

GENERAL TERMS & CONDITIONS

PREPARATION AND SUBMISSION OF PROPOSAL FORM: Milpitas Unified School District invites proposals on the forms enclosed to be submitted no later than, **10:30 a.m. on Friday, May 18, 2018**. All blanks on the proposal form must be appropriately completed. Each proposal must be submitted in a separate sealed envelope bearing on the outside "**Proposal BID NO. 2018.6 – Fresh Bakery**". It is the sole responsibility of the Vendor to ensure that the proposal is received by **10:30 a.m. on Friday, May 18, 2018**. Any proposal received after the scheduled closing time for receipt of proposals will be returned to the Vendor unopened.

1. PROPOSAL OPENING:

All proposals shall be publicly opened at **10:30 a.m. on Friday, May 18, 2018** at the:
MILPITAS UNIFIED SCHOOL DISTRICT
Student Nutrition Department
1585 Roger Street
Milpitas, CA 95035

- 2. SIGNATURES:** The proposal must be signed in the name of the proposer and must bear the signature in longhand of the person or persons duly authorized to sign the proposal on behalf of the proposer. All documents identified in the Required Bid Forms Section must be signed in permanent ink. Unsigned responses may be considered non-responsive, thus resulting in rejection of the proposal.
- 3. MODIFICATIONS AND CORRECTIONS:** Changes in or additions to the Pricing Sheet, alternate proposals, or any other modifications of the proposal form which is not specifically called for in the proposal documents may result in rejection of the proposal as not being responsive to the Request for Proposal. No oral or telephone proposals or modifications shall be considered. Proposals submitted must not contain any erasures, inter-lineation, or other corrections unless each such correction is initialed in the margin immediately opposite the correction by the person or persons signing the proposal. Proposals should be verified before submission and cannot be withdrawn after their opening.
- 4. ERASURES, INCONSISTENT OR ILLEGIBLE PROPOSALS:** The proposal submitted must not contain any erasures, interlineations, or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the surname or surnames of the persons signing the proposal. In the event of inconsistency between words and figures in the proposal price term, words shall control figures. In the event that the District determines that any proposal is unintelligible, inconsistent or ambiguous, the District may reject such proposal as not being responsive to the RFP.
- 5. QUESTIONS FROM VENDORS:** Written questions, clarifications, and/or discrepancies found in the RFP documents, are to be submitted to Kelly Ng, Purchasing/Contracts Specialist at kng@musd.org **no later than 10:00 a.m. on Friday, May 4, 2018**. Corrections will be made by addenda and will be available online at <http://www.musd.org/current-bids.html>. The District will not be responsible for oral interpretations. All addenda issued shall be incorporated into the proposal. Milpitas Unified School District shall not be obligated to answer any questions received after the above-specified deadline or any questions submitted in a manner other than as instructed above.
- 6. ADDENDA/CLARIFICATIONS:** If it becomes necessary for Milpitas Unified School District to revise any part of this RFP, or to provide clarification or additional information after the RFP documents are released, each recipient of record of the original RFP will be notified with instructions to download a written addendum. Recipients of record are those parties, which obtained a copy of the bid directly from Milpitas Unified School District. Addenda will be posted on the District web-site (www.musd.org). It shall be the responsibility of the Vendor's to inquire of Milpitas Unified School District as to any addenda issued. All addenda issued shall become part of the RFP.

7. **WITHDRAWAL OF PROPOSAL:** Any Vendor may withdraw his proposal personally or by written request at any time prior to the scheduled closing time for the receipt of proposals.
8. **AGREEMENT PERIOD:** It is anticipated that the Agreement to be awarded under this proposal shall be effective July 1, 2018, through June 30, 2019. The term can be renewed for two (2) one (1) year terms at the discretion of the District.
9. **PRICES:** Minimum contract term is twelve (12) months. Quoted prices must stay in effect for twelve (12) months after an award of contract and may be extended upon mutual consent of the district and vendor for up to two additional twelve (12) month periods or until the end of the school fiscal year, whichever is the shorter duration, in accordance with provisions contained in the Education Code, Sections 17596. Any price increase must be in accordance with the Santa Clara Area consumer Pricing Index with a maximum of 5% per contract term. In the event of a general price decrease the District reserves the right to revoke the contract award unless the decrease is passed onto the District.

All prices shall be quoted FOB destination. Destination shall be to the destination as specified by the District. All costs for delivery, drayage, insurance, freight, fuel or the packing of the said articles is to be borne by the Vendor. Vendor will be responsible for all assessorial charges associated with the shipping of goods ordered due to failure to follow above listed shipping instructions.
10. **TAXES:** Taxes, whether Local, State, or Federal, shall not be included in the proposal price term.
11. **EVIDENCE OF RESPONSIBILITY:** The District requires the name of three (3) references for whom similar supplies or equipment were provided during the previous year.
12. **EVIDENCE OF FINANCIAL RESPONSIBILITY:** Prospective Vendors shall submit, with their proposals, financial evidence showing the Distributor's ability and qualifications to perform the proposed contract. **If requested in writing, the District will not publicly disclose this information upon the opening of proposals unless required by law to do so.** The District may consider such evidence before making its decision awarding the proposed contract. Failure to submit evidence of responsibility to perform the proposed contract may result in rejection of the proposal.
13. **PROPOSAL DOCUMENT:** The Vendor should fully acquaint themselves with the conditions and terms affecting the performance of the Agreement if awarded. The Vendor's submission of a proposal shall be taken as prima facie evidence of compliance. Proposals should be verified before submission, as they cannot be withdrawn after their opening.
14. **TERMINATION OF AGREEMENT WITHOUT CAUSE:** Districts may terminate this Agreement at any time by giving the Vendor thirty (30) days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Other than payments for goods or services satisfactorily rendered prior to the effective date of said termination, Vendor shall be entitled to no further compensation or payment of any type from the District(s).
15. **FORMATION OF CONTRACT:** A signed and submitted Proposal constitutes an offer to Contract with the Milpitas Unified School District to provide the goods and/or perform the services specified in this RFP, thus eliminating the need for the formal signing of a separate contract. An RFP does not become a contract unless and until it is accepted by the Milpitas Unified School District after approval by the Milpitas Unified School District Board of Trustees. **No Vendor shall obtain any interests or rights in any award until the District issues Purchase Orders in the name of the vendor(s).**

16. DISTRICT'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION

THEREOF: The District(s) may withhold a sufficient amount or amounts of any payment otherwise due to the Vendor, as in its judgment may be necessary to cover defective items not remedied, and the District(s) may apply such withheld amount or amounts to the payment of such claims, in its discretion.

17. PROPOSAL FORM DIRECTIONS:

- A. Vendor is to use the Pricing Sheet template provided on the accompanying proposal documents.
- B. The Pricing Sheet must accompany the completed formal proposal.
- C. Vendor is to complete requested information on Pricing Sheet.
- D. Vendor is to submit all pricing spreadsheet pages, even those without responses.
- E. District reserves the right to purchase additional units, at various quantities, under the terms and conditions provided in this proposal.
- F. The District reserves the right to reject any or all proposals, in whole or in part, and to be the sole judge of the merits and qualifications of all proposals and the products submitted as "equal" to the District's specifications and not necessarily accept the lowest price offered.
- G. The District reserves the right to reject proposals with multiple items per line item (multiple flavors are not considered multiple items). Vendors submitting proposals with more than one item per line item may be rejected on grounds of non-responsiveness or non-responsibility.

18. PROPOSAL PROTEST PROCEDURES:

- 1) **Protest Procedures:** Any proposer may file a Protest. Only those proposers who have actually submitted a proposal on the project shall have the right to file a Protest. The protest shall be received in writing by the District's Student Nutrition Director no later than 3:00 p.m. at the conclusion of the third (3rd) business day following the date of the proposal opening. Untimely Protests will not be reviewed by the District and will be returned to the proposer. An e-mail address shall be provided and by filing the protest, protesting proposer consents to receipt of e-mail notices for purposes of the Protest and Protest related questions and Protest Appeal, if applicable.
- 2) **Content of Protest:** The Protest must contain a complete statement of all grounds (both factual and legal) for the Protest. The Protest must contain all facts, refer to the specific portion(s) of any document relied upon, and shall include copies of all documents referred to in the protest. Any grounds not set specifically forth in the Protest are waived. The party filing the Protest must concurrently transmit a copy of the Protest to the proposer whose proposal is being challenged pursuant to these procedures.
- 3) **Resolution of Controversy:** Once the Protest is received, the affected proposer will be notified of the protest and the evidence presented. If appropriate, the affected proposer will be given an opportunity to rebut the evidence and present evidence that the proposer should be allowed to perform the Work. District will issue a written decision within fifteen (15) business days of receipt of the Protest, unless factors beyond the District's reasonable control prevent such resolution. The District shall not be required to hold an administrative hearing to consider the Protest, but may do so at the option of the District, or if otherwise legally required. The Decision on the Protest will state the reasons for the actions taken by District and will be copied to all parties involved in the Protest.
- 4) **Appeal:** If the protesting proposer or the affected proposer is not satisfied with the Decision, the matter may be appealed to the Chief Business Official, or their designee, within three (3) business days after receipt of the District's written Decision on the Protest. The appeal must be in writing, set forth all

factual and legal grounds for the Appeal, and be sent via overnight registered mail with all accompanying information relied upon for the appeal and an e-mail address from which questions and responses may be provided to:

Milpitas Unified School District
Asst. Supt of Business Services
1331 E. Calaveras Blvd.
Milpitas, CA 95035

- 5) **Appeal Review and Finality:** The Chief Business Official or their designee shall review the Decision on the Protest from the Child Nutrition Director and issue a written response to the Appeal, or if appropriate, appoint a Hearing Officer to conduct a hearing and issue a written decision. The written decision of the Chief Business Official or the Hearing Officer shall be rendered within fifteen (15) business days and shall state the basis for the decision. The decision concerning the Appeal will be final and not subject to any further Appeals.
 - 6) **Reservation of Rights to Proceed with Contract Pending Appeal:** The District reserves the right to proceed to award the contract and commence services pending the Decision on the Protest and any Appeal. If there is State Funding or a critical completion deadline, the District may choose to shorten the time limits set forth in paragraph 12 if written notice is provided to the protesting party. E-mailed notice with a written confirmation sent by First Class Mail shall be sufficient to constitute written notice. If there is no written response to a written notice shortening time, the District may proceed with the award.
 - 7) **Waiver:** The procedures and time limits set forth in this Protest procedure are mandatory and are the proposers' sole and exclusive remedy in the event of a Protest. The proposer's failure to comply with any of this Protest Procedure shall constitute a waiver of any right to pursue a Protest or in any way challenge the award, including but not limited to, any challenge pursuant to the California Public Contract Code, filing of a claim pursuant to the California Government Code, or filing of any other legal proceedings.
19. **LIMITATIONS:** 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 districts. The District may take into account the performance of the proposer with respect to any recent contract(s) with other school districts. The District, however, 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 materials, equipment, and services offered, and to accept whatever proposal is deemed to be the best proposal meeting all the criteria specified in the proposal and is in the best interest of the districts. This RFP is not an offer by the District to contract with any party responding to this RFP. The District makes no guarantee 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 RFP. The awarding of the services contract, if at all, is at the sole discretion of the District.
20. **RESTRICTIONS ON LOBBYING AND CONTACT:** From the period beginning with the date of the issuance of this RFP and ending on the date of the award of the contract, no person, or entity submitting a response to this RFP, nor any officer, employee, representative, agent, or consultant representing such a person or entity shall contact, through any means, or engage in any discussion regarding this RFP, the evaluation or selection process and/or the award of the contract with the District, Board of Trustees, other than the named contact herein. Any such contact shall be grounds for disqualification of the entity submitting a response.
21. **ACCOUNTING:** Invoices will be furnished in triplicate and include delivery site, product name, quantity, unit size, and unit price. The original copy is to be kept by the Distributor. The original invoice must be

signed by the individual receiving the product and two copies are to be left for the food service lead or designee. An invoice signed by the food service lead or designee is required in order for the invoice to be processed for payment. A legible delivery discrepancy receipt shall be left at the site in the case of a return or shortage. Credits shall be issued in a timely manner. Statements for all goods purchased within a calendar month shall be made available on an individual site basis. Statements should be sent by the 5th of the month following the month of purchase. The payment terms of this contract shall be "Net 45 days" unless otherwise indicated below. All invoices are due and payable within 45 days from the "invoice date" or date of delivery. The Distributor will list all discounts and payment options available on the Proposal Worksheet if terms other than "Net 45 days" are offered.

- 22. DRUG/ALCOHOLIC BEVERAGE/TOBACCO –FREE CAMPUS:** The District prohibits the use of drug, alcoholic beverages and tobacco products, at any time, on District owned or leased buildings, on District property and in District vehicles.
- 23. SAFETY AND SECURITY:** The Distributor shall comply with the District 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 (Cal Code). Distributor's representatives driving motor vehicles on school grounds must use extreme caution during times when school is in session. Any unusual condition noted by drivers, such as evidence of vandalism, power failure, fire, water damage, gas leak, etc., must be reported to the affecting district.
- 24. NON-DISCRIMINATION:** It is the policy of the District that in connection with all work performed under Contracts, there be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, marital status, physical disability, mental disability, or medical condition. The Vendor agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act, beginning with Government Code, Section 12900, and Labor Code, Section 1735 and the American with Disabilities Act, 42 USC and 12101 et. Seq.
- 25. HOLD-HARMLESS CLAUSE:** To the fullest extent permitted by law, the Distributor agrees to indemnify, defend and hold the District entirely harmless from all liability arising out of: Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to Distributor's employees or Distributor's subcontractor employees arising out of Distributors work under this proposal; and Any loss, injury to or death of persons or damage to property caused by any act, neglect, default or omission of the Distributor, or any person, firm or corporation employed by the Distributor, either directly or by independent contract, including all damages due to loss or theft, sustained by and person, firm or corporation including the District, arising out of, or in any way connected with the Distributors work under this proposal, including injury or damage either on or off the property of the district property; but not for any loss, injury, death or damages caused by the sole or active negligence, or willful misconduct of the district. The Distributor, at the Distributors own expense, cost and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District districts, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the District, their officers, agents or employees in any action, suit or other proceedings as a result thereof.
- 26. ATTORNEYS' FEES:** In the event of any dispute between the District and Contractor pertaining to this Contract or the services or products provided for hereunder, the prevailing party (as determined by the court or arbitrator in any such action) shall be entitled to recover from the other party its reasonable attorneys' fees, costs and expenses incurred in connection therewith. The term "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photo-stating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals

and other persons not admitted to the bar but performing services under the supervision of an attorney, and the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The terms and provisions of this Section shall survive the expiration or earlier termination of this Contract.

27. **GOVERNING LAW AND VENUE:** In the event of litigation, all 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 Santa Clara County.
28. **PREVAILING LAW:** In the event of any conflict or ambiguity between a) the information enclosed herein and b) state or federal law or regulations, the latter shall prevail.
29. **INSURANCE:** Without limiting vendor's indemnification of the District, Vendors shall provide and maintain at its own expense during the term of the resulting contract, the following program(s) of insurance covering its operations hereunder. Such insurance shall be provided by insurer(s) satisfactory to the District and shall be delivered to the District on or before the effective date of Contract. Such evidence shall specifically identify the contract and shall contain express conditions that District is to be given at least thirty (30) days written notice in advance of any modification or cancellation of any policy of insurance.

A) Liability

Such insurance shall be primary to and not contributing with any other insurance maintained by the Districts, and shall name the District as an individual insured, and shall include but not be limited to:

1) Comprehensive General Liability Insurance

Endorsed for Premises-Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of \$2,000,000.00 per occurrence.

2) Comprehensive Automobile Liability

Endorsed for all owned and non-owned vehicles with a combined single limit of \$2,000,000.00 per occurrence.

B) Worker's Compensation

A program of Worker's Compensation Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, and which specifically covers all persons providing services on behalf of vendor and all risks to such persons under this contract

C) Product Liability

Vendor must maintain liability insurance including extended coverage for product liability in an amount not less than two million dollars (\$2,000,000.00) combined single limit and provide each participating district with a certificate evidencing insured and specifying that coverage shall not be canceled or modified without 30 days prior notice

30. **FINGERPRINT REQUIREMENTS:** Pursuant to Education Code Section 45125.1, it is necessary to the District to determine whether a contractor must have its employees fingerprinted and screened for criminal records. There are two bases for exemption:

- A) **Emergency Contacts – Exempt:** Subsection (b) states that Section 45125.1 shall not apply to a contractor of an independent contract consultant providing services to the District in an emergency or exceptional situation, such as when pupil health or safety is endangered or when repair are needed to make school facilities safe and habitable.

B) Limited Pupil Contact – Exempt: Subsection (c) states that Section 45125.1 shall not apply when the District determines that the employees of the entity or independent contract consultant will have limited contact with pupils.

The District has made an initial determination that the infrequent delivery requirements of short duration to meet the terms of this contract are such that supplier access to pupils will be limited an unnecessary.

By accepting the award of this bid, the successful supplier agrees to the terms outlined herein and will take such actions as is necessary in insure the supplier employee(s) have no direct contact with students at the delivery sites. Failure to comply with this requirement will be satisfactory cause for cancellation of the contract.

31. **INDEPENDENT CONTRACTOR**: While providing the items included herein, the Vendor is an independent contractor and not an officer, employee, or agent of the District.
32. **CAL-OSHA**: The Vendor certifies by delivery, that all items furnished under this Agreement meet or exceed applicable CAL-OSHA Codes.
33. **ENERGY POLICY AND CONSERVATION ACT**: Vendor will comply with the requirements of 42 USC § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this act.
34. **CERTIFICATIONS**:
 - a. The VENDOR shall comply with Title VI of the Civil Rights Act of 1964, as amended; USDA regulations implementing Title IX of the Education Amendments; Section 504 of the Rehabilitation Act of 1973; and any additions or amendments to any of these regulations.
 - b. The VENDOR shall comply with all applicable standards, orders, or regulations issued, including:
 - Executive Order 11738: <http://www.epa.gov/isdc/eo11738.htm>
 - Environmental Protection Agency (EPA) regulations at Title 40, *Code of Federal Regulations*, Part 15, et seq. (http://www.ecfr.gov/cgi-bin/text-idx?SID=9ed90ed6fc9c89c5c8465c743584c79a&tpl=/ecfrbrowse/Title40/40tab_02.tpl). Environmental violations shall be reported to the USDA and the U.S. EPA Assistant Administrator for Enforcement, and the VENDOR agrees not to use a facility listed on the EPA's List of Violating Facilities
 - c. **Energy Policy and Conservation Act**: <http://legcounsel.house.gov/Comps/EPCA.pdf>. the VENDOR shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state conservation plan issued in compliance with the Energy Policy and Conservation Act.
 - d. **Contract Work Hours and Safety Standards Act Compliance**: <http://www.dol.gov/compliance/laws/comp-cwhssa.htm>. In performance of this Contract, the VENDOR shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act
 - e. **The Contractors Certification** – Regarding Drug Free Workplace must accompany this Proposal

IN WITNESS WHEREOF, this Contract has been duly executed by the above named parties, on the day and year first above written.

DISTRICT:

Milpitas Unified School District

By: _____

Title: _____

Address:

1331 E. Calaveras Blvd.
Milpitas, CA 95035

Phone No: (408) 635-2600

Fax No: (408) 635-2617

PROVISIONER:

Athens Baking Company, Inc.

By: Lynn Jensen

Title: Office Manager

Address: 7080 N. Whitney Ave. #103
Fresno, CA 93720

Phone No: 559-324-8535 ext. 108

Fax No: (559)324-2477

Authorized Officers or Agents (Corporate Seal)

Athens Baking Company, Inc.

	Item Description	Reference Pack Size	Estimated Yearly Usage	Alternate Brand Name, Code No. & Pack Size	Case Pricing for 2018-2019
1	4" WW Hamburger Bun	12/pk	11,400		2.34
2	6" Hoagie Plain	6/pk	2,000		1.77
3	6" WW Hot Dog Bun	16/pk	1,050		2.96
4	Sandwich Wheat Bread, sliced	1 loaf	100		2.07