



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET

August 11, 2017

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

FROM: SHANNON WROBEL  
STATE CONTRACT PROCUREMENT OFFICER II

SUBJECT: **AWARD NOTICE – Addendum #2 (effective September 1, 2019)**  
**CONTRACT NO. GSS17662-PRODUCE**  
**Produce**

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KEY CONTRACT INFORMATION**

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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 Vendor's contract shall be valid for a one year period from September 1, 2017 through August 31, 2018. Each contract may be renewed for two (2) one (1) year periods through negotiation between the Vendor and Government Support Services. Negotiation may be initiated no later than ninety (90) days prior to the termination of the current agreement.

Addendum #1 extends the contract for a one year period through August 31, 2019 with The Class Produce.

**Addendum #2 extends the contract for a one year period through August 31, 2020 with The Class Produce.**

### 3. VENDORS

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GSS17662-PRODUCE-V01 <b>The Class Produce</b> 8477 Dorsey Run Rd. Jessup, MD 20794 FSF:00000145170	<del>GSS17662-PRODUCE-V02</del> <del><b>Seashore Fruit and Produce</b></del> <del>1344 North West Blvd</del> <del>Vineland, NJ 08630</del> <del>FSF: 0000030025</del>
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Contact email addresses and phone numbers can be found on the pricing spreadsheet.

Addendum #1 removes Seashore Fruit and Produce effective September 1, 2018

### 4. SHIPPING TERMS

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

### 5. DELIVERY AND PICKUP

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Deliveries may be made on a loading dock, or inside. Inside delivery is defined as delivery to a specific stock room, office, or any location other than the general receiving area. Inside deliveries may include stairs. There shall be no additional charges for certain types of 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. 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.

Delaware Veterans Home delivery requirements (location and times) can be found in the pricing spread sheet.

Department of Correction delivery requirements (locations and times) can be found in the pricing spread sheet.

Department of Health & Social Services delivery requirements (locations and times) can be found in the pricing spread sheet.

Division of Children, Youth & Their Families delivery requirements (locations and times) can be found in the pricing spread sheet.

## 6. PRICING

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Prices and/or rates shall remain firm for the initial three months of the contract, unless further negotiations are deemed necessary by the State.

Refer to pricing spreadsheet for all pricing information.

## 7. PRICE ADJUSTMENT

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 State Contract Procurement Officer.

For price changes effective December 1, 2017 through February 28, 2018 requests must be submitted between November 1, 2017 and November 15, 2017.

For price changes effective March 1, 2018 through May 31, 2018 requests must be submitted between February 1, 2018 through February 15, 2018.

For price changes effective June 1, 2018 through August 31, 2018 requests must be submitted between May 1, 2018 through May 15, 2018.

Quarterly price adjustments, for the first extension year, will be determined on the same language found in the request for proposal with the modification of dates to coincide with the new contract period.

For price changes effective September 1, 2018 through November 30, 2018 requests must be submitted between August 1, 2018 and August 15, 2018.

For price changes effective December 1, 2017 through February 28, 2019 requests must be submitted between November 1, 2018 and November 15, 2018.

For price changes effective March 1, 2019 through May 31, 2019 requests must be submitted between February 1, 2019 and February 15, 2019.

For price changes effective June 1, 2019 through August 31, 2019 requests must be submitted between May 1, 2019 and May 15, 2019.

**Quarterly price adjustments, for the second extension year, will be determined on the same language found in the request for proposal with the modification of dates to coincide with the new contract period.**

**For price changes effective September 1, 2019 through November 30, 2019 requests must be submitted between August 1, 2019 and August 15, 2019.**

**For price changes effective December 1, 2019 through February 28, 2020 requests must be submitted between November 1, 2019 and November 15, 2019.**

**For price changes effective March 1, 2020 through May 31, 2020 requests must be submitted between February 1, 2020 and February 15, 2020.**

**For price changes effective June 1, 2020 through August 31, 2020 requests must be submitted between May 1, 2020 and May 15, 2020.**

## **ADDITIONAL TERMS AND CONDITIONS**

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### **8. 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.

### **9. 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.

## **10. 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.

## **11. 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.

## **12. PURCHASE ORDERS**

Agencies that are part of the First State Financial (FSF) system are required to identify the contract number GSS17662-PRODUCE on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.

## **13. REQUIREMENTS**

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.

## **14. 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.

## **15. 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.

## **16. 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.

## 17. 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>.

## 18. 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 RFP 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.

## 19. 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.

Delivered items will be checked for compliance with the bid specifications. 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.

Products must be delivered no later than twelve (12 days) before the expiration dates.

## 20. ENVIRONMENTAL IMPACT

Where available, the State seeks products that are compliant with the section of the State's Environmentally Preferred Purchasing Policy (EPP) excerpted below. The pricing spreadsheet is structured to allow for pricing of both compliant and non-compliant products allowing end users to choose the best option for their needs.

Procurement of Agricultural Goods and Services shall consider the environmental impact as follows:

Above threshold spend shall allow points of the total award that considers:

- a. Reduced fuel consumed to reach market/ Agency recipient.
- b. Products and/or Services that are provided by Agricultural Businesses which are certified for Best Management Practices (BMP). Good Food Handling Practices (GHP) and Good Agricultural Practices (GAP) through the Delaware Department of Agriculture or surrounding States equivalent program.
- c. The consideration given for environmental impact shall not exceed 10% of the total points awarded or costs of the goods/ services.
- d. Fruit and vegetable consumption is an important component of a balanced diet consistent with the *Dietary Guidelines for Americans* and the Food Guide Pyramid. In order to maximize the nutritional value and reduce the use of carbon fuels. Fresh produce to support the Farm to School Initiative should be required to be delivered within 2 days of harvest.

The State's full Environmentally Preferred Purchasing Policy is available here: <http://mymarketplace.delaware.gov/documents/environmentally-preferred-purchasing-policy.pdf>

## 21. 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.

## 22. 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 agency. 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.

### **23. 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.