



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET

June 8, 2013

TO: ALL STATE AGENCIES, SCHOOL DISTRICTS, MUNICIPALITIES, VOLUNTEER  
FIRE COMPANIES AND POLITICAL SUBDIVISIONS

FROM: COURTNEY MCCARTY  
STATE CONTRACT PROCUREMENT OFFICER II  
302-857-4557

SUBJECT: **AWARD NOTICE – ADDENDUM #1** (Effective July 1, 2014)  
**CONTRACT NO. GSS13662-PRODUCE**  
**Produce**

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## **KEY CONTRACT INFORMATION**

### **1. MANDATORY USE CONTRACT**

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**REF: Title 29, Chapter 6911(d) Delaware Code.** Every state department and agency within the Executive Branch and Judicial Branch of the state government shall procure all material, equipment and nonprofessional services through the statewide contracts administered by Government Support Services, Office of Management and Budget. Delaware State University, Delaware Technical and Community College, the operations funded by Public School Districts, Delaware Transit Corporation, the Legislative Branch and the Board of Pension Trustees and their consultants are specifically exempted from the requirements of this subsection.

### **2. CONTRACT PERIOD**

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Each contractor's contract shall be valid for a one (1) year period from July 1, 2013 through June 30, 2014. Each contract may be renewed for three (3) additional one (1) year period through negotiation between the contractor and Government Support Services. Negotiation may be initiated no later than sixty (60) days prior to the termination of the current agreement.

**This contract has been extended one year through June 30, 2015.**

### **3. VENDORS**

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GSS13662-PRODUCE  
**The Class Produce Group, LLC**  
8477 Dorsey Run Road (PO Box 2003)  
Jessup, MD 20794  
POC: Daniels Ehm  
PH: 800-296-9672  
Email: [dehm@classproduce.com](mailto:dehm@classproduce.com)  
FSF: 0000145170

### **4. SHIPPING TERMS**

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F.O.B. destination; freight pre-paid.

### **5. PRICING**

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Prices shall remain firm for the initial three month term of the contract. The Vendor is not prohibited from offering a price reduction on its goods offered under the contract. The State is not prohibited from requesting a price reduction on those goods during the initial term or any subsequent options that the State may agree to exercise.

Current pricing can be found in Pricing Spreadsheet associated with this contract award. **Pricing for the first extension quarter of July 1, 2014 through September 30, 2014 will reflect a 2.5% decrease across the board. Refer to Pricing Spreadsheet – Addendum #2 for pricing effective for the quarter identified.**

## 6. PRICE ADJUSTMENT

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Price adjustments will be calculated as follows: Quoted prices shall be adjusted on a quarterly basis for the contract term (October 1, January 1, April 1, 2014) based on the change in value of the U.S. Department of Labor; Bureau of Labor Statistics; Producer Price Index (PPI) (series id: WPU01) for Farm Products.

The method of price adjustment will be to review the most recent non-preliminary index available on the first day of the month immediately preceding the quarterly adjustment date. The change in the index rate will determine the change in prices for the contract quarterly period.

The website for the Producer Price Index (PPI) is <http://data.bls.gov/cgi-bin/srgate>.

The vendor must submit a written request for price increases during the time frame as outlined below for their effectiveness date to the Government Support Services, Attn: Courtney McCarty, State Contract Procurement Officer.

For price changes effective **October 1, 2014** through **December 31, 2014** requests must be submitted between **September 1, 2014** through **September 15, 2014**.

For price changes effective **January 1, 2015** through **March 31, 2015** requests must be submitted between **December 1, 2014** through **December 15, 2014**.

For price changes effective **April 1, 2015** through **June 30, 2015** requests must be submitted between **March 1, 2015** through **March 15, 2015**.

Request for price increases **must be accompanied by documentation**, regardless of the vendors overall increase, price increases will not exceed the PPI stated above. NO price increases are to be billed to the State facilities without prior written approval by Government Support Services. Price increases become effective with all orders placed on or after the effective date. The State of Delaware shall receive full proportionate benefits of price decreases immediately upon their effective date.

When submitting requests for price changes, vendor shall be required to list the Section and State Item Number and complete identification of items requesting change. Vendor shall not delay or stop deliveries pending a price change. Failure to submit required information may result in denial for a price change.

## ADDITIONAL TERMS AND CONDITIONS

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### 7. BILLING

The successful vendor is required to **"Bill as Shipped" to the respective ordering agency(s).** Ordering agencies shall provide at a minimum the contract number, ship to and bill to address, contract name and phone number.

### 8. PAYMENT

The agencies or school districts involved will authorize and process for payment each invoice within thirty (30) days after the date of receipt. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.

**9. PRODUCT SUBSTITUTION**

All items delivered during the life of the contract shall be of the same type and manufacture as specified unless specific approval is given by Government Support Services to do otherwise. Substitutions may require the submission of written specifications and product evaluation prior to any approvals being granted.

**10. ORDERING PROCEDURE**

Successful contractors are required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Each agency is responsible for placing their orders and may be accomplished by written purchase order, telephone, fax or computer on-line systems. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.

**11. HOLD HARMLESS**

The contractor agrees that it shall indemnify and hold the State of Delaware and all its agencies harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused, by acts or omissions of the contractor, its employees, and invitees on or about the premises and which arise out of the contractor's performance, or failure to perform as specified in the Agreement.

**12. NON-PERFORMANCE**

In the event the contractor does not fulfill its obligations under the terms and conditions of this contract, the ordering agency may purchase equivalent product on the open market. Any difference in cost between the contract prices herein and the price of open market product shall be the responsibility of the contractor. Under no circumstances shall monies be due the contractor in the event open market products can be obtained below contract cost. Any monies charged to the contractor may be deducted from an open invoice.

**13. FORCE MAJEURE**

Neither the contractor nor the ordering agency shall be held liable for non-performance under the terms and conditions of this contract due, but not limited to, government restriction, strike, flood, fire, or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract.

**14. AGENCY'S RESPONSIBILITIES**

The Agency shall:

- a. Examine and review in detail all letters, reports, drawings and other documents presented by the Contractor to the Agency and render to the Contractor in writing, findings and decisions pertaining thereto within a reasonable time so as not to delay the services of Contractor.
- b. Give prompt written notice to the Contractor whenever the Agency observes or otherwise becomes aware of any development that affects the scope or timing of the Contractor's services.

- c. When an ordering agency first experiences a relatively minor problem or difficulty with a vendor, the agency will contact the vendor directly and attempt to informally resolve the problem. This includes failure to perform by the date specified and any unacceptable difference(s) between the purchase order and the merchandise received. Ordering agencies should stress to vendors that they should expedite correction of the differences because failure to reply may result in an unfavorable rating in the execution of the awarded contract.
- d. The state has several remedies available to resolve non-performance issues with the contractor. The Agency should refer to the Contract Terms and Conditions to view these remedies. When a default occurs, the Agency should first review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the state cannot expect the contractor to perform outside the agreement. If the issue is a part of the contract, the Agency or GSS - Contracting must then contact the contractor, discuss the reasons surrounding the default and establish a date when the contractor will resolve the non-performance issue.
- e. If there is a performance deficiency, a Corrective Action Report (CAR) may be used. Complete this form to report concerns with vendors or commodities. Be sure to furnish as much detail as possible. <http://gss.omb.delaware.gov/divisionwide/forms.shtml>.

## **15. TECHNICAL SPECIFICATIONS**

Food delivered under this contract is used to feed school children as well as residents in State hospitals and prisons. Due to this fact, delivery requirements included in this solicitation are of major importance. Vendors who are habitually unable to meet the delivery requirements of this solicitation are subject to penalty and possible contract termination. Also vendors who deliver unauthorized substitutions and/or items not meeting the quality requirements are subject to penalty and possible contract termination.

### **a. CONTRACT REQUIREMENTS**

The State of Delaware seeks to establish a contract with a produce provider which will provide their expertise to purchase and deliver perishable fruits and vegetables as listed in the “Deliveries” section. The contractor will be expected to work closely with Facility Food Service Supervisors or their designee in order to provide the quantity and quality of product required by each Institution. Occasionally, an additional special delivery will be required for special functions.

### **b. GENERAL REQUIREMENTS**

No service fees or additional cost will be invoiced to Contract Users by the supplier during the term of this agreement (except as described in this ITB or mutually agreed upon in writing).

There will be no “small order”, “minimum order”, or “special order” charges or surcharges.

There will be no return fees for inaccuracies or other errors on the part of the supplier.

c. **CUSTOMER SERVICE**

The Supplier(s) should provide each of the State and the Contract Users a single, local point of contact (and a backup) to handle questions or problems that may arise. At least one Customer Service Representative must be available during Supplier's operating hours. All service representatives must have on-line access to information to provide immediate response to inquiries concerning the status of orders (shipped or pending), delivery information, back-order information, State contract pricing, contracted product offerings/exclusions, contract compliance requirements, and general product information. Representatives should be available by phone, fax, or email (local or 800 number preferred).

d. **QUALITY**

The facilities will rely on the vendor's expertise to secure the quality of produce that meets or exceeds the State of Delaware's specifications at the best value and price. The quality level expected will be communicated to the vendor by the Food Services Quality Control Administrator. The vendor must make every effort to deliver the agreed upon product. Any product that is delivered and does not meet expectations will be returned for credit. Ordering Agency will obtain the rejected products through an Open Market purchase and back charge the vendor for any price difference.

e. **BACK ORDER**

It is the responsibility of the contractor to notify the ordering agency immediately upon notification that an item is on back order. The contractor shall state the reason for the back order and the date the agency can expect delivery. After receiving this information the agency reserves the right to cancel the back ordered items and purchase elsewhere, charging the increase in price and cost of handling, if any, to the contractor.

f. **ORDER PLACEMENT**

Orders will be placed by each facility by e-mail or fax according to a mutually agreed upon time and procedure to be determined after award of this contract

g. **DELIVERIES**

Delivery of product must be made in a well-maintained refrigerated truck. All deliveries shall be placed in the area designated by the Food Services Supervisor or designee. Under no circumstances may a delivery be left outside the building. Deliveries must be received as specified in the delivery information section of this bid. Delivery dates and times will be determined and mutually agreed upon after award of this contract to ensure the freshest product and optimal operational efficiency. All delivery locations and times are subject to change by the Agencies.

h. **CREDIT**

A credit will be issued for damaged or unacceptable produce. All such transactions are to be worked out with each Food Services Supervisor or designee.

i. **PACKAGING, PACKING**

Unless otherwise specified, commercial packaging as applicable under these specifications.

All items shall be delivered in standard commercial containers so constructed as to insure acceptance by common or other carrier for safe transportation, at the lowest rate, to the point of delivery, or blanket wrapped trailer load lots.

Shipping case shall be plainly printed or stenciled on one end showing name of commodity, quantity contained therein, the name of the contractor and the Purchase Order Number.

j. **QUANTITY**

No quantities are guaranteed. Each facility's usage is only an estimate and is subject to change.

k. **PERFORMANCE**

**Late Deliveries** – Those vendors not making deliveries on the date specified will have their order cancelled for the specific date and will be charged the difference between their bid and the open market purchase price. Three late deliveries to any agency will result in removal from the bidders list for a three month (3) period. If there is a delay anticipated vendors must notify the ordering school. Undelivered items will be purchased open market and the difference charged to the contract vendor.

**Inferior Merchandise** – Those vendors delivering merchandise of inferior quality, delivering in other than the manner specified will have their merchandise refused. The vendor will be charged the difference between their bid and the open market purchase. Three deliveries of inferior merchandise will result in removal from the bidders list for a three (3) month period.

**Quality of Merchandise** – If quality of merchandise is questionable and the receiving agency and vendor cannot reach an agreement, a State of Delaware and/or a Federal Meat Inspector will be called in to inspect the merchandise. The decision of the Inspector will be final. Costs will be borne by the vendor.

**Repetitive Infractions** – Those vendors with 2 suspensions from the bidders list will automatically be removed from our bidders list.

l. **PENALTIES**

In the event that the vendor is found to be habitually non-compliant with the requirements of this solicitation/contract they will be subject to the following additional penalties:

- Quarterly rate increases for the next quarter will be denied. (Any five (5) occurrences)
- Line item will be removed from vendor's award and offered to the next lowest, responsive bidder for the remaining contract term. Vendor will be charged the difference between their bid and all open market purchases made until a new award for the line item has been assigned. (Any three (3) occurrences per line)
- Contract Termination.

m. **DOC INVOICES**

**The successful vendor is required to “Bill as Shipped” to:**

Department of Correction  
Food Services Accounting Specialist  
245 McKee Road  
Dover, DE 19904

**Monthly Statements will be broken down by invoice and mailed to:**

Department of Correction  
Business Office  
245 McKee Road  
Dover, DE 19904

n. **DHSS INVOICES**

All invoices shall be sent to each location as the products were delivered.

Every packing slip, delivery ticket, and invoice must include:

Purchase Order Number

The name of the facility to which delivery was made

Title and quantity of each item

Net Price

Extended total of each item

Contract number

o. **DIVISION OF CHILDREN, YOUTH & THEIR FAMILIES INVOICES**

All invoices shall be sent to each location as the products were delivered.

Every packing slip, delivery ticket, and invoice must include:

Purchase Order Number

The name of the facility to which delivery was made

Title and quantity of each item

Net Price

Extended total of each item

Contract number