

Board of Trustees Agenda Item

Board Meeting Date: August 8, 2011

Title of Item: Award a Contract Pursuant to RFP 1364, Food Service Operations for Foothill College

Background and Analysis:

The District's Board of Trustees awarded the existing contract for Foothill College food services in June 2007. The existing contract expires in August 2011. Therefore, District Purchasing Services and Foothill College staff worked together to write Request for Proposals #1364. The RFP contains information about existing facilities and operations, contractor responsibilities, and the proposal evaluation process. The RFP document, including the contract, has been reviewed and approved by legal counsel, John Shupe.

The selected Contractor will be responsible for providing all labor, management, supplies, materials, and equipment, beyond that included in the Foothill College Campus Center, that is necessary to provide food services at the Campus Center as well as at the Krause Center for Innovation (KCI). The Contractor will provide beverages, sandwiches, pastries and other pre-prepared foods at both locations.

Purchasing Services advertised RFP #1364 in the San Jose Post Record on April 22 and April 29, 2011, and it also posted it on BidNet. Five (5) companies sent representatives to the job walks that were conducted on May 18, 2011 and June 2, 2011 by Purchasing Services and Foothill College staff.

Proposals were due on June 22, 2011 at 2 p.m. Three companies submitted proposals: Fresh & Natural, Una Mas Restaurants, Inc., and Pacific Dining.

A campus-appointed committee scored the proposals. Scores were based on operations experience; food service plan menu & prices; management & personnel; marketing & campus relations; conservation, recycling & sustainability; catering menu and prices; fee proposal & signed Agreement for Services; financial statements; evidence of insurance; interviews; and reference checks.

The committee ranked Pacific Dining as #1. Pacific Dining was founded in 1989 in San Jose, California. It currently operates food services at four California community colleges: College of San Mateo, Skyline College, Gavilan College, and Canada College. It also operates the food services at Devry University in Fremont, California. The committee conducted reference checks, and the responses showed that customers are highly satisfied with Pacific Dining's services.

Other rationale for selection included:

- 1) Highest scoring in proposal review
- 2) Highest scoring in interview
- 3) Excellent employee retention history (average of 7 years)
- 4) Their use of local products
- 5) Their use of sustainable/compostable products

6) Menu selections

The committee and Purchasing Services recommend that Pacific Dining be awarded the attached three-year contract. The contract will renew for two additional one-year periods unless terminated by either party at least 90 days before the expiration of the initial three-year term.

The contract provides that Pacific Dining will make commission payments to the District equal to 7% of net sales; net sales is equal to gross sales minus sales tax. Based upon net sales of \$466,009 during the 2010-11 fiscal year, estimated commission revenue is \$33,000 per year. The commission revenue will fund Foothill College graduation expenses and campus center equipment and repairs.

Recommendation: (specify if information only)

Authorize the Director of Purchasing Services, Carmen Redmond, to execute the attached contract with Pacific Dining.

Submitted by:	Carmen Redmond, ext 6166
Additional contact names:	Pat Hyland, ext 7389
Is backup provided?	Yes

Amendment 3 - RFP 1364 Food Services Operations, Foothill College
EXHIBIT C

Foothill-DeAnza Community College District
Agreement/Purchase Order No. _____

AGREEMENT FOR GOODS AND SERVICES

This Agreement entered this 16th day of August, 2011, by and between the Foothill-De Anza Community College District, a community college district of the State of California, hereinafter called "District" and JACQUE DUNN hereinafter called "Contractor."

WITNESSETH

WHEREAS, pursuant to Foothill-DeAnza Community College District Board Policy 3140 and Board of Trustees Resolutions, specified District employees have the duty to engage independent contractors to perform sundry services for the District, with or without the furnishing of material; and

WHEREAS, it is necessary and desirable that Contractor be engaged by District for the purpose of performing services hereinafter described:

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. **Services to be performed by Contractor.** In consideration of the payments hereinafter set forth, Contractor shall perform services for District in accordance with Request for Proposals 1364, the Contractor's response thereto, the terms, conditions and specifications set forth herein, and Exhibit "A" attached hereto and by this reference made a part hereof.
2. **Payments.** In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A", Contractor shall make payment to the District in the manner specified in Exhibit "A".
3. **Relationship of the Parties.** It is understood that this is an Agreement by and between Independent Contractor(s) and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Independent Contractor.
4. **Non-Assignability.** Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of District, and any attempted assignment without such prior written consent in violation of this Section automatically shall terminate this Agreement.
5. **Contract Term.** This Agreement shall be in effect from August 16, 2011 through August 15, 2014. Either party may terminate this contract at any time for any reason by providing at least 90 days prior written notice to the other party. Termination will be effective on the date specified in the notice. In the event of termination under this paragraph, Contractor shall be paid for all work provided to the date of termination and Contractor shall pay all commissions due to the District for sales through the contract expiration date.
6. **Hold Harmless and Indemnification:** The contractor shall indemnify and save harmless the District, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description, brought for, or on account of (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) by reason of any failure to withhold and /or

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pay to the government income and/or employment taxes from earnings under this contract as made necessary by Section 530 of the Revenue Act of 1978, including but not limited to the concurrent active or passive negligence of the District, its officers, agents, employees or servants, resulting from the performance of any work required of contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which the District has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of the contractor to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778.4 of the California Civil Code.

Contractor's duty to defend shall be triggered by notice to contractor that District has been served with a summons or complaint which alleges facts falling within the scope of contractor's indemnity obligations.

7. **Insurance.** During the term of the contract, the Contractor shall maintain, at his sole expense, minimum insurance coverage as follows:

General Liability. General Liability Insurance of \$1,000,000.00 per occurrence and \$3,000,000.00 in the aggregate including coverage for Premises/Operations, Independent Contractors, Contractual and Personal Liability at a combined single limit of \$1,000,000 per Bodily Injury and Property Damage, and;

Comprehensive Automobile Liability. Comprehensive Automobile Liability Insurance covering any vehicle at a combined single limit of \$1,000,000 per Bodily Injury and Property Damage.

Workers' Compensation. Workers' Compensation and Employer Liability Insurance providing full statutory coverage.

Insurance Carrier Rating. The Contractor's insurance carrier must be approved by the District and carry a minimum "A-" rating with a minimum financial capacity rating of VII.

The Contractor shall provide evidence of insurance to the District prior to the commencement of this contract.

Certificates and insurance policies shall include the following clause: "This policy shall not be canceled or reduced in required limits of liability or an amount of insurance until notice has been mailed to the District. Date of cancellation or reduction may not be less than thirty (30) days after date of mailing notice."

Certificates of insurance shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, and cancellation and reduction notice.

Certificates of insurance shall clearly state that the District and its officers, agents, employees and servants are named as an additional insured under the policy described and that such insurance afforded thereby to the District, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the District, or its officers and employees have other insurance or self-insurance against a loss covered by such a policy, such other insurance shall be excess insurance only. Contractor shall provide District with the endorsement to the policy that names District as additional insured.

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8. **Non-Discrimination.**

A. **General.** No person shall, on the grounds of race, color, national or ethnic origin, religious affiliation or non-affiliation, gender, marital status, sexual orientation, age, physical or mental disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Agreement.

B. **Employment.** Contractor shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Agreement. Contractor's personnel policies shall be made available to District upon request.

9. **Substitutions:** If particular people are identified in List of Subcontractors as working on this contract the Contractor will not assign others to work in their place without written permission from the District Purchasing Agent. Any substitution shall be with a person of commensurate experience and knowledge.

10. **Sole Property of the District:** Any system or documents developed, produced or provided under this contract shall become the sole property of the District. Notwithstanding any other provision herein, any intellectual property discovered or developed by contractor in the course of performing or otherwise as a result of its work hereunder shall be the sole property of the District.

11. **Contract Renewal.** The initial term of this contract will be for three (3) years and the District. Unless terminated by either party at least 90 days before expiration of the initial term, the contract will be automatically renewed for two (2) additional one (1) year periods.

12. **Expenditure Of Public Funds.** Contractor agrees to comply with Government Code Section 8546.7 which provides that the contracting parties for any contract involving expenditure of public funds in excess of \$10,000.00 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract.

13. **Confidentiality.** In performing its duties hereunder the Contractor may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC section 1232g. The parties agree that such incidental access is not a provision or conveyance or disclosure to contractor of student record information in violation of section 1232g or of any similar state law. Contractor agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.

14. **Merger Clause.** This Agreement, including Exhibit "A" attached hereto and incorporated herein by reference, constitutes the sole agreement of parties hereto and correctly states the rights, duties and obligations of each party as of the document's date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the District Purchasing Agent. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Exhibit "A" attached hereto, the terms, conditions or specifications set forth herein shall prevail.

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Exhibit "A"

- I. Detailed description of services to be performed and work product to be delivered to District by Contractor:

Services as described in RFP 1364 and Contractor's response thereto.

- II. Payment: The contractor will pay the District 7 % commission on Gross Sales minus Sales tax in accordance with its response to RFP 1364..

- III. Term of the contract: The term of this contract shall commence on the date specified in the first paragraph of this contract, and shall continue through August 15, 2014.


Authorized Contractor Signature

6/15/11
Date

Pacific Dining
Contractor's Company Name

77-0239220
Contractor's Tax I.D. Number

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

By _____
Authorized signature and Date

Title

Address

Date Approved By Board of Trustees
(Approval is required prior to commencement of services.)