

STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
OFFICE OF PROCUREMENT SERVICES
4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

MANDATORY USE CONTRACT FOR: FRUIT TURNOVERS, PROCESSED USING USDA COMMODITY FRUIT

CONTRACT No.: OT901112EFFECTIVE DATES: 08/15/11 to 06/30/13*

The Department of Administrative Services has accepted bids submitted in response to Invitation to Bid No. OT901112 that opened on 06/22/11. The evaluation of the bid response(s) has been completed. The bidder(s) listed herein have been determined to be the lowest responsive and responsible bidder(s) and have been awarded a contract for the items(s) listed. The respective bid response, including the [Terms and Conditions for Bidding, Standard Contract Terms and Conditions, and Supplemental Contract Terms and Conditions](#), special contract terms & conditions, any bid addenda, specifications, pricing schedules and any attachments incorporated by reference and accepted by DAS become a part of this Requirements Contract.

This Requirements Contract is effective beginning and ending on the dates noted above unless, prior to the expiration date, the Contract is renewed, terminated or cancelled in accordance with the Contract Terms and Conditions.

This Requirements Contract is available to THE DEPARTMENT OF EDUCATION, OFFICE FOR CHILD NUTRITION, 25 SOUTH FRONT STREET, THIRD FLOOR, COLUMBUS, OH 43215, as applicable.

Agencies are eligible to make purchases of the listed supplies and/or services in any amount and at any time as determined by the agency. The State makes no representation or guarantee that agencies will purchase the volume of supplies and/or services as advertised in the Invitation to Bid.

SPECIAL NOTE: State agencies may make purchases under this Requirements Contract up to \$2500.00 using the state of Ohio payment card. Any purchase that exceeds \$2500.00 will be made using the official state of Ohio purchase order (ADM-0523). Any non-state agency, institution of higher education or Cooperative Purchasing member will use forms applicable to their respective agency.

Questions regarding this and/or the Requirements Contract may be directed to:

Kellie Johnson
kellie.johnson@das.state.oh.us

This Requirements Contract and any Amendments thereto are available from the DAS Web site at the following address:

<http://www.ohio.gov/procure>

* Denotes change in effective dates with Amendment 1

** Denotes change in analyst with Amendment 1

Signed: _____
Robert Blair, Director Date

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SPECIAL TERMS AND CONDITIONS

AMENDMENTS TO CONTRACT TERMS AND CONDITIONS: The following Amendments to the Contract Terms and Conditions do hereby become a part hereof. In the event that an amendment conflicts with the Contract Terms and Conditions, the Amendment will prevail.

DELIVERY AND ACCEPTANCE: Purchase orders for any item(s) listed in a contract awarded pursuant to this bid will be placed directly with the successful contractor by the using agency. Product will be processed and delivered within one (1) month (per one [1] truckload of commodity) of receipt of commodity or as mutually agreed by the contractor and the Ohio Department of Education and, in accordance with Article S-2 of the Supplemental Contract Terms and Conditions and, in accordance with paragraphs S-8, S-9, and S-10 of the SUPPLEMENTAL CONTRACT TERMS AND CONDITIONS. Deliveries shall be made to the following Ohio sites. The delivery location will be noted on the purchase order issued by the participating agency. All shipments are to be one stop composite truckloads, with the exception of the final delivery, which may require a partial load to each site at no additional charge to the state. Unloading is by appointment only. The contractor shall contact the cold storage facilities (see warehouses and approximate percentage of total product deliveries below) to make an appointment for unloading prior to loading for shipment. The percentage of total product to be delivered to each location is also provided. The state reserves the right to add, delete, or change distribution centers and/or percentage of usage during the course of the contract. Acceptance (transfer of title) will occur upon the inspection and written confirmation by the ordering agency that the supplies delivered conform to the requirements set forth in the Contract. Unless otherwise provided in the Contract, acceptance shall be conclusive except in regards to latent defects, fraud, or such gross mistakes as amount to fraud.

<u>CITY</u>	<u>WAREHOUSE</u>	<u>PERCENTAGE OF PRODUCT DELIVERIES</u>
Dayton, Ohio	Terminal Cold Storage	50
Cincinnati, Ohio	SYSCO Foodservice	12
Cleveland, Ohio	SYSCO Foodservice	38

TRANSPORTATION CHARGES: Any item(s) ordered from a contract awarded pursuant to this bid shall be shipped F.O.B. destination, freight prepaid to the three (3) cold storage facilities in the state of Ohio listed above. Commodity will be delivered to the contractor by the United States Department of Agriculture (USDA), F.O.B. Destination.

PAYMENT: Shall be in accordance with Article III.B. of Contract Terms and Conditions with the following exception: Payments will be due on the 90th calendar day rather than the 30th calendar day. If payment terms are listed on the invoice of the Ohio Department of Education, it must be consistent with the terms of the contract.

DOCUMENTATION

1. The bidder should submit a narrative of their processing and fabrication procedures as part of the bid response for product to be produced under this contract. The processing and fabrication procedures are to describe the product and the exact method of processing.
2. Commodity Food Processing Agreement: The successful contractor shall submit an approved National Processing Agreement or an Ohio Processing Agreement prior to the inception date of any ensuing contract. The processing agreement will be provided by the Department of Education, Office for Child Nutrition and is the authority to process USDA commodity foods and adherence to its contents is mandatory. Failure to complete and return this document prior to inception date of any ensuing contract may result in immediate cancellation from contract.

Attachment A to the bid, which is Page 11 of the processing agreement is 'Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions' (Form AD-10-48 [11/97]). This page of the agreement only should be submitted as part of the bid response.

Processor shall furnish to Department of Education a surety bond obtained only from a surety company listed in the U.S. Department of Treasury Circular 570, "Surety Companies Acceptable on Federal Bonds", an irrevocable letter of credit, or an escrow account. Such bond, letter of credit, or escrow account shall be made payable to the Department of Education. The bond shall guarantee that the processor shall faithfully account for, return, or pay for all of the Commodity Food received or carried forward, in accordance with the processing agreement.

Inventory protection is required by the Department of Education prior to the delivery of commodity food to the processor. The minimum amount of the bond, letter or credit or escrow account, shall be determined by: value of the commodity food on order minus anticipated usage rate during the processing Agreement period. The bond shall remain in effect until all commodity food is properly accounted for, paid for or returned in accordance with the processing agreement. Liability for loss is provided in Article 18 of the processing agreement.

3. Quality Control/Total Quality Control: Prior to contract inception, the contractor shall submit to the ODE, OSHN a narrative of the quality control or total quality control program at the processing plant. The narrative of the quality control or total quality control program is not to be submitted as part of the bid response.
4. Nutritional Analysis: As part of the bid response, the bidder should submit a nutritional analysis for all finished products proposed to be processed for the Department of Education, Office for Child Nutrition (OCN).

Documentation listed above that is designated to be submitted with the bid response may also be requested during bid evaluation. Documents may be requested during evaluation and a deadline of seven (7) calendar days provided for submission. Failure to provide documents requested by the deadline provided will deem the bid not responsive.

PRODUCT SAMPLES: A sample of the cherry turnovers offered is required. A sample shall consist of one (1) case of product. Samples shall bear required labeling and markings. Each sample shall be identified as to content, processor, bid number, and bidder's company name and shall be submitted prior to 2:00 pm on Wednesday, June 22, 2011 to the address shown below:

Office for Child Nutrition
c/o Terminal Cold Storage
20-60 Eaker Road
Dayton, Ohio 45402
Telephone: (937) 223-3138 ext. 10
Attn: Cindy Watkins/Oji Ohajuruka

One-half (1/2) case of product shall be used for sample evaluation and the other one-half (1/2) case of product shall be used to verify actual processed product received during the term of any ensuing contract. Evaluation of samples may include, but is not limited to appearance, color, aroma, flavor (taste), and texture. The samples may be analytically tested. Samples will not be returned. Failure to submit sample as specified will deem the bid not responsive.

EVALUATION: Bids will be evaluated in accordance with Article I-17 of the "Instructions, Terms and Conditions for Bidding". In addition, the bid will be evaluated according to the fee per pound for processing the specified finished product. There will be a taste test of the samples submitted to determine acceptability. There will be, at a minimum, a ten (10) member panel composed of members of the OCN staff and members of the Ohio Commodity Advisory Board and/or students in Ohio. Samples will be evaluated for taste, texture, eye appeal, aroma, and color. If product is deemed unacceptable as a result of the taste test, no further consideration for award shall be given. If the product sample submitted for the taste test exceeds the specifications, as stated in the bid and is presented as being the end product for the entire contract, then the sample shall be the standard for the entire contract with anticipated yields as projected and costs as stated.

CONTRACT AWARD: The contract will be awarded to the lowest responsive and responsible bidder meeting all bid specifications and requirements by low lot total. Lot total will be determined by multiplying the unit price for each item by the minimum yield per truckload of commodity for that item and then multiplying that figure by the number of truckloads of commodity to be processed annually to obtain a line item extended price. The line item extension prices will be added together to obtain a lot total. Failure to bid all items may result in the bidder being deemed not responsive. For evaluation purposes, it is being estimated that 163,200 pounds of commodity cherries; 118,800 pounds of commodity apples; and 118,800 pounds of commodity peaches will be processed annually.

FIRM FIXED-PRICE CONTRACT: The contract is a Firm Fixed-Price Contract. The Contractor(s) is required to provide to the using agency supplies or services at the listed price(s) for the duration of the contract, and any extensions thereto.

USAGE REPORTS: Every six (6) months the contractor must submit a report (written or on disk) indicating sales generated by this contract. The report shall list usage by customer, by line item, showing the quantities/dollars generated by this contract. The report shall be forwarded to the Office of Procurement Services, 4200 Surface Road, Columbus, OH 43228-1395, Attn: Jennifer Dammeyer, CPPB.

FDA REGISTRATION: Pursuant to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) all domestic and foreign facilities that manufacture, process, pack or hold food for human or animal consumption in the United States are required to be registered with the Food & Drug Administration (FDA) no later than December 12, 2003. This registration includes owners, operators, or agents in charge of domestic or foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States. All domestic facilities, whether or not food enters interstate commerce, are required to register. Facilities may complete their registration with the FDA online at: <http://www.cfsan.fda.gov/~furls/ovffreg.html>

When applicable, by signature affixed on Page 1, the bidder, or their supplier, certifies that they comply with this requirement.

DISCLOSURE OF SUBCONTRACTORS / JOINT VENTURES (See Standard Contract Terms and Conditions, Section (roman numeral) V. General Provisions:, Paragraph Q.):

List names of subcontractors who will be performing work under the Contract.

None _____

By the signature affixed to Page 1 of this Bid, Bidder hereby certifies that the above information is true and accurate. The Bidder agrees that no changes will be made to this list of subcontractors or locations where work will be performed or data will be stored without prior written approval of DAS. Any attempt by the Bidder/Contractor to change or otherwise alter subcontractors or locations where work will be performed or locations where data will be stored, without prior written approval of DAS, will be deemed as a default. If a default should occur, DAS will seek all legal remedies as set forth in the Terms and Conditions which may include immediate cancellation of the Contract. Failure to complete this page may deem your bid not responsive.

Bid Automobile Liability Checklist:

Contractor will indicate, by checking the appropriate box(es) below, which mode of transportation will apply to this contract.

- Bidder/Broker ("The Contractor") or their Sub Contractor will make delivery or be performing services using a vehicle that is owned, leased or rented. Provide Certificate of Insurance documenting automobile liability with a Combined Single Limit of \$500,000.00.
- Goods/Services will be delivered via common carrier.
- No employee or representative of the contractor will have cause to be on state property to make deliveries or to perform services.

Notice on the Use of Social Security Numbers as Federal Tax Identification Numbers

The Department of Administrative Services (Department) requires vendors and contractors wishing to do business with the State to provide their Federal Taxpayer Identification Number to the Department. The Department does this so that it can perform statutorily required "responsibility" analyses on those vendors and contractors doing business with the State and, under limited circumstances, for tax reporting purposes. If you are a vendor or contractor using your Social Security Number as your Federal Taxpayer Identification Number, please be aware that the information you submit is a public record, and the Department may be compelled by Ohio law to release Federal Taxpayer Identification Numbers as a public record. If you do not want to have your Social Security Number potentially disclosed as a Federal Taxpayer Identification Number, the Department encourages you to use a separate Employer Identification Number (EIN) obtained from the United States Internal Revenue Service's to serve as your Federal Taxpayer Identification Number.

SPECIFICATION

I. SCOPE AND CLASSIFICATION

A. Scope

The purpose of this bid is to obtain a contractor to process United States Department of Agriculture (USDA) commodity fruit into individually wrapped fruit turnovers. It is anticipated that approximately 240,000 pounds of commodity cherries will be made available to the state of Ohio annually. It is possible that commodity apples and/or commodity peaches may also be made available to the Ohio Department of Education, Office for Child Nutrition. Should both apples and peaches become available, it is anticipated that 150,000 pounds of each commodity fruit would be made available to the state of Ohio annually. Should only one of the two fruits (apples or peaches) become available, it is anticipated that approximately 300,000 pounds may be made available to the state of Ohio annually. Quantities specified are based on anticipated product availability from the USDA and it is anticipated that these same amounts may be processed annually under any ensuing contract; however, the state of Ohio is not obligated to request processing in these or any other quantities. USDA commodity fruit will be delivered to the contractor and the contractor shall process commodity and deliver finished product to the cold storage facilities specified herein. Bid price (price per pound of finished product) shall include all transportation charges for delivery of finished product to the cold storage facilities and any other costs associated with providing the specified products. Any contract issued pursuant to this bid shall be for three (3) years, from August 1, 2011 through July 31, 2014.

B. Classification

1. Fruit Turnovers, Whole Grain Crust, Glazed, Individually Wrapped, Frozen
 - a. Cherry
 - b. Apple
 - c. Peach

II. REQUIREMENTS

A. Commodity Description

1. USDA commodity cherries, frozen
2. USDA commodity apples, sliced, frozen
3. USDA commodity peaches, sliced, frozen
 - a. Packaged in 20 pound containers

B. End Product Description

1. Fruit Turnovers, Whole Grain Crust, Glazed, Individually Wrapped, Frozen: Cherry, Apple, and Peach

a. Formulation

1. Cherry Turnover

<u>Ingredient</u>	<u>Percentage</u>
USDA commodity cherries, frozen	19.0% minimum
Wheat Flour and other ingredients	81.0% maximum

2. Apple Turnover

<u>Ingredient</u>	<u>Percentage</u>
USDA commodity apples, sliced, frozen	22.0% minimum
Wheat Flour and other ingredients	78.0% maximum

SPECIFICATION (Cont'd.)

3. Peach Turnover

<u>Ingredient</u>	<u>Percentage</u>
USDA commodity peaches, sliced, frozen	23.0% minimum
Wheat Flour and other ingredients	77.0% maximum

- b. Commodity fruit, juice, sugar, preservatives, gums, starch, water and food coloring shall be placed in a steam-jacketed kettle and mixed to create a filling. The filling shall be cooked and held at 185° F. The filling shall be cooled in the kettle and additional starch and natural flavors added.
 - c. A slurry shall be prepared with ice water, salt, preservatives and sugars and mixed until uniform.
 - d. Whole grain flour, white flour, gums, preservatives and fat replacers shall be combined in a mixer and dry mixed for a few minutes. The turnover dough shall be made with 51% whole grain flour and soft white whole wheat flour.
 - e. Shortening, oil and the slurry shall be added to the dry flour mixture and mixed until dough forms.
 - f. The dough shall be extruded and sheeted flat.
 - g. The filling shall be pumped onto the dough turnover.
 - h. A die shall be used to form the 2.5"x 5" dough turnover and shall have a crimped edge.
 - i. The turnover shall be fried in vegetable oil and cooled.
 - j. Once cooled, the turnover shall be glazed, individually wrapped, and boxed.
 - k. The turnovers shall contain artificial colors or flavors.
 - l. Each turnover shall have a minimum weight of 3.75 ounces.
 - m. Each turnover shall yield 1/2 cup fruit serving and two bread servings in the National School Lunch Program (NSLP).
 - n. Each turnover shall contain no more than 9 grams of fat, 29% of the calories from fat and less than 25% sugar by weight.
- C. Preparation and Processing: All preparation and processing described herein shall occur subsequent to the date of award. The product shall be produced, processed, and stored in plants regularly operating under the supervision of the contractor.
- D. Packaging
- 1. Turnovers shall be individually wrapped in colorful glassine film which is ovenable and microwave safe. Product shall be packed 80 to 100 individually wrapped turnovers per case. No alternate case packs are acceptable. Bidder shall indicate case pack offered on the bid pricing page. Case weights shall be uniform.
 - 2. All packaging and packing materials must be new and clean and must not impart objectionable odors or flavors to the product.
 - 3. Staples shall not be used as a final case closure. Case closure shall be accomplished by taping, strapping or gluing. All boxes within the delivery unit of an individual product shall be of a uniform size and weight.
 - 4. Boxes shall be one piece, die-cut, regular slotted container (RSC) design. Fiberboard shall be testing not less than 200 lbs. No holes in boxes are permitted.

SPECIFICATION (Cont'd.)

E. Labeling

1. The contribution value of a serving to the NSLP pattern, the nutrition analysis, and the reheating and serving size information shall be printed on the back of each fruit turnover wrapper or may be included as an insert in each master case.
2. The shipping carton shall bear the ingredient list in order of predominance, the name of the product and the date of pack.
3. Printed, stamped and stenciled labeling and marking information on shipping containers must be water-fast, non-smearing, of a contrasting color, clear and readable.
4. Label shall meet the requirements of the Food Allergy & Consumer Protection Act (FALCPA) of 2004. Any of the eight (8) protein allergens shall be identified if used in the production process. It may be necessary to identify other allergens than the eight (8) protein allergens, as required by the Act.
5. Cooking/serving instructions shall be included with each case and a copy sent to the Ohio Department of Education, Office for Child Nutrition prior to initial shipment of product.
6. Upon award of the contract to a successful bidder, the processor shall furnish the Ohio Department of Education a "Fact Sheet" and "Ingredient Statement" of the product for display at the Ohio Department of Education website (see the examples in Exhibit A and Exhibit B). The documents shall include the Ohio Department of Education assigned commodity codes.

F. Palletizing

Shipments shall be palletized according to standard industry practices and shall conform to the following:

1. Manufacturers standard 40" x 48" partial 4-way shipping pallets are acceptable.
2. Maximum Height: 7'6" (including pallet)
3. Maximum Weight: 3,500 lbs. (including pallet)
4. Pallets are to be securely banded or shrink wrapped.
5. The cost of palletizing must be included in the unit price.
6. Pallet exchange is satisfactory with all warehouses.

G. General Information

1. The delivered product shall comply with all applicable federal and state mandatory requirements and regulations relating to the preparation, packaging, labeling, storage, distribution, and sales of the product within the commercial marketplace.
2. All commodities and services to be furnished hereunder shall conform to the specifications as noted herein. All product shall be processed in the United States.
3. If laboratory analysis is done in accordance with Article S-15 of Supplemental Contract Terms and Conditions, the laboratory analysis will be predicated on the formulation specified herein. Costs incurred for laboratory analysis shall be borne by the OCN except in instances of demonstrated nonconformance to formulation and specifications.
4. Guaranty: By the signature affixed on page 1 of this bid, contractor guarantees that, as of the date of delivery to the State or the State's agent, the product(s) offered is (are) not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act ("the ACT"), and not an article which may not, under the provisions of section 404, 505, or 512 of the Act, be introduced into interstate commerce.

SPECIFICATION (Cont'd.)

III. CONTRACTOR'S RESPONSIBILITIES

In addition to those responsibilities specified above, the contractor shall be responsible for the following:

A. Receiving Information:

The contractor shall be responsible for:

1. Completing and filing with the OCN overage, shortage, and damage reports.
2. Obtaining signed receipts (original bills of lading) from carriers of commodity foods.
3. Mailing all delivery receipts and receiving reports to the OCN no later than the following business day after receipt.

B. Prime Contractor Responsibilities: The prime contractor will be required to assume responsibility for all contractual activities offered in this agreement, whether or not that contractor performs them. Further, the state will consider the prime contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated contract. If any part of the work is to be subcontracted, the contractor shall provide a list of subcontractors, including firm name and address, contact person, complete description of work to be subcontracted and descriptive information concerning subcontractor's organizational abilities. The state reserves the right to approve subcontractors and to require the primary contractor to replace subcontractors found to be unacceptable. The contractor is totally responsible for adherence by the subcontractor to all provisions of the contract. Any changes in subcontractors must be approved by the state, in writing, prior to such change.

C. Accounting Records: The contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and other procedures specified by the state of Ohio. Financial and accounting records shall be made available upon request to the state of Ohio, its designees or the Ohio Auditor of State at any time during the contract period and any extension thereof for three (3) years from expiration date and final payment on the contract or extension thereof.

PRICE SCHEDULE:

Bidders shall not insert a unit price more than 3 digits after the decimal point. Digit(s) beyond 3, after the decimal point, shall be dropped by Procurement Services and not used in the evaluation and any subsequent award.

ITEM ID	END PRODUCT (PROCESSED AS SPECIFIED)	COMMODITY WEIGHT PER TL	MINIMUM YIELD * OF END PRODUCT PER TL OF COMMODITY*	FEE FOR PROCESSING (PER LB. OF END PRODUCT)
4597	Fruit Turnover, Cherry	38,400 lbs.	166,650 lbs.	\$1.232 per lb.
8575	Fruit Turnover, Apple	39,600 lbs.	177,469 lbs.	\$1.232 per lb.
4598	Fruit Turnover, Peach	38,000 lbs.	164,925 lbs.	\$1.232 per lb.

Case pack offered: 80 / 3.75 oz turnovers per case

** Product(s) packaging contains recycled material: Yes No; If yes, _____%

Please complete all blanks above.

* Minimum yield under this contract is the pounds of end product returned to the state of Ohio on weight of commodity product.

** Shall not be included in evaluation

CONTRACTOR INDEX

CONTRACTOR, TERMS AND DELIVERY:

0000088280
Horizon Snack Foods, Inc.
d.b.a. Cutie Pie
7066 Las Positas Road, Suite A
Livermore, CA 94550

Remit To:

75 Remittance Drive, Suite 6432
Chicago, IL 60675-6432

CONTRACTOR'S CONTACT: Mr. Curt Connor

CONTRACTOR'S IT/MIS CONTACT: Mr. Darren Watson

BID/CONTRACT NO.: OT901112-1 (06/30/2013*)

TERMS: Net 90 Days

DELIVERY: As specified on page 3, paragraph 'DELIVERY AND ACCEPTANCE

Toll Free: (800) 327-6919
Telephone: (925) 215-4232
Fax: (925) 215-4233
Email: cconnor@horizonsnackfoods.com

Telephone: (925) 215-4225

* Denotes change in effective dates with Amendment 1

SUMMARY OF AMENDMENTS

Amendment Number	Revision Date	Description
1	03/11/2013	This amendment is issued to change the effective date of the contract to expire on June 30, 2013. Specifications have significantly changed. This contract may be bid at a future date. Updated contract analyst.