to employees in addition to those within the scope of Education Code section 45125.1, subdivision (a). Therefore, the Consultant and its Sub-Consultants shall comply in all respects with the requirements of Education Code section 45125.1. To the greatest extent permitted by law, the District may impose other requirement designed to protect students in connection with the performance of the Scope of Services. Any Consultant that is a sole proprietor shall have an immediate and affirmative duty to inform the District of such status so as to allow the District to comply with Education Code section 45125.1.

21. **DRUG AND ALCOHOL-FREE WORKPLACE AND TOBACCO FREE SCHOOLS:** Vendor acknowledges that the District is a drug and alcohol-free workplace and tobacco free schools. Vendor shall be responsible to ensure that tobacco products, drugs, and alcohol will not be used by Vendor or any of Vendor's employees, agents, representatives, or volunteers on District property. The District may terminate this Agreement and/or remove Vendor or any of Vendor's employees, agents, representative, or volunteers and other persons on District property for use of tobacco products, drugs, or alcohol.
22. **INDEPENDENT CONTRACTOR:** It is agreed that Vendor shall act and be an independent contractor and not an agent or employee of District and shall obtain no rights to benefits which accrue to District's employees.
23. **LIMITATIONS UPON SUBCONTRACTING AND ASSIGNMENT:** Vendor shall not contract with any other entity to perform the services required herein without written approval of the District. This Agreement may not be assigned, voluntarily or by operation of law, without the prior written approval of the District. If Vendor is permitted to subcontract any part of this Agreement by District, Vendor shall be responsible to District for the acts and omissions of its subcontractor as it is for persons directly employed by it. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and District. All persons engaged in the work will be considered employees of Vendor. District will deal directly with and will make all payments to Vendor. Vendor shall be responsible for paying its employees, agents, and/or subcontractors for any and all work performed under this Agreement.
24. **EXECUTION OF CONTRACT:** The contract award will be made by the Governing Board of District and will be communicated to awarded vendor(s) no later than September 18, 2023. A letter will then be provided by District officially notifying awardee(s) of contract.
25. **AWARD OF CONTRACT:** Pursuant to Section 200.320 of Title 2 of the Code of Federal Regulations, the award of the contract, if made by the District, will be to the responsive and responsible proposer whose proposal has been determined to be the most advantageous to the District with price and other factors considered. Proposers are responsible for providing all materials to meet specifications as presented unless otherwise outlined within this RFP.

Award shall be based on the highest number of points given during the evaluation process based on the weighted factors indicated in the RFP Scoring Rubric included in this RFP. The decision resulting from the evaluation process as to which proposal best meets the needs of the District remains the sole responsibility of the District and is final.

The District reserves the right in its absolute discretion to accept proposals, or any part of proposals, as deemed necessary for the best interest of the District. The District reserves the right to reject any one or all proposals, to waive any informality in the proposals, to judge the merit and qualification of the products and services offered and is in the best interest of the District.

The District makes no representation that participation in the RFP process will lead to an award of contract, or any consideration whatsoever. The District shall, in no event, be

responsible for the cost of preparing any proposal in response to this solicitation. The awarding of this contract, in whole or in part, is at the sole discretion of the District.

26. **INVOICES/PAYMENT TERMS:** Invoices will be furnished monthly and will include delivery site, product name, quantity ordered, quantity delivered, unit size, and unit price. Invoices will be sent directly to the District and should be sent by the 10th of the month following the month of purchase. Payment will be made on a Net-30 basis.
27. **CREDIT MEMOS:** The successful vendor shall provide a credit at the time of delivery for all merchandise short on delivery, or damaged or spoiled product necessitating a return or reorder. A copy of this credit, priced and extended, shall be provided with the corresponding monthly invoice.
28. **SAFETY AND SECURITY:** The successful vendor shall comply with each district's security regulations. All equipment and supplies furnished, and/or all work performed, shall meet all applicable safety regulations of the Division of Occupational Safety and Health of the State of California and Safety and Health Codes of the State of California (CalCode). Vendor's representatives driving motor vehicles on school grounds must use extreme caution during times when school is in session.
29. **COMPLIANCE WITH APPLICABLE LAWS:** All products and services furnished must comply with all Federal, State, and Local laws, rules, regulations, and ordinances.
30. **FEDERAL NONDISCRIMINATION STATEMENT:** In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs and prohibited from discriminating based on race, color, national origin, sex (including gender identify and sexual orientation), disability, age, or reprisal retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for proposal and contract information should contact the Agency where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through Federal Relay Service at 800-877-8339. Additionally, information may be made available in languages other than English. To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form (AD-3027) found online at the Filing a Discrimination Complaint as a USDA Customer Web page and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call 866-632-9992. Submit your completed form or letter to USDA by mail at U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Ave SW, Washington, DC 20250-9410. To send by email: program.intake@usda.gov. USDA is an equal opportunity provider.

31. ADMINISTRATOR OF CONTRACT. This Contract shall be administered on behalf of, and any notice desired or required to be sent to a party hereunder shall be addressed to:

For District: Assistant Superintendent of Business Services,

For Contractor: _____

32. NOTICE. All notices or demands to be given under this Contract by either party to the other, shall be in writing and given either by: (a) personal service or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the fifth day after deposit in any U.S. Post Office. The address to which notices, or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this Contract, the addresses of the parties are as set forth above.
33. SUCCESSORS: All terms of this Contract shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.
34. GOVERNING LAW AND VENUE: In the event of litigation, the RFP documents, specifications and related matters shall be governed by and construed in accordance with the laws of the State of California. Venue shall be with the appropriate state or federal court located in San Diego County.
35. TERMINATION CLAUSE: District may at any time, with or without reason, terminate the Contract and compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or not later than thirty (30) days after the day of mailing, whichever is sooner.

District may terminate this Contract upon giving of written notice of intention to terminate for cause. Cause shall include: (a) material violation of this Contract by the Contractor; or (b) any act by Contractor exposing the District to liability to others for personal injury or property damage; (c) or if Contractor is adjudged a bankrupt, and Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Contractor's insolvency. Written notice by District of termination for cause shall contain the reasons for such intention to terminate, and unless within thirty (30) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Contract shall upon the expiration of the thirty (30) days cease and terminate. In the event of such termination, the District may secure the required services from another contractor. If the cost to the District of obtaining the services from another contractor exceeds the cost of providing the service pursuant to this Contract, the excess cost shall be charged to and collected from the Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District. Written notice by District shall be deemed given when received by the other party, or no later than thirty (30) days after the day of mailing, whichever is sooner.

36. **FORCE MAJEURE:** In the event that performance on the part of any party hereto shall be delayed or suspended as a result of circumstances beyond the reasonable control and without fault or negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder shall include, but not be limited to, acts of God or the public enemy, insurrection, acts of the federal government or any unit of state or local government in sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or delays in transportation, to the extent that such circumstances are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.
37. **PIGGYBACKING:** This request for proposal is not available for piggyback.

END OF CONTRACT TERMS AND CONDITIONS

**ATTACHMENT A:
REFERENCES FORM**

Proposers must submit three (3) California school district references, one of which must be in San Diego County, that are current customers. Proposers, therefore, release the organizations and individuals listed in this form from any claim or liability, because of responses given to requests for information by the District regarding the vendor and/or vendor's performance of work.

Proposers are strongly advised to alert references of future contact from the Berkeley Unified School District Child Nutrition regarding this solicitation.

Name of School District: _____

Address: _____

Contact Name: _____

Contact's Email Address: _____

Contact's Phone Number: _____

Current Contract Start/End Date: _____

Name of School District: _____

Address: _____

Contact Name: _____

Contact's Email Address: _____

Contact's Phone Number: _____

Current Contract Start/End Date: _____

Name of School District: _____

Address: _____

Contact Name: _____

Contact's Email Address: _____

Contact's Phone Number: _____

Current Contract Start/End Date: _____

ATTACHMENT B
Vendor Questionnaire

Please complete this qualifying criteria questionnaire, use a separate sheet if necessary, and submit with your proposal.

1. Will you be able to meet the specified delivery hour timeframe? Yes No

2. Will you be able to provide delivery days to all specified locations Yes No

3. Please describe how you will communicate ongoing product market updates and information regarding product availability to identify best priced products.

4. What is the lead time you require for orders?

5. How late can add-ons be added to next day delivery? Is there a limit on the number of cases that can be added on?

6. What is your procedure for notifying customers of shortages and/or substitutes

7. Will you be able to provide point/s of contact with whom the district can communicate through e-mail and by phone? Knowing that point/s of contact can change, please indicate who at this time that contact will be.

8. What percentage of products sourced within 250 miles of Alameda county are you able to provide? Please mark one: 40% or more 20-39% 19-1% 0%

9. Can you produce production reports to show the percent of local products provided?
 Yes No If yes can you describe current reporting/tracking mechanisms below. If no are you willing to develop reporting/tracking mechanisms? Yes No

10. How many years has your company been in the grocery food items/distribution business?

11. What school districts with student population greater than 7,000 does your company currently serve in Santa Clara and Alameda Counties?

12. Has your firm resigned or been replaced at the will of a district (s) during the school year with in the last 24 months? If so, explain.

13. What is your lead time you require for orders that ensures a 90% fill rate?

- 14. Describe your policy regarding your delivery driver/staff assisting sites in moving received products to storage.
- 15. Do you offer a percentage discount for early payment? ____Yes ____No If yes please state the terms of discount.
- 16. How many years has your company been in the K-12 food service business?
- 17. What is your procedure for notifying customers of product recall?
- 18. Will combination refrigerated/freezer trucks be used to deliver frozen and refrigerated items at the same time? ____Yes ____No

Name of Distributor
Firm or corporation _____

Signature of Distributor's Authorized Representative

_____ Date of Signing _____

Print Name and Title of Authorized Representative

Phone# _____
Email: _____

**ATTACHMENT C:
HACCP AND FOOD SAFETY PROTOCOLS**

Food Safety: Food/Beverage vendors shall be expected to comply with all Federal, State, and local mandates regarding food safety and are expected to have adequate controls in place to ensure the safety of the food/beverages provided.

Please provide information below or attach documentation about your company's HACCP and food safety policies and procedures.

Vendor name:

FEDERAL CERTIFICATIONS FORM

(To Be Submitted with Proposal)

REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS – APPENDIX II TO 2 CFR PART 200

The following provisions are required and apply when federal funds are expended by for any contract resulting from this procurement process.

The Berkeley Unified School District is the Subgrantee or Subrecipient by definition.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is:

The inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

The Berkeley Unified School District reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be affected and the basis for settlement. (All contracts in excess of \$10,000)

The Berkeley Unified School District reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor pursuant to Article 35 of the Contract Terms and Conditions.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

(C) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$250,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

The vendor agrees to comply with all applicable requirements of the Clean Air Act as shown above.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

- (D) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM

Exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

The vendor certifies that during the term of an award for all contracts by Berkeley Unified School District resulting from this procurement process, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

- (E) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non- Federal award.

The undersigned certifies that:

- 1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

(F) As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, by signing this offer, that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the contract will be at least the amount required by the applicable contract specifications or other contractual requirements.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

(G) Record retention requirements for contracts paid for with federal funds – 2 cfr § 200.333

When federal funds are expended by Berkeley Unified School District for any contract resulting from this procurement process, the vendor certifies that it will comply with the record retention requirements detailed in 2 CFR §200.333. The vendor further certifies that vendor will retain all records as required by 2 CFR §200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

(H) Certification of compliance with the energy policy and conservation act

When federal funds are expended by Berkeley Unified School District for any contract resulting from this procurement process, the vendor certifies that the vendor will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et seq.; 49 C.F.R. Part 18; Pub. L. 94- 163, 89 Stat. 871).

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

(I) Certification of compliance with Buy American provisions.

Vendor certifies that vendor is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy American Act must still follow the applicable procurement rules calling for free and open competition.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

Vendor agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that vendor certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.

Vendor's Name/Company Name:

Company registered on SAM.gov? Yes _____ No _____

Address, City, State, and Zip Code:

Phone Number:

Printed Name and Title of Authorized Representative: _____

Email Address: _____

Signature
of Authorized Representative

Date: _____

Equal Opportunity Employment

Federal affirmative action regulations mandate that Federal contractors include an Equal Opportunity (EO) clause in all contracts, subcontracts and purchase orders. The intent is to make the nondiscrimination and affirmative action provisions of Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, the Vietnam Era Veterans' Readjustment Assistance Act, and the Jobs for Veterans Act flow down to all tiers of contractors.

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

Certificate

I/We hereby certify that _____(company)
Is an equal opportunity employer as defined in the Equal Opportunity Act.

Date _____
_____ Contractor

By: _____

BUY AMERICAN CERTIFICATION FORM

Berkeley Unified School District is to purchase, to the maximum extent practicable, domestic commodity or product. Section 12(n) of the National School Lunch Act defines “domestic commodity or product” as an agricultural commodity that is produced in the United States and a food product that is processed in the United States using substantial agricultural commodities that are produced in the United States.

“Substantial” means that over 51% of the final processed product consists of agricultural commodities that were grown domestically.

Berkeley Unified School District must be notified in writing at least 10 days prior to delivering a nondomestic agricultural commodity or product and request prior approval. The written notification must list alternative domestic substitutes for the SFA to consider and provide an explanation for the following:

- Why the domestic product is not produced or manufactured in sufficient and reasonably available quantities of a satisfactory quantity; and/or
- The bid or price of the nondomestic agricultural food product is more than 25 percent lower than the bid or price of the domestic agricultural food product.
- The quality of the domestic agricultural food product is inferior to the quality of the agricultural food product grown, packed, or produced non-domestically.
- The agricultural food product is not produced or manufactured domestically in sufficient and reasonably available quantities of a satisfactory quality to meet the needs of the public institution.

An “Agricultural food product” means a fresh or processed product, including fruits, nuts, vegetables, herbs, mushrooms, dairy, shell eggs, honey, grains, livestock meats, poultry meats, and fish, including shellfish.

I/we _____, certify that only domestic commodity or food/beverage products will be supplied to Berkeley Unified School District unless otherwise mutually agreed upon and pre-approved by Berkeley Unified School District.

Signature

Date

If the District has agreed to purchase a non-domestic food or beverage item, justification documentation will be kept on file by the District.

Berkeley Unified School District will monitor the contract to ensure that the correct domestic food components contracted for are delivered as required by 2 CFR, Section 200.318(b) unless otherwise agreed upon between Berkeley Unified School District and the vendor and documented.

CRIMINAL RECORDS CHECK CERTIFICATION
(Vendor Fingerprinting requirements)

VENDOR CERTIFICATION

With respect to the Agreement dated _____, 2024 by and between Berkeley Unified School District (“District”) and _____ (“Vendor”) for the provision of services, Vendor hereby certifies to District’s governing board that is has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees that may come in contact with District pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).

Vendor’s Representative

Date

**RFP Food & Non-Food
SCORING CRITERIA**

Criterion	Possible Points
Price	40
Commitment to Delivery needs / times	20
District References and Past Performance	15
Geographic Location	5
Food Recall Protocol and HACCP Plan	5
Sales Rep access / Communication	5
Ability to place orders online / ease to place	5
Easy access to accurate spec sheets	5
Total Possible Points	100

Exhibit A

DELIVERY LOCATIONS

Delivery Specifications: The Successful Proposer will partner with the District over the term of the contract resulting from this RFP to deliver dairy to the District. Delivery to site(s) must be completed within the designated delivery timeframe; between Monday and Friday or on the designated delivery days as agreed upon. District reserves the right to designate an alternate delivery location if designated site is unable to receive deliveries for any reason. The District also reserves the right to revise delivery times as required. The District would like 2 deliveries days per week. All deliveries are to be placed, in the appropriate cooler or fridge at each school location during staff working hours- no overnight “dark” drops.

All deliveries shall occur after the sites open which is typically 5 am but are required to arrive and be unloaded before 1:30pm each delivery day.

Addresses for all sites are listed below:

High School - Requires only one delivery a week (Ideally Monday)

Berkeley High 1980 Allston Way, Berkeley, CA 94704

Central Kitchen – Requires two deliveries a week (Ideally Monday and Wednesday)

Martin Luther King Jr 1781 Rose Street, Berkeley, CA 94703

Central Warehouse – Can take multiple deliveries – can set this once vender (s) are chosen

720 Harbor Way S. Richmond Ca, 94804