

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.: OT900814

EFFECTIVE DATES: 07/01/13 to 06/30/16

The Department of Administrative Services has accepted bids submitted in response to Invitation to Bid No. OT900814 that opened on 04/19/13. 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 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.ohio.gov

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

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

Signed: _____
Robert Blair, Director Date

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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 of receipt of the commodity order or as mutually agreed by the contractor and the Department of Education and, in accordance with Article S-2, 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 in accordance with the quantities ordered. Quantities ordered may be to the nearest whole pallet, or as mutually agreed by the contractor and the Department of Education. Unloading of ordered product shall be by appointment only. The contractor shall contact the cold storage facilities 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 term 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 as regards to latent defects, fraud, or such gross mistakes as amount to fraud.

| <u>CITY</u> | <u>WAREHOUSE</u> | <u>OF PRODUCT</u> |
|------------------|-----------------------|-------------------|
| Cincinnati, Ohio | SYSCO Food Storage | 25% |
| Cleveland, Ohio | SYSCO Foodservice | 25% |
| Columbus, Ohio | A T Xpress | 25% |
| Dayton, Ohio | Terminal Cold Storage | 25% |

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 four (4) cold storage facilities in the state of Ohio listed above. Due to expiration of some existing warehouse contracts, it is possible that the delivery destinations as well as the percentage of finished product to the destinations above may change during the contract period. Any such changes should not attract additional charges to ODE. Bidders may take this into consideration in their bid. Commodity will be delivered to the contractor by the 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 to the Ohio Department of Education, it must be consistent with the terms in the contract.

DOCUMENTATION:

1. The bidder should submit a narrative of their processing and fabrication procedures as part of the bid response for all products 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 complete and sign 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 10 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 of 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: The contractor shall submit with the completed Commodity Food Processing Agreement 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.

PRODUCT SAMPLES: A sample of product offered is required. A sample shall consist of two (2) cases of each end product specified. Product samples shall meet all requirements as specified herein and shall bear required labeling and markings. samples shall be certified by the processor's quality control department as meeting the specifications contained herein. Certification shall be in form of a letter on company letterhead, signed by authorized company representative. Reheating and preparation instructions shall be included with the samples.

Samples must be submitted prior to 2:00 pm on Friday April 19, 2013 to the address shown below. Failure to submit samples as specified will result in the bidder being deemed as not responsive.

Ohio Department of Education, Office for Child Nutrition
c/o Interstate Cold Storage
2400 Setterlin Drive
Columbus, Ohio 43228
Telephone: (614) 449-1801 ext. 102
Attn: Ron Ciccarelli/Oji Ohajuruka

One case of each product shall be used for bid evaluation and the other case of each product shall be used to verify actual processed product received during the contract period. Samples will be evaluated on appearance, color, aroma, flavor (taste), and texture. The sample may be analytically tested. Samples will not be returned.

In addition to Whole grain apple and cherry pockets, a processor may submit samples and offer bids for other Whole grain fruit pockets (for example peach, strawberry, etc.). All such fruit fillings must also meet ½ cup fruit and 2 ounce whole grain equivalent requirement. The product must also be priced no higher than the apple and cherry pockets. An award for such fruit pocket shall be contingent upon the availability of the commodity fruit from USDA, the demand for the item as determined by the ODE commodity staff and a satisfactory taste-test evaluation of the product.

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 Office for Child Nutrition staff, members of the Ohio Commodity Advisory Board and/or students from Ohio schools. Samples will be evaluated for taste, texture, eye appeal, flavor 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 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 bid evaluation purposes, the following minimum yield of end products per truckload of commodity will be used: 166,650 lbs. for cherry turnover, 177,469 lbs. for apple turnover and 164,925 lbs. for peach turnover. Bidders must provide required minimum yield information in page 8 whether they are the same as these numbers or not.

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 State Purchasing, 4200 Surface Road, Columbus, Ohio 43228-1395, Attn: Kellie Johnson

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 163,200 pounds of commodity cherries, 118,000 pounds of commodity apples and 118,000 pounds of commodity peaches will 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 and any other charges associated with providing the specified product. The term of any contract awarded pursuant to this bid shall be for three (3) years, from July 1, 2013 through June 30, 2016.

B. Classification

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

II. REQUIREMENTS

A. Commodity Description

1. USDA commodity cherries, frozen, USDA Material Code 100235 or 100237
2. USDA commodity apples, sliced, frozen, USDA Material Code 100206
3. USDA commodity peaches, sliced, frozen, USDA Material Code 100239
4.
 - a. Packaged in 20 pound containers, or other packaging

B. End Product Description

1. Fruit Turnovers, Whole Grain Crust, Glazed, Individually Wrapped, Frozen: Apple, Cherry, and/or other fruit

a. Formulations

1. Cherry Turnover

| <u>Ingredient</u> | <u>Percentage</u> |
|--|-------------------|
| USDA commodity cherries, frozen | 19.0% minimum |
| Fructose, Whole grain-rich Flour and other ingredients | 81.0% maximum |

2. Apple Turnover

| <u>Ingredient</u> | <u>Percentage</u> |
|--|-------------------|
| USDA commodity apples, sliced, frozen | 22.0% minimum |
| Fructose, Whole grain-rich 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 |
| Fructose, Whole grain-rich Flour and other ingredients | 77.0% maximum |

- b. The turnovers may contain artificial colors or flavors.
 - c. Each turnover shall be individually wrapped and have a minimum weight of 3.75-ounce portion size.
 - d. Each turnover must meet 1/2 cup fruit serving and 2 ounce equivalence whole grains serving in the National School Lunch Program (NSLP).
 - e. Each turnover shall have a light glaze and contain zero trans-fat.
 - f. Product shall have a shelf life of at least nine (9) months if held frozen at 0 degrees F. or below.
- 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. Alternative case packs may be 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.
- E. Labeling
- 1. The contribution value of a serving to the National School Lunch Program (NSLP) pattern, the nutritional analysis, and the reheating and serving size information shall be printed on the outside of the master case or may be included as an insert in each master case.
 - 2. Product must have an approved CN label.
 - 3. Each case shall bear the USDA contract compliance stamp and certificate number.
 - 4. The shipping carton shall contain ingredient statement, name of product, and date of pack.
 - 5. Printed, stamped, and stenciled labeling and marking information on shipping containers must be water-fast, non-smearing, of a contrasting color, clear and readable.
 - 6. Labeling of products shall be in compliance with all guidelines as specified by the U. S. Food and Drug Administration regulations 21 CFR 101 and 9 CFR 317 Subpart B; The Food Allergen Labeling and Consumer

SPECIFICATION (Cont'd.)

Protection Act of 2004 (Public Law 108-282, Title II); and the State of Ohio Rule 3717-1-03.5(C), (the administrative rule adopted under Ohio Revised Code 3717.53).

Labeling of products containing the major food allergens - milk, egg, fish (e.g., bass, flounder, or cod), Crustacean shellfish (e.g., crab, lobster, or shrimp), tree nuts (e.g., almonds, pecans, or walnuts), wheat, peanuts, and soybeans - shall be in compliance with the Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282, Title II) and the State of Ohio Rule 3717-1-03.5(C), (the administrative rule adopted under Ohio Revised Code 3717.53).

E. Palletizing

Shipments may be requested as palletized deliveries; and if requested, 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: 3500 pounds (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.

F. 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 products shall be processed in the United States.
3. If laboratory analysis is done in accordance with Article S-15 of the Supplement Contract Terms and Conditions, the laboratory analysis will be predicated upon the formulation specified herein.
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.

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 obtaining signed receipts (original bills of lading) from carriers of donated foods.
- 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 change 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, and 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.

ALL BLANKS BELOW MUST BE COMPLETED

| ITEM NUMBER | 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) |
|-------------|------------------------------------|-------------------------|--|---|
| 25093 | Fruit Turnover, Cherry | 38,400 lbs. | 166,650 lbs. | \$ 1.66 per lb. |
| 25094 | Fruit Turnover, Apple | 39,600 lbs. | 177,469 lbs. | \$ 1.367 per lb. |
| | Fruit Turnover, Peach | 38,000 lbs. | NO AWARD | NO AWARD |

1. Cherry Turnover \$32.80cs/ \$0.41 each

Case pack offered: 80 turnovers per case

Case Weight Offered (lbs.) 19.75

Number of Servings Per Case 80

2. Apple Turnover \$26.98cs/ \$0.337 each

Case pack offered: 80 turnovers per case

Case Weight Offered (lbs.) 19.75

Number of Servings Per Case 80

3. Peach Turnover _____ N/A _____

Case pack offered: _____ turnovers per case

Case Weight Offered (lbs.) _____

Number of Servings Per Case _____

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

* 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:

000088280
Horizon Snack Foods, Inc.
d.b.a. Cutie Pie
7066 Las Positas Road, Suite G
Livermore, CA 94550

BID/CONTRACT NO.: OT900814 (06/30/16)

TERMS: Net 90 Days

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

CONTRACTOR'S CONTACT: Donna Kimbrell
Lisa Swanson

Toll Free: (800) 229-2552
Telephone: (925) 373-7700
Fax: (925) 373-8303
Email: dkimbrell@cutiepie.com
lswanson@horizonsnackfoodgroup.com