



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET

August 17, 2016

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

FROM: MARIA FRY  
STATE CONTRACT PROCUREMENT OFFICER II  
302-857-4583

SUBJECT: **AWARD NOTICE – Addendum #1, Effective July 1, 2018**  
**CONTRACT NO. GSS16036-MILK\_DAIRY**  
**Milk, Dairy and Juice Products**

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**GOVERNMENT SUPPORT SERVICES – CONTRACTING**  
100 ENTERPRISE PLACE – SUITE 4 – DOVER, DE 19904-8202  
PHONE: (302) 857-4550 – FAX: (302) 739-3779 – GSS.OMB.DELAWARE.GOV

## KEY CONTRACT INFORMATION

**Addendum #1 extends the contract for one year through June 30, 2018 under the same pricing, terms and conditions.**

### 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 from September 1, 2016 through June 30, 2018. Each contract may be renewed for three (3) one (1) year periods through negotiation between the contractor and Government Support Services. Negotiation may be initiated no later than ninety (90) days prior to the termination of the current agreement.

The State reserves the right to extend this contract on a month-to-month basis for a period of up to three months after the term of the full contract has been completed.

In the event that a contractor (s) is not selected prior to the contract expiration date or by termination by the State of Delaware, it shall be incumbent upon the contractor to continue the contract under the same terms and conditions until new contracts can be completely operational. At no time shall this transition period extend more than ninety (90) days beyond the original expiration date of the existing contract.

**The Contract has been extended through June 30, 2019 under the same pricing, terms and conditions.**

### 3. VENDORS

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<b>Hy-Point Dairy Farms</b> 425 Beaver Valley Road Wilmington, DE 19803  Contact: W. Jay Meany Phone: 302-478-1414 Fax: 302-477-0353 <a href="mailto:deorders@hy-pointfarms.com">deorders@hy-pointfarms.com</a>  FSF #: 0000024514 GSS16036-MILK_DAIRYV01	<b>Cloverland Farms Dairy</b> 2701 Loch Raven Road Baltimore, MD 21218  Contact: Joe Lawrence Phone: 410-235-4477 Fax: 410-467-6413 <a href="mailto:jlawrence@cloverlanddairy.com">jlawrence@cloverlanddairy.com</a>  FSF #: 0000030470 GSS16036-MILK_DAIRYV02
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#### 4. SHIPPING TERMS

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

#### 5. DELIVERY AND PICKUP

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Milk shall be delivered to schools and other agencies no later than 8:30 a.m. unless otherwise arranged by the food service manager. Milk shall be delivered in crates at a maximum temperature of 41 degrees, as established by the State of Delaware Food Code, Section 3-202. The interior and the exterior of the crate shall be clean and sanitary. Cases, crates, and cartons must be packed, layered, and or stacked so as to prevent soiling or damage to each layer of cartons/containers. Milk shall be placed in milk coolers or a refrigerated area designated by the food service manager. If coolers are inoperable at the time of delivery, the vendor shall make appropriate arrangements (such as providing sufficient ice and containers) to hold the milk at 41 degrees Fahrenheit temperature until coolers can be repaired or replaced. Milk and ice shall be placed as designated by the food service manager.

- The successful vendor shall provide reasonable service for emergencies.
- Route schedules shall be furnished to Food Service Supervisors of each District by August 15<sup>th</sup> for each upcoming school year.
- Route schedules shall be furnished to all food program Sponsors within a reasonable time prior to the commencement of the program start date.

Vendor will be notified within forty-eight (48) hours of any changes in school calendars.

#### 6. PRICING

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Price adjustments will be permitted per the Price Adjustment section of the original Invitation to Bid document.

Please see the pricing spreadsheet as posted on the contract site for the most current pricing.

#### 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.

Orders shall be placed with vendor's driver (delivery person) as needed. Orders for one-half pints of milk shall be a standing order and shall be adjusted with a firm carton count seven (7) calendar days prior to the beginning of a vacation period or at the end of the school year. Orders for cottage cheese shall be placed as far as possible in advance of the date needed. The successful bidder shall have a local telephone exchange, toll free number, or agree to accept the charges for long distance calls.

Please see the pricing spreadsheet as posted on the contract site for the initial lead time required to service new customers.

## **11. PURCHASE ORDERS**

Agencies that are part of the First State Financial (FSF) system are required to identify the contract number GSS16036-MILK\_DAIRY on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.

## **12. 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.
- Any rush delivery that occurs as a result of Supplier's error (e.g. stock-outs, delivery of wrong product, etc.) will be free of charge. No handling surcharges will be added or discounts lost for any rush or expedited orders.

## **13. FOOD PROGRAM SPONSORS**

The USDA funds the Summer Food Program and CACFP, which are administered by the Delaware Department of Education (DDOE). Non-profit Sponsors of these programs are eligible to utilize this contract upon receipt of a Sponsor Award Letter from DDOE. There are approximately 14 Non-profit Sponsors participating in the current Summer Food Program from June through July. Approximately 63 Non-profit Sponsors have participated in the CACFP program, which operates from October through the end of the school year in June. Non-profit Sponsors of these food programs must provide a copy of their award letter to vendor prior to establishing service in order to receive products under this contract.

#### **14. QUALITY**

All products shall meet standards set by the Federal Food and Drug Administration 6 Del C, Chapter 51, § 5126. All products prepared and handled must meet State of Delaware Board of Health requirements and are subject to inspection by said department. All milk shall be fluid, Grade A, pasteurized, homogenized, in disposable cartons to meet State of Delaware Board of Health regulations. Flavored milk must contain no more than 150 calories per 8 oz. All milk when delivered shall be at a temperature not above or 41 degrees Fahrenheit as established by the State of Delaware Food Code, Section 3-202.

The Supplier(s) is to guarantee its products to be free from defects in materials and workmanship, given normal use and care, over the period of the manufacturer warranty. The terms of this contract will supersede any language to the contrary on purchase orders, invoices or other documents produced by the supplier(s). The Supplier(s) is to agree to repair and/or replace within 48 hours, without charge to Contract Users, any product or part thereof which proves to be defective or fails within the warranty period as specified. Agencies are required to notify the awarded vendor of rejection in writing through facsimile or email notification to the vendor point of contact, and shall retain copies of notices in their files.

If the rejected product cannot, or will not, be replaced by the awarded vendor with identical, approved and usable product within 48 hours, the agency may procure the product elsewhere, and chargeback any cost differences, including cost of handling, if any, to the awarded vendor.

#### **15. INSPECTION**

Upon delivery, all products shall be subject to inspection by an authorized representative of the Agency or School. If product is found defective or if it in any way fails to meet the specifications as indicated in this proposal, it may be rejected. The decision(s) of the Agency or School will be final.

#### **16. DELIVERY SLIPS AND INVOICES**

Delivery slips must be signed by authorized personnel. Acceptance of goods received shall not necessarily verify invoice accuracy. Separate invoices for each school or agency shall be sent to the district school food service office or other designated location no later than three (3) working days after the last delivery of the month. When schools close in June, invoices are to be sent to the Nutritional Office no later than three (3) days after the last milk delivery. In case of summer programs, billing arrangements and delivery time are to be made with the manager of each location.

#### **17. EXPIRED PRODUCT**

The expiration date of all milk products should be at least 8 days from date of delivery. At no time will the state agencies be expected to accept expired product nor should any awarded vendor make attempt to deliver product that has passed its identified product life.

If it is determined that a vendor has delivered expired product, the product shall immediately be rejected by the receiving agency. If expired product is discovered while a shipment(s) is being unpacked, the agency shall notify the vendor within 24 hours and reject the product. Agencies shall notify the vendor in writing through facsimile or electronic correspondence that an expired product has been received, and shall retain copies of such correspondence in their records.

The delivering vendor has 48 hours to remove and replace the expired product with identical or substitute product that has been previously approved by the State. If the expired and rejected product cannot, or will not, be replaced by the awarded vendor with identical, approved and usable product within 48 hours, the agency may procure the product elsewhere, and chargeback any cost differences, including cost of handling, if any, to the awarded vendor.

Additionally, if the vendor refuses to replace or pick up the expired product from the agency within the timeframe specified, the agency will not be held accountable for the billing nor the condition of the identified product delivered. The agency's accountability will extend to the thawing of previously frozen material, and if an unhealthy situation is created, the disposal of the rejected product.

## 18. PRODUCT AVAILABILITY

Suppliers must agree that there will be no cancellation of products used without an equal and acceptable replacement approved by a designated State of Delaware representative, as listed in the final contract, during the term of the agreement. Manufacturer's discontinuation of any products must be communicated to Contract Users by suppliers in writing within two (2) business days. In such instances, suppliers agree to work with Contract Users to identify and implement alternative options that maintain or reduce costs associated with the replacements.

Awarded vendor(s) shall provide alternative product samples to the appropriate agency personnel along with nutritional data information sheets to allow for an approval or rejection of an alternate product.

## 19. SUBSTITUTIONS

**Substitutions of any products or quantity on any order are unacceptable unless the vendor has acquired written authorization from the designated buyer PRIOR to delivery.** Unauthorized substitutions may be subject to penalty.

The receiving agency shall reserve the right to immediately reject any product that has not been previously authorized by agency personnel. An agency's decision to accept delivery of a not previously authorized product is not a guarantee that future deliveries will be automatically accepted, or that the accepted product has become an authorized alternative. If a vendor seeks to include an alternative product as an authorized alternative, the awarded vendor must receive written authorization, or submit a sample, nutritional data information sheet to the agency for testing and contact the contract officer managing the contract directly. **Only on acceptance of the substitution, and written identification from the agency that the product has been accepted,** shall the vendor consider the product an authorized substitution which will be automatically accepted for future deliveries.

If the agency opts not to accept the delivered product for any reason, the agency shall make note on the bill of lading provided at the time of delivery. Such identification will serve as official notice to the vendor of the rejection, and no further correspondence will be required. The awarded vendor shall be provided with 48 hours within which to provide an authorized product. **If the vendor is not willing or is unable to supply the appropriate product to the agency, the agency shall reserve the right to obtain the product from an alternative supplier, and to charge any increase in price and/or cost of handling, if any, to the original awarded contractor.**

Unauthorized substitutions are also subject to the RETURNS section below.

## 20. RETURNS

Any materials delivered in poor condition, in excess of the amount authorized by the requisition form, unauthorized substitutions or not included on the requisition form or purchase order may, at the discretion of the Contract Users, be returned to the Supplier's warehouse at the Supplier's expense within 30 days. Return Authorizations (RA's) must be credited immediately once Supplier receives the returned goods. **If product was returned due to poor condition or unauthorized substitution the Supplier must make arrangement to have authorized product delivered within 48 hours if requested by ordering**

**Agency at no additional charge.** No payments will be made for products that do not meet agreed upon pricing, quality, or other requirements to be specified in the ITB or the contract.

## 21. SAMPLES

Upon request by the Agency, the Vendor must comply within one week after the request for samples. The samples must be furnished free of charge, marked and labeled appropriately and delivered to the designated agency. The state agencies, in accordance with FDA and State of Delaware Food Codes, will evaluate these samples, **all samples approved and non-approved are at the discretion of the State agencies.** Samples must be delivered in the same container that will be used for delivery during the contract period.

Samples must be delivered in the same container that will be used for delivery during the contract period. **Products previously submitted for taste testing, and are not approved, will not be re-evaluated or awarded as part of this contract. Samples submitted will not be returned.**

## 22. MILK COOLERS

The successful vendor will respond upon request for coolers within a reasonable period of time, not to exceed twenty-four (24) hours. Each cooler shall be equipped with locks and wheels where required. The vendor(s) shall be responsible for the maintenance and repair of all vendor supplied coolers. Coolers will be replaced within five (5) working days. The vendor(s) shall be required to replace all products which spoil due to failure of a milk cooler. As part of the Invitation to Bid, each bidder shall have the opportunity to propose monthly rates for the rental of milk coolers by agencies and school districts.

For a complete list of contract specifications please refer to the original bid solicitation document(s). Any contract specific documentation will be accessible through the hyperlink(s) provided on this contract's details page.

## 23. 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.

## 24. 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.

## 25. 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.

## 26. 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>.