



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET

# State of Delaware

## Food Products and Services (Packaged and Meats)

### Request for Proposal

**Contract No. GSS25728-FOOD\_PROD**

*March 18, 2025*

**- Deadline to Respond -  
April 15, 2025  
3:00 PM (Local Time)**

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Government Support Services

**CONTRACT NO. GSS25728-FOOD\_PROD**

ALL VENDORS:

The enclosed packet contains a "REQUEST FOR PROPOSAL" for Food Products and Services. The proposal consists of the following:

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- I. INTRODUCTION**
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**\*\* [Ctrl+Click on the headings above will take you directly to the section.](#)**

All appendices are made part of this solicitation and are available for download at the following site:

<https://bids.delaware.gov/>

**In order for your proposal to be considered, the Proposal response must be submitted through the online bid submission portal [<https://gss.bonfirehub.com/>] by April 15, 2025 by 3:00pm (Local Time) to be considered. Submissions by other methods will not be accepted.**

Please review and follow the information and instructions contained in the General Provisions and this Request for Proposal (RFP). Should you need additional information, please contact Takishia Kiah through the [online bid submission portal](#).

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**I. INTRODUCTION**

**A. PURPOSE**

The purpose of this Request for Proposal is to obtain sealed proposals for Food products and services.

It is the goal of this Request for Proposal to identify a vendor(s) and execute a contract to support the State's needs for food products and services (packaged and meats).

**1. COMPETITIVE SEALED PROPOSAL**

It has been determined by Director, Government Support Services, pursuant to **Delaware Code Title 29, Chapter 6924 (a)** that this solicitation be offered as a request for competitive sealed proposals because the use of competitive sealed bidding is not practical and/or not in the best interest of the State. The use of competitive sealed proposals is necessary to:

- Use a contract other than a fixed-price type; or
- Conduct oral or written discussions with vendors concerning technical and price aspects of their proposals; or
- Afford vendors an opportunity to revise their proposals through best and final offers; or
- Compare the different price, quality and contractual factors of the proposals submitted; or
- Award a contract in which price is not the determining factor.

**2. CONTRACT REQUIREMENTS**

This contract will be issued to cover the requirements for all State Agencies and shall be accessible to any School District, Political Subdivision, Municipality, Volunteer Fire Company or higher education entity receiving state funds. Furthermore, this contract shall be accessible to all other entities as identified by Del. Code, Chapter 69, Title 29 § 6910.

**3. MANDATORY USE CONTRACT**

**REF: Title 29, Chapter 6911(d) Delaware Code.** All Covered Agencies as defined in 29 *Del. C.* § 6902(6) 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, school districts, and the Legislative Branch are specifically exempted from the requirements of this subchapter. In addition, the Delaware Transit Corporation is exempt from the entire procurement chapter. Pursuant to 29 *Del. C.* § 6904(l) and (n) respectively, the Department of Elections and the Board of Pension Trustees have certain exemptions from the procurement chapter which may or may not apply to this Request for Proposals.

**4. COOPERATIVE USE OF AWARD**

As a publicly competed contract awarded in compliance with 29 DE Code Chapter 69, this contract is available for use by other states and/or governmental entities through a participating addendum. Interested parties should contact the State Contract Procurement Officer identified in the contract for instruction. Final approval for permitting participation in this contract resides with the Director of Government Support Services and in no way places any obligation upon the awarded vendor(s).

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**5. MULTIPLE SOURCE AWARD**

The Agency reserves the right to award this contract to more than one vendor pursuant to 29 Del.C. § 6926. Government Support Services reserves the right to reject any or all bids in whole or in part, to make multiple awards, partial awards, award by types, item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.

**6. POTENTIAL CONTRACT OVERLAP**

Vendors shall be advised that the State, at its sole discretion, shall retain the right to solicit for goods and/or services as required by its agencies and as it serves the best interest of the State. As needs are identified, there may exist instances where contract deliverables, and/or goods or services to be solicited and subsequently awarded, overlap previous awards. The State reserves the right to reject any or all bids in whole or in part, to make partial awards, to award to multiple vendors during the same period, to award by types, on a zone-by-zone basis or on an item-by-item or lump sum basis item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.

**7. SUPPLEMENTAL SOLICITATION**

The State reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed in the best interest of the State.

**8. CONTRACT PERIOD**

Each Vendor's contract shall be valid for **two (2)** year period from **June 1, 2025** through **May 31, 2027**. Each contract may be renewed for **three (3) 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.

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.

**B. KEY RFP DATES/MILESTONES**

The following dates and milestones apply to this RFP and subsequent contract award. Vendors are advised that these dates and milestones are not absolute and may change due to unplanned events during the bid proposal and award process.

<b>Activity</b>	<b>Due Date</b>
RFP Availability to Vendors	March 18, 2025
<b>Mandatory</b> Pre-bid Conference	N/A
Written Questions Due No Later Than (NLT)	March 25, 2025, by 4:30pm local time
Written Answers Due/Posted to Website NLT	April 1, 2025, by 4:30pm local time
Proposals Due NLT	April 15, 2025, by 3:00pm local time
Public Proposal Opening	April 15, 2025, at 3:00pm local time
Proposal Evaluation/Presentations	As required
Vendor Best & Final Discussions	As required
Contract Award	Will occur within 90 days of bid opening

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**C. INQUIRIES & QUESTIONS**

The State of Delaware will allow written requests for clarification of this solicitation. All questions with regard to the interpretation of this solicitation, drawings, or specifications, or any other aspect of this solicitation must be received through the [online bid submission portal](#) by March 25, 2025, referencing the section, page number, text of passage being questioned, and the question. All questions will be answered in writing by April 1, 2025, with responses posted on <https://bids.delaware.gov> and <https://gss.bonfirehub.com/>.

**D. RFP DESIGNATED CONTACT**

All requests, questions, or other communications about this solicitation shall be made in writing through the [online bid submission portal](#). Address all communications to the person listed below; communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the solicitation designated contact, through an addendum posted on <https://mmp.delaware.gov/Bids/> and <https://gss.bonfirehub.com/>. The designated contact for this solicitation is:

**Takishia Kiah**

**E. CONTACT WITH STATE EMPLOYEE**

Direct contact with State of Delaware employees other than the State of Delaware Designated Contact regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

**II. SCOPE OF WORK**

**A. OVERVIEW**

The Vendor(s) shall provide all equipment, materials and labor to supplement the State of Delaware's need for as described in this Request for Proposals. The contract will require the Vendor(s) to cooperate with the ordering agency to ensure the State receives the most current state-of-the-art material and/or services.

**B. BACKGROUND**

Food delivered under this contract is used to feed school children as well as residents in State hospitals and prisons. It is our intent with this procurement to consider multiple vendors who can meet the food product needs of the many different food service settings throughout the state to include, schools, hospitals, long term care facilities and prisons.

It is important to be aware that delivery needs, warehousing capabilities and product requirements may vary greatly from setting to setting and vendors may be awarded and utilized according to their capabilities presented for the best possible competitive pricing and level of service as required.

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**C. DETAILED REQUIREMENTS**

The technical requirements of this RFP are stated in Appendix A. Vendors must provide pricing for the items listed in the Excel Spreadsheet, Appendix B and B1.

**III. FORMAT FOR PROPOSAL**

**A. INTRODUCTION**

This section prescribes the mandatory format for the presentation of a proposal in response to this RFP. Each Vendor must provide every component listed in the order shown in this RFP, using the format prescribed for each component. A proposal may be rejected if it is incomplete or conditional.

**B. PROPOSAL RESPONSE**

The Request for Proposal may contain pre-printed forms for use by the vendor in submitting its proposal. The forms required by this solicitation shall be considered mandatory, prevailing documents.

When preprinted forms are used, the forms shall contain basic information such as description of the item and the estimated quantities and shall have blank spaces for use by the vendor for entering information such as unit bid price, total bid price, as applicable.

The Vendor's proposal shall be written in ink or typewritten on the form provided, and any corrections or erasures MUST be initialed by vendor's representative completing the bid submission.

If items are listed with a zero quantity, Vendor shall state unit price ONLY (intended for open end purchases where estimated requirements are not known). The proposal shall show a total bid price for each item bid and the total bid price of the proposal excluding zero quantity items.

Vendors' proposal must respond to each and every requirement outlined in the RFP criteria in order to be considered responsive. Proposals must be clear and concise.

**C. NON-CONFORMING PROPOSALS**

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive or a mere formality shall reside solely within the State of Delaware.

**D. CONCISE PROPOSALS**

The State of Delaware discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. The State of Delaware's interest is in the quality and responsiveness of the proposal.

**E. COVER LETTER**

Each proposal will have a cover letter on the letterhead of the company or organization submitting the proposal. The cover letter must briefly summarize the Vendor's ability to provide the services specified in

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the RFP. The cover letter shall be signed by a representative who has the legal capacity to enter the organization into a formal contract with Government Support Services.

**F. TABLE OF CONTENTS**

Each proposal must include a Table of Contents with page numbers for each of the required components of the proposal.

**G. DESCRIPTION OF SERVICES AND QUALIFICATIONS**

Each proposal must contain a detailed description of how the Vendor will provide the goods and services outlined in this RFP. This part of the proposal may also include descriptions of any enhancements or additional services or qualifications the Vendor will provide that are not mentioned in this RFP.

**H. DISCOUNT**

Vendors are invited to offer in their proposal value added discounts (i.e. speed to pay discounts for specific payment terms). Cash or separate discounts should be computed and incorporated into unit bid price(s).

**I. SAMPLES OR BROCHURES**

Samples or brochures may be required by the agency for evaluation purposes. They shall be such as to permit the Agency to compare and determine if the item offered complies with the intent of the specifications.

**J. ACKNOWLEDGEMENT OF UNDERSTANDING OF TERMS**

By submitting a bid, each vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

**K. BID BOND REQUIREMENT**

The Bid Bond requirement has been waived.

**L. PERFORMANCE BOND REQUIREMENT**

The Performance Bond requirement has been waived.

**M. SUBMITTING A PROPOSAL RESPONSE**

Solicitation responses must be submitted through the online bid submission portal at: <https://gss.bonfirehub.com/>. Refer to Appendix D – Online Bid Submission Portal Instructions for specific instructions.

**N. PROPOSAL EXPIRATION DATE**

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through the term of the contract. Delaware reserves the right to ask for an extension of time if needed.

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**O. WITHDRAWAL OF PROPOSALS**

Vendors will have the ability to withdraw their submissions up to the Submission Deadline in the [online bid submission portal](#).

**P. PROPOSAL MODIFICATIONS**

Vendors will have the ability to modify their submissions up to the Submission Deadline in the [online bid submission portal](#).

**Q. LATE PROPOSALS**

Proposals submitted after the specified date and time will not be accepted by the online bid submission portal. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt within the online bid submission portal.

**R. ADDENDA TO THE REQUEST FOR PROPOSAL (RFP)**

If it becomes necessary to revise any part of this RFP, revisions will be posted at <https://bids.delaware.gov/> and <https://gss.bonfirehub.com/>. By submitting a solicitation response to the State, vendors have acknowledged receipt, understanding and commitment to comply with all materials, revisions, and addenda related to the Request for Proposal.

**S. INCURRED EXPENSES**

The State will not be responsible for any expenses incurred by the Vendor in preparing and submitting a proposal.

**T. ECONOMY OF PREPARATION**

Proposals should be prepared simply and economically, providing a straight-forward, concise description of the Vendor's offer to meet the requirements of the RFP.

**U. DISCREPANCIES AND OMISSIONS**

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor. Should vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify the State of Delaware's Designated Contact, in writing, of such findings at least ten (10) days before the proposal opening. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, no later than ten (10) calendar days prior to the time set for opening of the proposals.

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**V. EXCEPTIONS**

Respondents may elect to take minor exception to the terms and conditions of this solicitation through the completion of the Exceptions form. Government Support Services shall evaluate each exception according to the intent of the terms and conditions contained herein, but Government Support Services must reject exceptions that do not conform to State Bid law and/or create inequality in the treatment of Bidders. Exceptions shall be considered only if they are submitted with the response or before the date and time of the Bid opening.

Exceptions must be submitted utilizing the provided form to be considered. Exceptions listed elsewhere in the Respondent's submission will not be considered. Government Support Services maintains sole discretion to reject any vendor exceptions that are submitted.

**W. BUSINESS REFERENCES**

Provide at least three (3) business references consisting of current or previous customers of similar scope and value, using the provided Business Reference Form. If subcontractors are identified, a minimum of three business references must also be provided for each subcontractor.

PLEASE DO NOT UTILIZE STATE OF DELAWARE PERSONNEL AS REFERENCES.

**X. DOCUMENT(S) EXECUTION**

All vendors must complete and submit with its proposal the non-collusion statement that is enclosed with this Request for Proposal labeled as Non-Collusion Statement. The awarded vendor(s) will be presented with the contract form for signature and seal, if appropriate. Both documents shall be executed by a representative who has the legal capacity to enter the organization into a formal contract with Government Support Services.

The State of Delaware requires a new vendor to complete the registration process through the Delaware Supplier Portal at <http://esupplier.erp.delaware.gov>. Successful completion of this registration enables the creation of a State of Delaware supplier record. The Taxpayer ID (SSN or EIN) and Applicant (supplier) name are submitted to the Internal Revenue Service for "matching". If the Taxpayer ID and name do not match, the vendor record cannot be approved.

It is the applicant's responsibility to select the appropriate 1099 Withholding Type and Class. If incorporated, a business is not subject to 1099 reporting unless the business is providing legal or medical services.

Any questions about completing this registration or specific comments about the registration, please contact supplier maintenance by phone at 302-734-6827.

**Y. SUBCONTRACTS**

Subcontracting is permitted under this RFP and contract. However, every subcontractor shall be identified in the Proposal, through the completion of the Subcontractor Form.

**Z. CONFIDENTIALITY**

Subject to applicable law or the order of a court of competent jurisdiction to the contrary, all documents submitted as part of the vendor's solicitation response (response) will be treated as confidential during

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the evaluation process. As such, vendor responses will not be available for review by anyone other than the State of Delaware Evaluation Team or its designated agents. There shall be no disclosure of any vendor's information until a fully executed contract is received unless such disclosure is required by law or by order of a court of competent jurisdiction.

The State of Delaware and its constituent agencies are required to comply with the State of Delaware Freedom of Information Act, 29 Del. C. § 10001, et seq. ("FOIA"). FOIA requires that the State of Delaware's records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection and copying by any person upon a written request. Once fully executed contracts are received, the contents of all vendor responses are subject to FOIA's public disclosure obligations and exemptions.

The State of Delaware wishes to create a business-friendly environment and procurement process. As such, the State respects the vendor community's desire to protect its intellectual property, trade secrets, and confidential business information (collectively referred to herein as "confidential business information"). Responses must contain sufficient information to be evaluated. Through the [online bid submission portal](#), vendors will submit two copies of their solicitation response. One shall be marked original containing the full solicitation response. The second shall be marked redacted copy, redacting those items the vendor is looking to mark confidential.

The redacted copy must include the completed confidentiality form describing the items redacted, representing in good faith that the information is not "public record" as defined by 29 Del. C. § 10002, and briefly stating the reasons that each redaction meets the said definitions.

A vendor's allegation as to its confidential business information shall not be binding on the State. The State shall independently determine the validity of any vendor designation as set forth in this section. Any vendor submitting a response to the solicitation herein expressly accepts the State's absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, Vendor(s) assume the risk that confidential business information included within a response to a solicitation may enter the public domain.

## **AA. ATTACHMENTS**

- Sample Reports 1 – Monthly Usage Report
- Sample Reports 2 – Subcontracting (2<sup>nd</sup> Tier Spend) Report
- Attachment 1 – Office of Supplier Diversity Certification Application
- Appendix A – Scope of Work Details
- Appendix B – Pricing
- Appendix B1 – Product Offering Pricing (Optional)
- Appendix C – Vendor Forms
- Appendix D – Online Bid Submission Portal Instructions

## **IV. PROPOSAL EVALUATION PROCEDURES**

### **A. GENERAL ADMINISTRATION**

#### **1. STATE'S RIGHT TO REJECT PROPOSALS**

Government Support Services reserves the right to reject any or all proposals in whole or in part, to make multiple awards, partial awards, award by types, item by item, or lump sum total, whichever is determined

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to be the most advantageous to the State of Delaware. Vendors submitting proposals may be afforded an opportunity for discussion. Vendors may be requested to provide a best and final offer during the negotiation process. Negotiations may be conducted with responsible Vendors who submit proposals found to be reasonably likely to be selected for award. The contents of any proposal shall not be disclosed so as to be available to competing Vendors during the negotiation process.

**2. STATE’S RIGHT TO CANCEL SOLICITATION**

The State of Delaware reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The State of Delaware makes no commitments expressed or implied, that this process will result in a business transaction with any vendor.

This RFP does not constitute an offer by the State of Delaware. Vendor’s participation in this process may result in the State of Delaware selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the State of Delaware to execute a contract nor to continue negotiations. The State of Delaware may terminate negotiations at any time and for any reason, or for no reason.

**3. FORMAL CONTRACT AND/OR PURCHASE ORDER**

No employee of the Contractor(s) is to begin any work prior to receipt of a State of Delaware Purchase Order signed by authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office. A purchase order, telephone call, email, fax or State credit card shall serve as the authorization to proceed with work in accordance with the bid specifications and the special instructions, once it is received by the Contractor(s).

**4. PUBLIC OPENING OF PROPOSALS**

The proposals shall be publicly opened at the time and place specified by the Agency. Vendors or their authorized representatives are invited to be present.

Only the vendor’s name and address will be read aloud during the bid opening process.

**5. DISQUALIFICATION OF VENDORS**

Any one or more of the following causes may be considered as sufficient for the disqualification of a vendor and the rejection of its proposal or proposals:

- a. More than one proposal for the same contract from an individual, firm, or corporation under the same or different names.
- b. Evidence of collusion among vendors.
- c. Unsatisfactory performance record as evidenced by past experience with the State of Delaware or on a State of Delaware central contract.
- d. Any suspension or debarment of the parent company, subsidiary or individual involved with the vendor by federal, any state or any local governments within the last five (5) years.
- e. If the unit prices are obviously unbalanced either in excess or below reasonable cost analysis values.

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- f. If there are any unauthorized additions, interlineations, conditional or alternate bids or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- g. Non-attendance of mandatory pre-bid meetings shall be cause of disqualification.

**6. AUTHORITY OF AGENCY**

On all questions concerning the interpretation of specifications, the acceptability and quality of material furnished and/or work performed, the classification of material, the execution of the work, and the determination of payment due or to become due, the decision of the Agency shall be final and binding.

**7. OR EQUAL (PRODUCTS BY NAME)**

Specifications of products by name are intended to be descriptive of quality or workmanship, finish and performance. Desirable characteristics are not intended to be restrictive. Substitutions of products for those named will be considered provided the vendor certifies that the function, characteristics, performance and endurance qualities of the material offered is equal or superior to that specified.

**8. RESPONSIVENESS AND RESPONSIBILITY OF VENDOR**

Government Support Services shall award this contract to the most responsible and responsive vendor who best meets the terms and conditions of the proposal.

- a. Rejection of individual proposals. – A proposal may be rejected for 1 or more of the following reasons:
  - 1) The person responding to the solicitation is determined to be nonresponsive or non-responsible;
  - 2) It is unacceptable;
  - 3) The proposed price is unreasonable; or
  - 4) It is otherwise not advantageous to the State.
- b. Vendors whose proposals are rejected as non-responsive shall be notified in writing about the rejection.
- c. Responsibility of vendors. – It shall be determined whether a vendor is responsible before awarding a contract. Factors to be considered in determining if a vendor is responsible include:
  - 1) The vendor's financial, physical, personnel or other resources, including subcontracts;
  - 2) The vendor's record of performance and integrity;
  - 3) Any record regarding any suspension or debarment;
  - 4) Whether the vendor is qualified legally to contract with the State;
  - 5) Whether the vendor supplied all necessary information concerning its responsibility; and
  - 6) Any other specific criteria for a particular procurement which an agency may establish
- d. If a vendor is determined to be non-responsible, the vendor shall be informed in writing.
- e. The State reserves the right to waive minor irregularities or request additional information before determining the responsiveness of the Vendor. All Vendors will be afforded the same or similar

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opportunities, as necessary, and will be treated with equal regard before such determinations are finalized.

**B. PROPOSAL EVALUATION COMMITTEE**

The Proposal Evaluation Committee (“Committee”) is comprised of representatives of the State of Delaware.

The Committee reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.
- Select more than one vendor pursuant to 29 *Del. C.* § 6926. Such selection will be based on the following criteria: The communicated ability of any one vendor to meet the needs of the entire State representative of the best value to the State

Government Support Services reserves the right to reject any or all bids in whole or in part, to make multiple awards, partial awards, award by types, item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.

**C. REQUIREMENTS OF THE VENDOR**

The purpose of this section is to assist the Proposal Evaluation Committee to determine the ability of the organization to provide the materials and services described in the application. The proposal response should contain at a minimum the following information:

- Brief history of the organizations, including accreditation status, if applicable.
- Applicant’s experience, if any, providing similar services. At least three references are required.
- Brief history of the subcontractor of the organization, if applicable. At least three references of subcontractor, if applicable.
- Financial information (balance sheets and income statements) for the past three years.
- Experience of the Service Technicians.
- Describe the methodology/approach used for this project including details of required service and turnaround time.
- The bidder should take special care to address all items under criteria and scoring section below.

**D. CRITERIA AND SCORING**

	<b>EVALUATION CRITERIA</b>	<b>POINTS</b>
1.	Satisfactory Food and Safety Code Inspection and Licensing Documentation and the overall completeness of the proposal package.	20
2.	Assess the strength of the vendors stated plan to provide customer service, uphold critical delivery schedules operating on a five (5) business day lead-time, and cater to the specific food product needs for each setting as required by this contract. Setting types to be taken into your scoring consideration are Hospital, Prison, and Schools and different and specific	20

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	storage challenges to include small kitchen/canteen storage settings and large warehouse settings.	
3.	Review the vendor's supply chain and warehousing capabilities, process to communicate backordered items, reactive plan to address the potential of an 'Emergency Need' type item requiring an abbreviated lead-time, and vendor's plan to deliver goods to the required locations in a way that allows for our receiving staff to easily and efficiently identify and assess product for satisfactory quality levels and adherence to specification. Evaluate how product travels from the original manufacturer to our receiving dock and how the vendor plans to stock items to respond to the needs of the contract.	20
4.	Rate the vendor's qualification and established experience with servicing similar contracts of this size according to the current governmental accounts they service and years in business.	20
5.	Competitiveness of price.	25
	TOTAL SCORE	105

Procurement Evaluation Committee members will assign up to the maximum number of points listed for each of the criteria listed above. For items having quantitative answers, points will be proportionate to each proposal's response. Items with qualitative answers will receive the average of points assigned by Proposal Evaluation Committee members.

**E. BEST AND FINAL OFFERS**

Once the proposals have been evaluated and negotiations have been held with the vendor(s) determined to be likely to receive an award, the Procurement Evaluation Committee issue a request for Best and Final Offers from the vendor(s).

**F. REFERENCES**

The Committee may contact any customer of the vendor, whether or not included in the vendor's reference list, and use such information in the evaluation process. Additionally, the State of Delaware may choose to visit existing installations of comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the State of Delaware will pay travel costs only for State of Delaware personnel for these visits.

**G. ORAL PRESENTATIONS**

Selected vendors may be invited to make oral presentations to the Committee. The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components.

All of the vendor's costs associated with participation in oral discussions and system demonstrations conducted for the State of Delaware are the vendor's responsibility.

**V. MANDATORY PREBID MEETING**

A mandatory pre-bid meeting has not been established for this Request for Proposal.

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**VI. DEFINITIONS AND GENERAL PROVISIONS**

The attached Definitions and General Provisions apply to all contracts and are part of each Request for Proposal. The requirement to furnish a bid bond and performance bond is applicable unless waived. Should the General Provisions conflict with the Special Provisions, the Special Provisions shall prevail. Vendors or their authorized representatives are required to fully acquaint themselves as to State procurement laws and regulations prior to submitting bid.

**A. DEFINITIONS:** Whenever the following terms are used, their intent and meaning shall be interpreted as follows:

**STATE:** The State of Delaware

**AGENCY:** State Agency as noted on cover sheet.

**BIDDER OR VENDOR:** Any individual, firm, or corporation formally submitting a proposal for the material or work contemplated, acting directly or through a duly authorized representative.

**BID INVITATION:** The "Invitation to Bid" or "Request for Proposal" is a packet of material sent to vendors and consists of General Provisions, Special Provisions, specifications, and enclosures.

**BOND:** The approved form of security furnished by the Vendors and its surety as a guaranty of good faith on the part of the Vendor to execute the work in accordance with the terms of the contract.

**CONTRACT:** The written agreement covering the furnishing and delivery of material or work to be performed.

**DESIGNATED OFFICIAL:** The agent authorized to act for an Agency.

**GENERAL PROVISIONS:** General Provisions are instructions pertaining to contracts in general. They contain, in summary, requirements of laws of the State, policies of the Agency, and instructions to vendors.

**LOCAL TIME:** Eastern Standard Time/Eastern Daylight Time

**OPPORTUNITY BUY:** A special offer from a supplier that is usually associated with a limited time to respond.

**PROPOSAL:** The offer of the Vendor submitted on the approved form and setting forth the Vendor's prices for performing the work or supplying the material or equipment described in the specifications.

**RFP:** Request for Proposal.

**SPECIAL PROVISIONS:** Special Provisions are specific conditions or requirements peculiar to the contract under consideration and are supplemental to the General Provisions. Should the Special Provisions conflict with the General Provisions, the Special Provisions shall prevail.

**SURETY:** The corporate body which is bound with and for the contract, or which is liable, and which engages to be responsible for the Vendor's payments of all debts pertaining to and for its acceptable performance of the work for which he has contracted

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**VENDOR'S DEPOSIT:** The security designated in the proposal to be furnished by the Vendor as a guaranty of good faith to enter into a contract with the Agency if the work to be performed or the material or equipment to be furnished is awarded to it.

## **B. GENERAL PROVISIONS**

### **1. INTERPRETATION OF ESTIMATES/QUANTITIES**

- a. Unless stated otherwise, the quantities given in the RFP are to be considered to be approximate only and are given as a basis for the comparison of bids. The Agency may increase or decrease the amount of any item as may be deemed necessary or expedient, during the period of the contract. Bidders shall recognize there are no guaranteed minimum contract quantities or values associated with this solicitation.
- b. An increase or decrease in the quantity for any item is not sufficient ground for an increase or decrease in the unit price.
- c. Prior contract utilization may be viewed on the Delaware Open Data Portal <https://data.delaware.gov/>. The Government and Finance data sets provide Central Contract Line Item Spend by Fiscal Year among several additional data products. Past usage shall not be considered a guaranteed future volume.

### **2. SILENCE OF SPECIFICATIONS**

The apparent silence of the specifications as to any detail, or the apparent omission from it of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality are to be used. Proof of specifications compliance will be the responsibility of the vendor.

### **3. EXAMINATION OF SPECIFICATIONS AND PROVISIONS**

The Vendor shall examine carefully the proposal and the contract forms for the material contemplated. The Vendor shall investigate and satisfy itself as to the conditions to be encountered, quality and quantities of the material to be furnished, and the requirements of any Special Provisions in the RFP and the contract. The submission of a proposal shall be conclusive evidence that the Vendor has made examination of the aforementioned conditions.

### **4. PRICES QUOTED**

The prices quoted are those for which the material will be furnished F.O.B. Ordering Agency and include all charges that may be imposed during the period of the contract. **All prices quoted must be in U.S. Dollars.**

All vendors that maintain a core list of products under this contract shall maintain the appropriate negotiated prices on their core list. Vendors shall routinely offer to add to the core list material that has been identified as necessary. The Vendors are expected to routinely update any changes to the core list with the appropriate discounts listed.

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Any adjustments to a core list must receive prior written approval from the State before a core list can be changed by the Vendor. Changes include but are not limited to the migration of items on and off the core list as well as any price adjustments from the original agreed upon pricing.

**5. PUBLIC INSPECTION OF PROPOSALS**

All documents submitted as part of the vendor's proposal will be deemed confidential during the evaluation process. Vendor proposals will not be available for review by anyone other than the State of Delaware/Proposal Evaluation Committee or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract.

The State of Delaware is a public agency as defined by state law, and as such, it is subject to the Delaware Freedom of Information Act, 29 *Del. C.* Ch. 100. Under the law, all the State of Delaware's records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person. Vendor(s) are advised that once a proposal is received by the State of Delaware and a decision on contract award is made, its contents will become public record and nothing contained in the proposal will be deemed to be confidential except proprietary information.

Vendor(s) shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information. If a vendor feels that they cannot submit their proposal without including proprietary information, they must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection. Vendor(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 *Del. C.* § 10002(d), and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the State of Delaware will open the envelope to determine whether the procedure described above has been followed.

**6. LAWS TO BE OBSERVED**

The Vendor is presumed to know and shall strictly comply with all Federal, State, or County laws, and City or Town ordinances and regulations in any manner affecting the conduct of the work. The Vendor shall indemnify and save harmless the State of Delaware, the Agency, and all Officers, Agency and Servants thereof against any claim or liability arising from or based upon the violation of any such laws, ordinances, regulations, orders, or decrees whether by itself, by its employees, or by its subcontractor (s).

**7. APPLICABLE LAW AND JURISDICTION**

This bid, any resulting contract, and any and all litigation or other disputes arising therefrom, in connection with, or related hereto shall be governed by the applicable laws, regulations and rules of evidence of the State of Delaware. Bidder submits to personal jurisdiction in the State of Delaware. Any and all litigation or other disputes arising out of, in connection with, or relating to this bid, and any resulting contract, shall be brought exclusively in a court in the State of Delaware or the United States District Court of the District of Delaware as applicable.

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**8. SEVERABILITY**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

**9. PERMITS AND LICENSES**

All necessary permits, licenses, insurance policies, etc. required by local, State or Federal laws, shall be provided by the Vendor at its own expense.

**10. PATENTED DEVICES, MATERIAL AND PROCESSES**

- a. The Vendor shall provide for the use of any patented design, device, material, or process to be used or furnished under this contract by suitable legal agreement with the patentee or owner and shall file a copy of this agreement with the Agency.
- b. The Vendor and the surety shall hold and save harmless the State of Delaware, the Agency, the Director, their Officers or Agents from any and all claims because of the use of such patented design, device, material, or process in connection with the work agreed to be performed under this contract.

**11. EMERGENCY TERMINATION OF CONTRACT**

- a. Due to restrictions which may be established by the United States Government on material, or work, a contract may be terminated by the cancellation of all or portions of the contract.
- b. In the event the Vendor is unable to obtain the material required to complete the items of work included in the contract because of restrictions established by the United States Government and if, in the opinion of the Agency, it is impractical to substitute other available material, or the work cannot be completed within a reasonable time, the incomplete portions of the work may be cancelled, or the contract may be terminated.

**12. TAX EXEMPTION**

- a. In accordance with the Internal Revenue Service regulations, the State of Delaware is generally exempt from federal excise tax for communications, certain fuels, sales by manufacturers and the tax on heavy trucks, trailers, and tractors. More detail is included in IRS Publication 510 Excise Taxes located at <https://www.irs.gov/pub/irs-pdf/p510.pdf>. Per IRS regulations, all exemption certificates must be specific to the vendor and the type of excise tax. If an exemption certificate is requested by a vendor, the Division of Accounting will work with the agency and vendor to complete the appropriate certificate. Such taxes shall not be included in prices quoted.
- b. Any material which is to be incorporated in the work or any equipment required for the work contemplated in the proposal may be consigned to the Agency. If the shipping papers show clearly that any such material is so consigned, the shipment will be exempt from the tax on the transportation of property under provisions of Section 3475 (b) of the Internal Revenue Code, as amended by Public

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Law 180 (78<sup>th</sup> Congress). All transportation charges shall be paid by the Vendor. Each Vendor shall take its exemption into account in calculating its bid for its work.

**13. INVOICING**

After the awards are made, the agencies participating in the bid may forward their purchase orders ("P.O.") to the successful Vendor(s) in accordance with State Purchasing Procedures. The State will generate a payment voucher upon receipt of an acceptable invoice from the vendor.

**14. EQUALITY OF EMPLOYMENT OPPORTUNITY ON PUBLIC WORKS**

During the performance of any contract for public works financed in whole or in part by appropriation of the State of Delaware, the contractor agrees as follows:

- a. The contractor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will not discriminate against any employee or applicant for employment with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment without regard to their race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeships. The contractor agrees to post in conspicuous places, notices to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.
- b. During the performance of this contract, the contractor agrees as follows:
  - 1) The contractor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will not discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.
  - 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin."
- c. The term "contractor for public works" means construction, reconstruction, demolition, alteration, and/or repair work, maintenance work, and paid for in whole or in part out of the funds of a public body except work performed under a vocational rehabilitation program. The manufacture or

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furnishing of materials, articles, supplies, or equipment is not a public work within the meaning of this subsection unless conducted in connection with and at the site of the public work.

**15. PRICES**

Prices and/or rates shall remain firm for the first quarter of the contract, with price adjustments beyond that based on Section 17. Price Adjustment.

The pricing policy that you choose to submit must address the following concerns:

- a. The structure must be clear, accountable, and auditable.
- b. It must cover the full spectrum of services required.
- c. Costs and compensation must be consistent with the rates established or negotiated as a result of this RFP or P.O. issued based on this contract.

**16. COOPERATIVES**

Vendors, who have been awarded similar contracts through a competitive bidding process with a cooperative, are welcome to submit the cooperative pricing for this solicitation.

**17. PRICE ADJUSTMENT**

The Vendor is not prohibited from offering a price reduction on its services or materiel offered under the contract. The State is not prohibited from requesting a price reduction on those services or materiel during the initial term or any subsequent options that the State may agree to exercise.

Price adjustments for this contract will be calculated as follows: Quoted prices shall be adjusted on a quarterly basis for the contract term (see schedule below) based on the change in value of the U.S. Department of Labor; Bureau of Labor Statistics; Producer Price Index (PPI) (series id: WPUID61) for Finished Consumer Foods. Refer to Exhibit 1 for calculation example.

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 over the most recent non-preliminary quarter will be used to determine the change in prices for the contract quarterly period. There will be no consideration given to price fluctuation outside of that most recent quarter.

It is the vendors responsibility to obtain the correct percentage of change, accurately fill out and submit the excel document, and address any related questions or concerns with the contract officer in writing well in advance of the deadline for price submissions or their submission may be rejected.

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: Takishia R. Kiah, State Contract Procurement Officer.

For price changes effective September 1, 2025 must be submitted between August 1, 2025 through August 15, 2025.

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For price changes effective December 1, 2025 must be submitted between November 1, 2025, through November 15, 2025.

For price changes effective March 1, 2026 must be submitted between February 1, 2026, through February 15, 2026.

For price changes effective June 1, 2026 must be submitted between May 1, 2026 through May 15, 2026.

For price changes effective September 1, 2026 must be submitted between August 1, 2026 through August 15, 2026.

For price changes effective December 1, 2026 must be submitted between November 1, 2026 through November 15, 2026.

For price changes effective March 1, 2027 must be submitted between February 1, 2027, through February 15, 2027.

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.

All prices submitted for approval will be in the original Appendix B and B1 Excel format document as submitted in the original proposal. When submitting requests for price changes, vendor shall be required to list the 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.

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**Exhibit #1**

Data extracted on: September 30, 2021 (10:48:07 AM)

**PPI Commodity Data**

**Series Id:** WPUID61  
Not Seasonally Adjusted  
**Series Title:** PPI Commodity data for Intermediate demand by commodity type-Processed goods for intermediate demand, not seasonally adjusted  
**Group:** Intermediate demand by commodity type  
**Item:** Processed goods for intermediate demand  
**Base Date:** 198200

Download: [xls](#) [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2011	190.6	193.7	197.6	201.0	203.2	203.3	204.1	202.8	203.2	200.2	199.9	198.5
2012	198.8	200.0	203.3	203.0	201.5	199.7	198.8	200.7	202.7	201.8	199.5	199.2
2013	200.0	202.5	201.5	200.8	201.0	201.3	201.3	201.6	201.5	200.1	198.8	199.3
2014	200.9	202.1	203.0	203.8	203.8	204.3	204.5	204.4	203.8	200.5	197.7	194.2
2015	189.7	189.2	189.3	188.3	190.2	191.6	191.2	189.6	186.8	185.1	183.4	181.3
2016	179.6	178.3	178.8	179.7	181.6	183.8	184.2	183.9	184.4	184.0	183.6	184.6
2017	186.7	188.0	188.3	189.4	189.9	190.8	190.8	191.5	192.7	192.9	193.5	193.9
2018	195.4	197.0	197.3	198.5	201.7	203.4	203.6	203.8	204.3	204.6	202.2	199.4
2019	197.8	198.2	199.6	200.2	200.2	198.8	198.9	197.7	197.2	196.8	196.4	196.0
2020	195.8	194.2	191.7	185.0	185.8	188.8	191.6	193.2	194.1	195.0	196.1	198.9
2021	202.5	207.9	215.5	219.6	226.5(P)	231.4(P)	235.5(P)	237.6(P)				

P : Preliminary. All indexes are subject to revision four months after original publication.

Using the most recent, non-preliminary to calculate quarterly price adjustment allowance:

April 2021: 219.6  
February 2021: 207.9  
Formula:  $((219.6-207.9)/207.9)*100$   
PPI Rate of Change: 5.63%

**18. SHIPPING TERMS**

FOB Destination, freight prepaid.

**19. ELECTRONIC CATALOG**

At the discretion of Government Support Services, the successful vendor(s) may be required to submit their items list in an electronic format designated by the State.

By example, but not limited to, the following items may be required:

- Electronic catalogs,
- Electronic catalogs converted to a CSV format with contract specific pricing,
- Items designated by commodity/classification code: United Nations Standard Products and Services Code (UNSPSC), and/or
- A unique item ID for all items in your system and/or our award.

## **20. INDEPENDENT CONTRACTORS**

The parties to any contract from this solicitation shall be independent contractors to one another, and nothing herein shall be deemed to cause the agreement to create an agency, partnership, joint venture, or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations, or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

## **21. TEMPORARY PERSONNEL ARE NOT STATE EMPLOYEES UNLESS AND UNTIL THEY ARE DIRECTLY HIRED**

Vendor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation shall remain the employee(s) of Vendor for all purposes including any required compliance with the Affordable Care Act by the Vendor. Vendor agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Solicitation must be provided any benefits, including any healthcare benefits by the State of Delaware and Vendor agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third-party governmental entity determines that the State of Delaware is a dual employer or the sole employer of any individual temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation, Vendor agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

Notwithstanding the content of the preceding paragraph, should the State of Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this Solicitation, the aforementioned obligations to hold harmless, indemnify, and defend the State of Delaware shall cease and terminate for the period following the date of hire. Nothing herein shall be deemed to terminate the Vendor's obligation to hold harmless, indemnify, and defend the State of Delaware for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware. Vendor will waive any separation fee provided an employee works for both the vendor and hiring agency, continuously, for a three (3) month period and is provided thirty (30) days written notice of intent to hire from the agency. Notice can be issued at second month if it is the State's intention to hire.

## **22. WORK PERFORMED IN A STATE BUILDING**

Awarded Vendor(s) who have any employees carrying out any work related to the awarded contract at a State facility shall have those employees comply with any health mandate or policy issued by the State related to a pandemic or other State of Emergency issued by any State authority during the term of the awarded contract, including those that apply directly to State employees.

## **23. ACA SAFE HARBOR**

The State and its utilizing agencies are not the employer of temporary or contracted staff. However, the State is concerned that it could be determined to be a Common-law Employer as defined by the Affordable Care Act ("ACA"). Therefore, the State seeks to utilize the "Common-law Employer Safe Harbor Exception" under the ACA to transfer health benefit insurance requirements to the staffing

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company. The Common-law Employer Safe Harbor Exception can be attained when the State and/or its agencies are charged and pay for an “Additional Fee” with respect to the employees electing to obtain health coverage from the Vendor.

The Common-law Employer Safe Harbor Exception under the ACA requires that an Additional Fee must be charged to those employees who obtain health coverage from the Vendor but does not state the required amount of the fee. The State requires that all Vendors shall identify the Additional Fee to obtain health coverage from the Vendor and delineate the Additional Fee from all other charges and fees. The Vendor shall identify both the Additional Fee to be charged and the basis of how the fee is applied (i.e. per employee, per invoice, etc.). The State will consider the Additional Fee and prior to award reserves the right to negotiate any fees offered by the Vendor. Further, the Additional Fee shall be separately scored in the proposal to ensure that neither prices charged, nor the Additional Fee charged will have a detrimental effect when selecting vendor(s) for award.

#### **24. FUNDING OUT or NON-APPROPRIATION**

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

#### **25. MANDATORY REQUIREMENTS**

As a part of the contract requirements, the contractor must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. All contractors must carry the following coverage depending on the type of service or product being delivered.

- a. Worker’s Compensation and Employer’s Liability Insurance in accordance with applicable law.
- b. Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate.
- c. Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to Vendor pursuant to this Agreement as well as all units used by Vendor, regardless of the identity of the registered owner, used by Vendor for completing the Work required by this Agreement to include but not limited to transporting Delaware clients or staff), providing coverage on a primary non-contributory basis with limits of not less than:
  1. \$1,000,000 combined single limit each accident, for bodily injury;
  2. \$250,000 for property damage to others;
  3. \$25,000 per person per accident Uninsured/Underinsured Motorists coverage;
  4. \$25,000 per person, \$300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 *Del. C.* § 2118; and
  5. Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss.

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The successful vendor must carry at least one of the following depending on the scope of work being performed.

- a. Medical/Professional Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate
- b. Miscellaneous Errors and Omissions - \$1,000,000 per occurrence/\$3,000,000 per aggregate
- c. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate

Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

State of Delaware  
Government Support Services  
Contract No: GSS25728-FOOD\_PROD  
600A S. Bay Road  
Dover, DE 19901-4604

Nothing contained herein shall restrict or limit the Vendor's right to procure insurance coverage in amounts higher than those required by this Agreement. To the extent that the Vendor procures insurance coverage in amounts higher than the amounts required by this Agreement, all said additionally procured coverages will be applicable to any loss or claim and shall replace the insurance obligations contained herein.

To the extent that Vendor has complied with the terms of this Agreement and has procured insurance coverage for all vehicles Leased and/or operated by Vendor as part of this Agreement, the State of Delaware's self-insured insurance program shall not provide any coverage whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.

In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

**26. STATE OF DELAWARE BUSINESS LICENSE**

Prior to receiving an award, the successful Vendor shall either furnish the Agency with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: 302-577-8778. <http://revenue.delaware.gov/services/BusServices.shtml>

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Information regarding the award of this contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject your organization to applicable fines and/or interest penalties.

## **27. INDEMNIFICATION**

### **a. General Indemnification**

By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents, and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the vendor's its agents and employees' performance work or services in connection with the contract.

### **b. Proprietary Rights Indemnification**

Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services, and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware shall promptly notify the vendor in writing and vendor shall defend such claim, suit or action at vendor's expense, and vendor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the vendor (collectively "Products") is or in vendor's reasonable judgment is likely to be, held to constitute an infringing product, vendor shall at its expense and option either:

- 1) Procure the right for the State of Delaware to continue using the Product(s);
- 2) Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- 3) Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.

## **28. NON-PERFORMANCE**

In the event the Vendor does not fulfill its obligations under the terms and conditions of this contract, in addition to proceeding with termination of the contract, the ordering agency may terminate any individual orders in accordance with General Provisions, Item 51 below and purchase equivalent product on the open market. Regarding any such open market purchase, payment for any difference in cost or expense in excess of the contract prices for reasonably equivalent products or services herein shall be the responsibility of the Vendor and shall be submitted to the State no later than 30 days following the delivery of the State's invoice detailing the open market purchase. Under no circumstances shall monies be due the Vendor in the event open market products can be obtained below contract cost. Any monies charged to the Vendor may be deducted from an open invoice.

## **29. FORCE MAJEURE; APPLICABILITY**

Neither the Vendor nor the State shall be held liable for non-performance under the terms and conditions of this Agreement due, but not limited to:

- a. Acts of God; labor disturbances; accidents; failure of a governmental entity to issue a permit or approval required for performance when the Contractor has filed proper and timely application with the appropriate government entity; civil disorders; acts of aggression; changes in any law or regulation adopted or issued by a governmental entity after the date of this Agreement; a court order; explosions; failure of utilities; material shortages;
- b. Diseases, plagues, quarantine, epidemics or pandemics;
- c. Federal, state, or local work or travel restrictions to control, mitigate, or reduce transmission of diseases, plagues, epidemics, or pandemics; or
- d. The State's need to occupy, utilize, or repurpose an active or prospective work area due to diseases, plagues, quarantine, epidemics, pandemics, work or travel restrictions, and the need to control, mitigate, or reduce transmission of diseases, plagues, epidemics, or pandemics.

Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract within 2 business days of the party's knowledge of significant non-performance risk.

## **30. VENDOR NON-ENTITLEMENT**

State of Delaware Vendors for Materiel and for Services shall not have legal entitlement to utilize any Central Contract held by the State of Delaware. The Vendors may not seek business from another Vendors' Central Contract for the purpose of preparing a bid or proposal to the State of Delaware. Additionally, they shall not utilize other Central Contracts to fulfill the requirements of their respective contract unless they are considered a "Covered Agency" as defined by Title 29 Chapter 69 of the State Procurement Code or otherwise permitted by law.

This is not a prohibition from any Vendor choosing to work with another Vendor who holds a State Central Contract for private business.

## **31. OPPORTUNITY BUYS**

The Director for the State of Delaware, Office of Management and Budget, Government Support Services can waive use of a central contract pursuant to 29 *Del. C.* § 6911. A process has been developed to permit any vendor the opportunity to submit an Opportunity Buy offer to the State for goods and/or services for consideration despite the existence of a central contract. See [Opportunity Buy Flowchart](#). The Director will afford any vendor on an existing central contract an opportunity to match or to beat the Opportunity Buy offer made by a non-contracted vendor prior to a waiver being granted.

## **32. I FOUND IT CHEAPER**

Director for the State of Delaware, Office of Management and Budget, Government Support Services can waive use of a central contract pursuant to 29 *Del. C.* § 6911(e). A process has been developed to

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permit any State employee or Vendor to identify a lower price for material and or services for consideration despite the existence of a central contract. See [I Found It Cheaper Flowchart](#). The Director will afford any Vendor on an existing central contact an opportunity to match or to beat the I Found It Cheaper suggestion and if not matched or beaten, approve the purchase via a waiver.

### **33. REQUIRED REPORTING**

One of the primary goals in administering this contract is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of the contract and to establish proper bonding levels, if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested parties.

A complete and accurate Usage Report (Sample Report - 1) shall be furnished in an Excel format and submitted electronically, no later than the 15th (or next business day after the 15th day) of each month, detailing the purchasing of all items and/or services on this contract. The reports shall be completed in Excel format, using the template provided, and submitted as an attachment to [vendusage@delaware.gov](mailto:vendusage@delaware.gov), with a copy going to the contract officer identified as your point of contact. Submitted reports shall cover the full month (Report due by January 15<sup>th</sup> will cover the period of December 1 – 31.), contain accurate descriptions of the products, goods or services procured, purchasing agency information, quantities procured, and prices paid. Reports required monthly, including those with “no spend”. Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result in corrective action, up to and including the possible cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, Vendors who are determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.

In accordance with [Executive Order 49](#), the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes minority (MBE), woman (WBE), veteran owned business (VOBE), or service-disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service-disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women’s Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier reporting is shown as Sample Report - 2.

Accurate 2nd Tier reports shall be submitted to the contracting Agency’s Office of Supplier Diversity at [vendusage@delaware.gov](mailto:vendusage@delaware.gov) on the 15th (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if the contract has expired by the report due date.

### **34. ORDERING PROCEDURE**

Successful Vendors 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. Depending on the nature and scope of the event, each State agency or other governmental entity shall be responsible for contacting the awarded vendor directly for all required resources. All consumables delivered by the Vendor and received by a State

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agency or other governmental entity, become the property of that State agency or entity. Orders may be accomplished by written purchase order, telephone, email, fax or computer on-line systems.

**35. PURCHASE ORDERS**

Agencies that are part of the First State Financial (FSF) system are required to identify the contract number GSS25728-FOOD\_PROD on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.

**36. BILLING**

The Vendor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number. The Vendor shall not charge a late fee that exceeds more than one percent (1%) per month, not to exceed twelve percent (12%) per annum.

Agencies will make every effort to achieve available discount opportunities under this contract. Vendors shall be required to report semi-annually opportunities to enhance the discounts achieved.

**37. METHOD OF PAYMENT**

- a. For each P.O. issued as part of this contract, the State will pay Vendor monthly, within thirty (30) days of receipt of the Vendor's billing, the amount which is legitimately earned by the Vendor, and supported by payroll data and an itemized accounting of reasonable reimbursable direct non-salary costs. A current progress report of the work shall accompany each billing.

Final settlement for total payment to the Vendor will be made within thirty (30) days from the date of final written State acceptance of the work and services as agreed to in the P.O.

- b. No premium time for overtime will be paid without prior written State authorization. Indirect overhead cost shall not be applied to the premium portion of the overtime.
- c. The agencies or school districts using this award will authorize and process for payment each invoice within thirty (30) days after the date of receipt of a correct invoice. The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally, there shall be no minimum or maximum limits on any P-Card transaction under the contract. While it is the State's intention to utilize the P-card payment method the State reserves, at its discretion, the right to pay by ACH/ACI or check. Should a Vendor wish to provide a financial incentive to not process payment by P-Card in their proposal, they are to prepare their proposals to clearly outline any incentives for alternative payment methods the Vendor is willing to accept.

**38. PRODUCT SUBSTITUTION**

All items or services delivered during the life of the contract shall be of the same type and manufacture as specified or accepted as part of the proposal unless specific approval is given by the Agency to do otherwise. Awarded vendors are highly encouraged to offer any like substitute product (s), either generic or brand name, at any time during the subsequent contract term, especially if an opportunity for cost

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savings to the state exists. In all cases, the state may require the submission of written specifications and/or product samples for evaluation prior to any approvals being granted.

If a substitution is granted by the state, the Vendor must update its core list and maintain said list in a timely manner.

### **39. SCHEDULE FOR PERFORMANCE OF WORK**

All work described in these specifications shall be completed with reasonable promptness. As used in this Section, the State of Delaware shall be the sole judge of the term “reasonable”. If the Vendor does not begin the work in a reasonable amount of time, they will be notified that if they fail to initiate the work promptly, the contract may be terminated, and the State will forthwith proceed to collect for nonperformance of work.

### **40. VENDOR RESPONSIBILITY**

The State will enter into a contract with the successful Vendor(s). The successful Vendor(s) shall be responsible for all products and services as required by this RFP whether or not the Vendor or its subcontractor provided final fulfillment of the order. Subcontractors, if any, shall be clearly identified in the Vendor’s proposal by completing the Subcontractor Form, and are subject the approval and acceptance of Government Support Services.

### **41. VENDOR- OWNED RENTAL EQUIPMENT AND SUPPLIES REMOVAL**

The awarded Vendor shall remove all rental equipment and supplies from the event location (s) no later than an agreed to date once all contract obligations by the Vendor have been met.

### **42. ENVIRONMENTAL PROCUREMENT REQUIREMENTS**

- a. Energy Star - If applicable, the Vendor must provide products that earn the ENERGY STAR rating and meet the ENERGY STAR specifications for energy efficiency in order to keep overall event costs to a minimum. The Vendor is encouraged to visit [www.energystar.gov](http://www.energystar.gov) for complete product specifications and updated lists of qualifying products.
- b. Green Products – third party certification of green products accepted from GSS w/approved green certification shall be offered wherever available in addition to or as a substitute for non-green products.
- c. Vendors shall report all green items procured during the monthly reporting period using the Usage Report that will be provided to the awarded Vendor(s).

Environmental Procurement Policies of the State shall determine acceptable consideration and credit for environmentally preferred products and services in the performance of this award. The State Environmental Procurement Policies may be found: [Environmentally Preferred Purchasing Policy](#)

### **43. PERSONNEL, EQUIPMENT AND SERVICES**

- a. The Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services required under this contract.

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- b. All of the equipment and services required hereunder shall be provided by or performed by the Vendor or under its direct supervision, and all personnel, including subcontractors, engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.
- c. None of the equipment and/or services covered by this contract shall be subcontracted without the prior written approval of the State. Only those subcontractors identified on the Subcontractor Form are considered approved upon award. Changes to those subcontractor(s) listed in the original solicitation response must be approved in writing by the State.

#### **44. FAIR BACKGROUND CHECK PRACTICES**

Pursuant to 29 Del. C. [§ 6909B](#), the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Vendors doing business with the State are encouraged to adopt fair background check practices. Vendors can refer to 19 Del. C. [§ 711\(g\)](#) for applicable established provisions.

#### **45. VENDOR BACKGROUND CHECK REQUIREMENTS**

Vendor(s) selected for an award that access state property or come in contact with vulnerable populations, including children and youth and long-term care residents, shall be required to complete background checks on employees serving the State's on premises contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry:

- Delaware Sex Offender Central Registry at: <https://sexoffender.dsp.delaware.gov/>

Individuals that are listed in the registry shall be prevented from direct contact in the service of an awarded state contract but may provide support or off-site premises service for contract vendors. Should an individual be identified, and the Vendor(s) believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

By Agency request, the Vendor(s) shall provide a list of all employees serving an awarded contract and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of a contract award. A violation of this condition represents a violation of the contract terms and conditions, and may subject the Vendor to penalty, including contract cancellation for cause.

Individual agency requesting services may require additional background checks and/or security clearance(s), depending on the nature of the services to be provided, the location(s) being accessed, or as a matter of law. This includes, but may not be limited to, background checks that are compliant with 31 Del. C. §309 and/or 16 Del. C. § 1141 or other applicable laws. The agency requesting service is responsible for notifying the vendor of any special requirements at the time-of-service request, including the applicability of 31 Del. C. §309 and/or 16 Del. C. § 1141 or other statutory requirements. The Vendor(s) shall be responsible for the background check requirements of any authorized Subcontractor providing service to the Agency's contract. The Vendor(s) shall be responsible for all costs associated with background check requirements. The access to and the provision of services by the Vendor or its agents may be withheld until background checks are completed and deemed accepted by the Agency requesting services.

#### **46. DRUG TESTING REQUIREMENTS FOR LARGE PUBLIC WORKS**

Pursuant to 29 *Del.C.* [§ 6908\(a\)\(6\)](#), effective as of January 1, 2016, OMB has established regulations that require Contractors and Subcontractors to implement a program of mandatory drug testing for Employees who work on Large Public Works Contracts funded all or in part with public funds. The regulations establish the mechanism, standards and requirements of a Mandatory Drug Testing Program that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 *Del.C.* [§ 6962](#).

Final publication of the identified regulations can be found at the following:

[4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects](#)

#### **47. MINIMUM WAGE RATES**

Work performed under this solicitation may fall under the [State of Delaware Minimum Wage Rates](#) or the Delaware Prevailing Wage rates. Prior to issuing a purchase order, the ordering agencies must obtain from the Department of Labor a determination if prevailing wage applies to the project and, if appropriate, what the applicable prevailing wage rates would be for the work to be performed. No work shall proceed without a determination by the Department of Labor. Request for prevailing wage certification can be found at: <http://dia.delawareworks.com/labor-law/prevailing-wage.php>.

#### **48. PREVAILING WAGE**

The prevailing wage law, 29 *Del. C.* [§ 6960](#), is enforced by the Department of Labor and states that the specifications for every contract or aggregate of contracts relating to a public works project in excess of \$500,000 for new construction (including painting and decorating) or \$45,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of building or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Delaware Department of Labor, Division of Industrial Affairs, to be prevailing in the county in which the work is to be performed.

#### **49. DISPUTE RESOLUTION**

At the option of the parties, they shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

If the matter is not resolved by negotiation, as outlined above, or, alternatively, the parties elect to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to a mediator selected by the parties. If the matter is not resolved through mediation, it may be submitted

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for arbitration or litigation. The Agency reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by State of Delaware law, and jurisdiction and venue shall be in the State of Delaware. Each party shall bear its own costs of mediation, arbitration, or litigation, including attorneys' fees.

## 50. REMEDIES

Except as otherwise provided in this solicitation, including but not limited to Section 48 above, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor arising out of, or relating to, this solicitation, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

## 51. TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS

As a central contract, the contract resulting from this RFP shall include individual orders from state agencies and other entities authorized by law to procure from this contract. The individual orders may be terminated as follows:

- a. **Termination for Cause:** If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner his obligations, or if the Vendor violates any of the covenants, agreements, or stipulations of this contract, the Agency shall have the right to terminate the P.O. by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Vendor in the performance of the P.O. shall, at the option of the Agency, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the Agency.
- b. **Termination for Convenience:** The Agency may terminate the P.O. at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the department, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials which are usable to the Agency.
- c. **Termination for Non-Appropriations:** In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

## 52. TERMINATION OF CONTRACT

As a central contract, the contract resulting from this RFP may be terminated as follows by Government Support Services.

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- a. Termination for Cause:** If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Vendor under this Contract shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

On receipt of the contract cancellation notice from the State, the Vendor shall have not less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A vendor response shall not effect or prevent the contract cancellation unless the State provides a written acceptance of the vendor response. If the State does accept the Vendor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion the State may reject in writing the Vendor's proposed action plan and proceed with the original contract cancellation timeline.

- b. Termination for Convenience:** The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.
- c. Termination for Non-Appropriations:** In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

### 53. CHANGES

Both parties may, from time to time, require changes in the services to be provided by the Vendor under the Scope of Work. Such changes, including any increase or decrease in the amount of the Vendor's compensation, which are mutually agreed upon by and between the Agency and the Vendor shall be incorporated in written amendments to the Purchase Order or contract.

### 54. INTEREST OF VENDOR

The Vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree in providing products or performing services required under this contract. The Vendor further covenants, that in the performance of this contract, no person having any such interest shall be employed.

#### **55. PUBLICATION, REPRODUCTION AND USE OF MATERIAL**

No material produced in whole or part under this contract shall be subject to copyright in the United States or in any other country. The State shall have unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data, or other materials prepared under this contract; provided, however, that the State agrees not to use any design or engineering plans prepared by the Vendor for anything other than their intended purpose under this Contract. The Vendor shall have the right to publish any and all scientific findings. Appropriate acknowledgment and credit for the State's support shall be given in the publication.

#### **56. RIGHTS AND OBLIGATIONS**

The rights and obligations of each party to this agreement shall not be effective, and no party shall be bound by the terms of this agreement, unless and until a valid executed purchase order has been approved by the Secretary of Finance, and all procedures of the Department of Finance have been complied with. A separate purchase order shall be issued for every project or order.

#### **57. ASSIGNMENT OF ANTITRUST CLAIMS**

As consideration for the award and execution of this contract by the State, the Vendor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

#### **58. TESTING AND INSPECTION**

The State of Delaware reserves the right to conduct any test or inspection it may deem necessary to insure equipment, materials and services conform to contract requirements.

#### **59. COVENANT AGAINST CONTINGENT FEES**

The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty, the State shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

#### **60. GRATUITIES**

- a. If it is found, after notice and hearing, by the State that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Vendor or any agent of the State with a view toward securing a contract, or securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performance of this contract, the State may, by written notice to the Vendor, terminate the right of the Vendor to proceed under this contract and/or may pursue such other rights and remedies provided by law or under this agreement; provided that

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the existence of the facts upon which the State makes such findings shall be in issue and may be reviewed in proceedings pursuant to the Remedies clause of this contract; and

- b. In the event this contract is terminated pursuant to subparagraph "a", the State shall be entitled (i) to pursue the same remedies against the Vendor, and (ii) to exemplary damages, as a penalty in addition to any other damages to which it may be entitled by law, in an amount which shall be not less than three, nor more than ten, times the costs incurred by the Vendor in providing any such gratuities to any such officer or employee. The amount of such exemplary damages shall be in the sole discretion of the State.

**61. AFFIRMATION**

The Vendor must affirm that within the past five (5) years the firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not currently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business.

**62. AUDIT ACCESS TO RECORDS**

The Vendor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Vendor agrees to preserve and make available to the State, upon request, such records for a period of five (5) years from the date services were rendered by the Vendor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Vendor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under the Contract. Upon notice given to the Vendor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Vendor's financial records will be borne by the Vendor. Reimbursement to the State for disallowances shall be drawn from the Vendor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

**63. IRS 1075 Publication (If Applicable)**

**a. Performance**

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

All work will be performed under the supervision of the contractor or the contractor's responsible employees.

The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

Any Federal tax returns or Federal tax return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance

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of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.

All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

No work involving returns and return information furnished under this contract will be subcontracted without prior written approval of the IRS.

The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

The contractor shall comply with agency incident response policies and procedures for reporting unauthorized disclosures of agency data.

**b. Criminal/Civil Sanctions**

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

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Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10 ) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

**c. Inspection**

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.

**64. REMEDIES**

Except as otherwise provided in this contract, all claims, counterclaims, disputes, and other matters in question between the State and the Vendor arising out of, or relating to, this contract, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

**65. SUBCONTRACTS**

Subcontracting is permitted under this RFP and contract. However, every subcontractor or reseller shall be identified in the Proposal (Subcontractor Form) and agreed to in writing by the State or as are specifically authorized in writing by the Agency during the performance of the contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of the State.

The Vendor(s) shall be responsible for compliance by the subcontractor with all terms, conditions and requirements of the RFP and with all local, State and Federal Laws. The Vendor shall be liable for any noncompliance by any subcontractor. Further, nothing contained herein or in any subcontractor

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agreement shall be construed as creating any contractual relationship between the subcontractor and the State.

## 66. AGENCY'S RESPONSIBILITIES

The Agency shall:

- a. Examine and review in detail all letters, reports, drawings and other documents presented by the Vendor to the Agency and render to the Vendor in writing, findings and decisions pertaining thereto within a reasonable time so as not to delay the services of Vendor.
- 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. [Corrective Action Report](#)

## 67. CONTRACT DOCUMENTS

The Definitions and General Provisions and any Special Instructions, Specifications, Request for Proposal, Proposal, Purchase Order, and Contract shall be a part of and constitute the entire Agreement entered into by the State of Delaware and any Vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter:

- Contract
- Request for Proposal
- Specifications or Scope of Work
- Definitions & General Provisions
- Proposal
- Purchase Order
- Special Instruction

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**68. ASSIGNMENT**

This contract shall not be assigned except by express prior written consent from the Agency.

**69. NOTICE**

Any notice to the State of Delaware required under the contract shall be sent by registered mail to:

**State of Delaware  
Government Support Services  
600A S. Bay Road  
Dover, DE 19901-4604**

**70. VENDOR EMERGENCY RESPONSE POINT OF CONTACT**

The awarded vendor(s) shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan or in the event of a local emergency or disaster where a state governmental entity requires the services of the vendor. Failure to provide this information could render the proposal as non-responsive.

In the event of a serious emergency, pandemic or disaster outside the control of the State, the State may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of the State, even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

**71. NO PRESS RELEASES OR PUBLIC DISCLOSURE**

The State of Delaware reserves the right to pre-approve any news or broadcast advertising releases concerning this solicitation, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract performance. Any such news or advertising releases pertaining to this solicitation or resulting contract shall require the prior express written permission of the State of Delaware.

The State will not prohibit or otherwise prevent the awarded vendor(s) from direct marketing to the State of Delaware agencies, departments, municipalities, and/or any other political subdivisions, however, the Vendor shall not use the State's seal or imply preference for the solution or goods provided.

**C. AWARD AND EXECUTION OF CONTRACT**

**1. CONSIDERATION OF PROPOSALS**

The right is reserved to waive technicalities, to reject any or all bids, or any portion thereof, to seek new proposals, to proceed to do the work otherwise, or to abandon the work, if in the judgment of the Agency or its agent, the best interest of the State will be promoted thereby.

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**2. MATERIAL GUARANTY**

Before any contract is awarded, the successful Vendor may be required to furnish a complete statement of the origin, composition, and manufacture of any or all of the material to be used in the contract together with such samples as may be requested for the purpose of testing.

**3. AWARD OF CONTRACT**

Within ninety (90) days from the date of opening proposals, the contract will be awarded, or the proposals rejected.

**4. EXECUTION OF CONTRACT**

The Vendor (s) to whom the award is made shall execute a formal contract within twenty (20) days after date of official notice of the award of the contract.

**5. WARRANTY**

The successful Vendor(s) shall be required to extend any policy guarantee usually offered to the general public, FEDERAL, STATE, COUNTY, or MUNICIPAL governments, on material in this contract against defective material, workmanship, and performance.

**6. THE CONTRACT(S)**

The contract(s) with the successful Vendor(s) will be executed with Government Support Services acting for all participating governmental entities.

**7. INFORMATION REQUIREMENT**

The successful Vendor's shall be required to advise and provide Government Support Services of the gross costs associated with this contract.

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**VII. PUBLIC BID OPENING ANNOUNCEMENT**

**CONTRACT NO. GSS25728-FOOD\_PROD**

Food Products and Services (packaged and meats)

For anyone who wishes to witness the Bid opening they may do so:

- **In-Person**  
April 15, 2025, at 3:00pm local time  
Government Support Services  
600A South Bay Road  
Dover, DE 19901
- **Virtual**  
April 15, 2025, at 3:00pm local time  
Virtual Meeting Link: [Join the meeting now](#)  
Meeting Number: 260 929 033 647  
Password: s2Ny3ty6

The public proposal opening ensures the citizens of Delaware that contracts are being proposed fairly on a competitive basis and comply with Delaware procurement laws. The agency conducting the opening is required by law to publicly open the proposals at the time and place specified and the contract shall be awarded within ninety (90) days thereafter. The main purpose of the proposal opening is to reveal the name(s) of the Vendor(s), not to serve as a forum for determining the apparent low Vendors. The disclosure of additional information, including prices, shall be at the discretion of the contracting agency until such time that the responsiveness of each proposal has been determined.

After receipt of a fully executed contract(s), the Delaware public and all Vendors are invited to make an appointment with the agency in order to review pricing and other non-confidential information.

**NOTE: ONLY THE VENDOR'S NAME AND ADDRESS WILL BE READ AT THE OPENING**



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Sample Reports 2 – Tier 2 Reporting

**SAMPLE REPORT – FOR ILLUSTRATION PURPOSES ONLY**

State of Delaware																			
Subcontracting (2nd tier) Quarterly Report																			
Prime Name:							Report Start Date:												
Contract Name/Number							Report End Date:												
Contact Name:							Today's Date:												
Contact Phone:							*Minimum Required		Requested detail										
Vend or Name *	Vend or TaxID *	Contra ct Name/ Numbe r*	Vendo r Conta ct Name *	Vendo r Conta ct Phone *	Repo rt Start Date*	Repo rt End Date*	Amount Paid to Subcontract or*	Work Performed by Subcontrac tor UNSPSC	M/WBE Certifyi ng Agency	Veteran/Serv ice Disabled Veteran Certifying Agency	2nd tier Suppli er Name	2nd tier Suppli er Address	2nd tier Suppli er Phone Number	2nd tier Suppli er email	Descripti on of Work Performe d	2nd tier Suppli er Tax Id	Dat e Paid		

**Note:** A copy of the current 2<sup>nd</sup> Tier Usage Report will be sent by electronic mail to the Awarded Vendor

Completed reports shall be saved in an Excel format, and submitted to the following email address: [vendorusage@delaware.gov](mailto:vendorusage@delaware.gov)



**The Office of Supplier Diversity (OSD) has moved to the  
Division of Small Business (DSB)**

Supplier Diversity Certification Applications can be found here:  
[Certifications - Division of Small Business - State of Delaware](#)

Completed Applications can be emailed to: [OSD@Delaware.gov](mailto:OSD@Delaware.gov)

For more information, please send an email to OSD:  
[OSD@Delaware.gov](mailto:OSD@Delaware.gov) or call 302-577-8477

[Subscribe](#) to the OSD Mailing List

**New address for OSD:**

Carvel State Building  
820 N. French Street, 10<sup>th</sup> Floor  
Wilmington, DE 19801

Telephone: 302-577-8477 / Fax: 302-736-7915

Email: [OSD@Delaware.gov](mailto:OSD@Delaware.gov)

Web site: <https://business.delaware.gov/osd/>

**Dover address:**

**(Local applicants may drop off applications here)**

99 Kings Highway  
Dover, DE 19901  
Phone: 302-739-4271

Submission of a completed Office of Supplier Diversity (OSD) application is optional and does not influence the outcome of any award decision.

## Appendix A – SCOPE OF WORK AND TECHNICAL SPECIFICATIONS

### I. PURPOSE

Food delivered under this contract is used to feed school children as well as residents in State hospitals and prisons. It is our intent with this procurement to consider multiple vendors who can meet the food product needs of the many different food service settings throughout the state to include, schools, hospitals, long term care facilities and prisons.

It is important to be aware that delivery needs, warehousing capabilities and product requirements may vary greatly from setting to setting and vendors may be awarded and utilized according to their capabilities presented for the best possible competitive pricing and level of service as required.

### II. SERVICES

#### A. MENU AND RECIPE SUPPORT: (For DHSS/DSCYF locations only)

Vendor will provide menu, recipe, and nutrition data in both electronic and paper format. Recipes will be developed for 10, 50 and 100 servings. The nutrient analysis will be provided in an Excel spreadsheet format.

#### B. ONLINE ORDERING

##### Intent to Load Contract Award in State eMarketplace Solution

Upon award, this contract will be loaded into the State's eMarketplace solution as a catalog contract.

As a **catalog** contract, awarded vendor(s) are required to identify a point of contact for implementation. This contact will assist with catalog configuration, product catalog submission, testing, and go-live. Upon submission of the enablement ticket by Government Support Services, vendor(s) will receive an invitation to join the Delaware marketplace, which must be accepted within 14 days. The initial product catalog must be ready for review by Government Support Services within 14 days of invitation acceptance.

Vendors using CXML must be able to accept receipt of both ship to and bill to address details from the orders for proper delivery of products and invoices.

Those with punchout functionality must support "shop at the top" functionality, where searches are conducted on the main eMarketplace page. Orders must capture both ship-to and bill-to addresses.

Additionally, vendors must work with the eMarketplace provider to allow functionality within the test environment, ensuring full functionality is tested. This may require vendors to make their API available (if they have one) or participate in a site assessment to determine alternate search configurations. It may also necessitate submitting a CSV catalog file to supplement the punchout catalog. The API utilized within the test environment will be for production data retrieval.

As a **request for quote** contract, awarded vendor(s) will be required to identify a point of contact for implementation. Once enablement ticket has been submitted by Government Support Services, vendor(s) will automatically receive an invitation to join the Delaware marketplace. This invitation must be accepted within 14 days.

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As an **informational** contract, a contract profile will be developed by Government Support Services. This profile will enable end users to see search results that include these contracts. Additionally, these profiles will provide shoppers with details on how to place orders for the goods and services associated with the contract outside of eMarketplace.

The failure and/or inability to comply with the eMarketplace requirement(s) may subject the awarded vendor to corrective action, up to and possibly including termination of the contract.

### III. 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.

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.

#### A. APPENDIX B

Appendix B is an Excel spreadsheet to be completed electronically by the bidding vendor. The purpose of the workbook is to submit contract pricing for the “market basket” items the bidding vendor wishes to offer.

Appendix D- Online Bid Submission Portal Instructions, section F. BidTable Fields, provides greater detail on the completion of Appendix B.

Appendix B contains a column for Bulk Discount, Minimum Qty and Bulk Discount, price. These cells **MUST** be completed in each row that a vendor has selected “bid” in the Bid/No Bid Decision column; failure to complete these cells will invalidate the line item. **If vendors do not wish to offer an additional discount for “bulk” quantities, please enter “1” in the Bulk Discount, Minimum Qty column and re-enter the price from the Price column for that item.**

Only items included in Appendix B and B1 will be available to offer for sale under this contract.

#### B. APPENDIX B1

Appendix B1 is an Excel spreadsheet to be completed electronically by the bidding vendor. The purpose of the workbook is to submit contract pricing for additional related product offerings the bidding vendor wishes to offer.

Appendix B1 contains a column for Bulk Discount, Minimum Qty and Bulk Discount, price. These cells **MUST** be completed in each row that a vendor has selected “bid” in the Bid/No Bid Decision column; failure to complete these cells will invalidate the line item. **If vendors do not wish to offer an additional discount for “bulk” quantities, please enter “1” in the Bulk Discount, Minimum Qty column and re-enter the price from the Price column for that item.**

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Appendix B1 includes detailed instructions on what information needs to be presented in each column. Unless specified in the instruction tab, each column and cell highlighted in yellow **MUST** be completed.

Appendix D- Online Bid Submission Portal Instructions, section F. BidTable Fields, provides greater detail on the completion of Appendix B1.

**C. NUTRITIONAL DATA SHEETS**

The vendor must furnish nutritional data sheets for all “market basket” and “additional offering” items bid with your bid package.

Each nutritional data sheet must be labeled with:

Vendor Name  
Line Item #  
Manufacturer Product #

Product # on Nutritional data sheets must match the product # entered into Appendix B and B1 in order to be considered.

**D. DEVIATIONS TO SPECIFICATIONS**

All deviations to specifications must be noted, as an exception. Those vendors not noting deviations will be expected to deliver products as specified. Total order must be delivered on the specified dates; partial shipments will be considered cause for rejection of delivery of the item.

Any deviations found not noted on bidding documents may cause ordering Agency to purchase product open market and back charge the vendor any additional cost to the Agency.

**E. SAMPLES**

Government Support Services, reserves the right to require a Bidder to furnish samples of any item on which a vendor submits a bid. Upon request by the Government Support Services or an Agency, the Bidder must comply within 48 hours after the request for samples. The samples must be furnished free of charge, marked with item number and Bidder’s name, and delivered to the designated agency. The state agencies 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. 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.

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**IV. ORDERS**

**A. CUSTOMER SERVICE**

The Vendor(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).

**B. QUALITY ASSURANCE GUARANTEES**

The Vendor(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 Vendor(s). The Vendor(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.

All product is expected to be received in a fresh, unaltered state as it was shipped direct from the original manufacturer.

All product, unless otherwise specifically stated shall be fresh stock, latest model, design, or pack.

**C. EXPIRED PRODUCT**

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

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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.

**D. BACK ORDER**

It is the responsibility of the vendor to notify the ordering agency in writing immediately upon notification that an item is on back order. The vendor shall state the reason for the back order and the date the agency can expect delivery. Agencies shall be required to accept back orders within 48 hours of the original delivery date. Agencies shall reserve the right to accept back orders scheduled to take longer than 48 hours to deliver at their discretion and shall make their decision known to the awarded vendor.

If the time to deliver a back ordered item is longer than 48 hours after original delivery was scheduled, the agency shall retain the ability to cancel the back-order product delivery without cost or penalty. The agency is required to inform the awarded vendor of the cancellation in writing through facsimile transmission or email notification to vendor point of contact. Agencies shall retain copies of cancellations in their records.

If the back order is canceled under this back-order condition, the agency reserves the right to purchase from an alternative vendor, charging the increase in price and cost of handling, if any, to the original awarded vendor.

**E. 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.

**F. 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 (See J. Penalties).

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 and nutritional data information sheet to the agency for testing. 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

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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 vendor.

Unauthorized substitutions are also subject to the RETURNS section below.

#### **G. 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.

#### **H. DELIVERIES**

Locations will expect weekly order delivery.

Product is expected to be in stock and available for delivery within a five (5) business day lead time.

In case of unforeseen circumstances, one 'Emergency Need' delivery per month must be permitted. 'Emergency Need' deliveries are to be made within 72 hours of original order.

Deliveries are to be made in a climate-controlled truck for refrigerated or frozen foods.

Vendor delivery personnel must assist in unloading.

Total poundage per item delivered must be within a five percent (5%) tolerance of the specified amount ordered.

#### **I. DELIVERY LOCATIONS**

The location listing below shows current known delivery locations. This list is not exclusive of all locations that are eligible to order through the contract.

- James T. Vaughn Correctional Center, 1181 Paddock Road, Smyrna, DE 19977
- Delaware Psychiatric Center, 1901 N. DuPont Hwy, Main Building, New Castle, DE 19720
- Delaware Hospital for the Chronically Ill, 100 Sunnyside Road, Smyrna, DE 19977
- Stockley Center, 26351 Patriots Way, Georgetown, DE 19947
- Ferris School, 959 Centre Road, Wilmington, DE 19805
- Delaware Veterans Home, 100 Delaware Veterans Blvd, Milford, DE 19963

#### **J. PENALTIES**

If the vendor is found to be habitually non-compliant with the requirements of this solicitation/contract they may be subject to the following corrective actions:

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- A penalty of \$25.00 per missed notification to agency within 48-hours of product Back Order or Product availability will be enforced. It will be deducted from either current or future invoice.
- Quarterly rate increases for the next quarter will be denied for any three (3) actionable non-performance occurrences.
- Individual line item will be removed from vendor's award and offered to the next lowest, responsive bidder for the remaining contract term for any three (3) actionable non-performance occurrences per line.
- Contract Termination.

**V. PRODUCTS**

**A. PLASTIC CONTAINERS**

Please utilize plastic jars in place of glass jars, when possible.

**B. LABELING**

All items shall be packaged and labeled in accordance with accepted trade practices in sufficiently sturdy and clean containers. Labels are to contain nutritional information as well as product contents.

All exterior packaging shall be labeled with:

- Purchase Order Number
- Product name
- Product/Item code
- Brand/Packer's name
- USDA inspection stamp
- Unit/pack size
- Pack date
- Ingredients
- Nutritional values including Sodium and Fat content
- Safe handling instructions, to include storage and shelf life
- Thawing instructions, if applicable
- Cooking instructions, if applicable

All interior packaging with multi-package units that require interior labeling per product specifications, shall be labeled with:

- Product name
- Package weight

All meat products with grade specified must have:

- USDA Grade Stamp on item itself, i.e., Gooseneck bottom Round shall have a purple stamp reading "USDA Select."

**C. FOOD LAWS AND STANDARDS**

All products specified herein shall be processed, packaged and delivered in accordance with any and all applicable regulations including those of the Delaware Health Department, U.S. Department of

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Agriculture, and requirements of the Federal Food, Drug and Cosmetic Act and regulations promulgated there under.

**D. ORGANOLEPTIC REQUIREMENTS**

All meats for purpose of this contract shall be free from rancidity; free of fruity, sulfide-like, cardboardy, tallowy, oily, oxidized, metallic, chlorine and other off or foreign odors; free of foreign materials (e.g., glass, metal, paper, rubber); must show no evidence of mishandling or deterioration; and must have bright color with no evidence of dehydration or freezing and thawing. Any product that does not comply with the organoleptic requirements will be rejected for use under this contract.

**E. GRADES FOR CANNED AND FROZEN FRUITS**

All fruits must be of U.S. Grade A quality, they are the very best, with an excellent color and uniform size, weight, shape. They have the proper ripeness and few or no blemishes. This highest grade of fruits is the most flavorful and attractive. If product bid is determined to be inferior quality, the State will not award that item bid.

**F. SAMPLES OF PRODUCTS AFTER THE AWARD**

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.

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.

All samples submitted must have accompanying Manufacturer Product Specification Sheets inclusive of:

- Item name
- Brand name
- Product code
- Unit/pack size
- Ingredients
- Nutritional information including Sodium and Fat content

**G. DEPARTMENT OF EDUCATION**

**1. 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 to receive products under this contract.

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**2. CONTACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708)**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. Additional requirements include:

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The State of Delaware and its agencies, shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

**3. CLEAN AIR ACT (42 U.S.C. 7401-7671q.) AND FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387)**

as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or

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regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the federal grant recipient (Child Nutrition Programs) and understands and agrees that the federal grant recipient (Child Nutrition Program) will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office, the Federal awarding agency, or the USDA.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the State of Delaware and/or its agencies and understands and agrees that the State of Delaware and/or its agencies will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office, the Federal awarding agency, or the USDA.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000.

**4. BUY AMERICAN PROVISION**

As required by the Buy American provision, all products must be of domestic origin as required by 7 CFR Part 210.21(d).

The School District(s) participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products for Program meals. A “domestic commodity or product” is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR Part 210.21(d). Substantially means that at least 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved upon request. To be considered for the alternative or exception, the request must be submitted in writing to a designated official, a minimum of 3 day (s) in advance of delivery. The request must include the:

- (a) Alternative substitute(s) that are domestic and meet the required specifications:
  - (i) Price of the domestic food alternative substitute(s); and
  - (ii) Availability of the domestic alternative substitute(s) in relation to the quantity ordered
- (b) Reason for exception: limited/lack of availability or price (include price):
  - (i) Price of the domestic food product documenting that the domestic product is significantly higher; and
  - (ii) Price of the non-domestic product that meets the required specification of the domestic product.

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**5. BYRD ANTI LOBBYING AMENDMENT (31 U.S.C. 1352)**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency. If applicable, the contractor must sign and submit to the non-federal entity, a certification regarding lobbying activities.

**6. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)**

(1) This contract is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 CFR § 180.995) or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).

(2) The contractor must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the federal grant recipient (Child Nutrition Programs). If it is later determined that the contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to the federal grant recipient (Child Nutrition Programs), the federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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**APPENDIX B – PRICING**

Appendix B is a separate file found on [mymarketplace.delaware.gov](http://mymarketplace.delaware.gov) and <https://gss.bonfirehub.com/>. Appendix B is an excel workbook for the submission of vendor pricing and product details for Market Basket items. Appendix B must be submitted through the [online bid submission portal](#) using the provided format.

**APPENDIX B1 – ADDITIONAL PRODUCT OFFERING PRICING (OPTIONAL)**

Appendix B1 is a separate file found on [mymarketplace.delaware.gov](http://mymarketplace.delaware.gov) and <https://gss.bonfirehub.com/>. Appendix B1 is an excel workbook for the submission of vendor pricing and product details for additional product offerings. Appendix B1 must be submitted through the [online bid submission portal](#) using the provided format.

**APPENDIX C – VENDOR INFORMATION FORMS**

Appendix C is a separate file found on [mymarketplace.delaware.gov](http://mymarketplace.delaware.gov) and <https://gss.bonfirehub.com/>. This appendix contains forms that are to be completed and submitted through the [online bid submission portal](#).

**APPENDIX D – ONLINE BID SUBMISSION PORTAL INSTRUCTIONS**

Appendix D is a separate file found on [mymarketplace.delaware.gov](http://mymarketplace.delaware.gov) and <https://gss.bonfirehub.com/>. This appendix contains instructions on how to structure your solicitation response and submit through the [online bid submission portal](#).