

OFFICE OF CHIEF OPERATIONS OFFICER
Summary of State Board of Education Agenda Items
June 21, 2018

OFFICE OF CHILD NUTRITION

04.B. Action: Renew competitive contracts to various produce distributors to supply and deliver produce to local organizations in the State Food Purchasing Program (Five Regions in the State) [Goal 1 – MBE Strategic Plan]

Awarded Vendor: Gulf Coast Produce Distributors, Inc.
Biloxi, Mississippi

Merchants Foodservice
Hattiesburg, Mississippi

MS Fruit & Vegetable Co.
Grenada, Mississippi

Scope of Project: Under the State Food Purchasing Program Miss. Code Ann. § 37-11-7(3) and State Board Policy Part 3, Chapter, 17, Rule 17.8 – Purchasing System, Food Purchasing System for Public Schools, sealed, competitive bids were solicited for distribution of produce on behalf of participating organizations. The contracts were awarded to the lowest and most responsive bidders. The contracts were originally issued August 1, 2017, for one year with an optional one-year renewal. Contractors will deliver the produce to participants of the Child Nutrition programs in five regions of the state. Payment will be made directly to the contracted distributors by the local organizations.

Scope of Contract:

- Term of Contract: August 1, 2017– July 31, 2019
- Total Amount to be Awarded: No MDE funds will be expended
- Method of Award: Invitation for Bids

Funding Source: N/A

This item references Goal 1 of the *Mississippi Board of Education 2016-2020 Strategic Plan*.

Recommendation: Approval

Back-up material attached

SECTION 1

MISSISSIPPI DEPARTMENT OF EDUCATION
OFFICE OF CHILD NUTRITION

INVITATION TO BID

Produce & Distribution
Commodity or Equipment

Bid File: 17-2510-PR601

April 25, 2017
Date Invitation Mailed

Bid Opening Time: 11:00 a.m.

May 19, 2017
Bid Opening Date

Office of Child Nutrition
500 Greymont Avenue, Suite F
Jackson MS 39202

BID OPENING PLACE

The undersigned offers and agrees that should this bid be accepted, they will sell and deliver to the school districts and other qualified entities in compliance with the conditions set forth in this document the produce products specified in Section V of this Invitation. The person signing this document shall be an employee of the bidding company and shall have the authority to obligate the company to comply with the terms set forth herein.

Return Original, Signed Bid Document to:

Mississippi Department of Education
Office of Child Nutrition
P. O. Box 771, Jackson, MS 39205-0771 **(Mailing Address)**
500 Greymont, Suite F, Jackson, MS 39202 **(Physical Location)**

Bidder's Firm Name _____ Address _____

City _____ State _____ Zip _____ Area Code _____ Telephone _____

AUTHORIZED SIGNATURE _____

Contract Administrator:

Name _____ Title _____

Firm _____ Address _____

City _____ State _____ Zip _____ Area Code _____ Telephone _____

**RETURN THIS PAGE WITH BID FORM
STATEWIDE PURCHASING PROGRAM**

**Certification Regarding Debarment, Suspension, Ineligibility
and Voluntary Exclusion**

This certification is required by the regulations regarding suspension/debarment rules in 7 CFR Part 3017, Section 3017 Subpart C. The regulations were published in the November 26, 2003, Federal Register.

BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS

- (1) The prospective company certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) If the bidding company is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

Bid File Number

Name(s) and Title(s) of Authorized Representative(s)

Signature(s)

Date

Return this page signed and dated with bid packet

SECTION II

2.0 GENERAL CONDITIONS

- 2.0.1 Mississippi Department of Education, Office of Child Nutrition will accept on-line bids until 11:00 a.m. Friday, May 19, 2017, in the Office of Child Nutrition, 500 Greymont Building, Suite F, Jackson, MS. Instructions on on-line bidding have been demonstrated at the pre-bid conference conducted on April 13, 2017. Instructions are also included with this bid package. In addition to entering bids on line, bidders must print the completed Bid Solicitation and Bid Summary page and return them prior to bid opening at 11:00 a.m. Friday, May 19, 2017. Bids delivered after that time will be returned, unopened to the appropriate bidder **and on-line bids will not be considered.** Post marks or dating of documents will be given no consideration in case of late bids. If, however, a deliverer, UPS, Federal Express, US Air, etc. can provide documented proof as evidenced by the signature of a MDE Bureau of Child Nutrition employee that substantiates the claim the bid was delivered to the proper place prior to the time and date set for the bid opening and, through fault of MDE personnel, the bid did not get to the proper authority, the bid will be considered. The MDE reserves the right to reject any or all bids and to waive informalities.

An informality shall be defined as a requirement of the specifications that is needed for informational purposes only and failure on the part of a bidder to provide it would have no impact on the outcome of the bid. In such cases, the bidder failing to supply the information may be given a specified period of time to comply. If the bidder fails to comply in that time period, the bid will be rejected for reasons of non-compliance. No award will be made unless all required information is received by MDE.

2.0.2 Compliance:

Failure to meet the requirements of the specifications in any area not considered to be an informality will cause the bid to be non-responsive and the bid shall be rejected.

2.0.3 General Conditions:

The bid shall be offered, and the contract shall be entered into in accordance with the general conditions. However, should a conflict exist between the general conditions and the special conditions, the special condition shall take precedence. Further, it is to be understood that the Mississippi Department of Education reserves the right to waive any general or special condition if it is in the best interest of the State, so long as the waiver is not given so as to deliberately favor any single vendor and the waiver would have the same effect on all bidders.

2.0.4 Bidder Responsibility:

It shall be incumbent upon each bidder to understand the provisions of this bid document and, when necessary, obtain clarifications prior to the time and date set for the bid opening. Failure to obtain a clarification will be no excuse or justification for non-compliance with the provisions set forth herein.

2.0.5 Clarification:

If a clarification is required the request shall be made, in writing, to the MDE not later than seven (7) working days prior to the time and date set for the bid opening. The MDE will

respond to the request, by letter, or in the form of a written addendum if it is determined that all prospective bidders should have benefit of the clarification. No addendum will be issued within the five (5) working days prior to the date the bids are to be opened.

Bidders shall acknowledge receipt of any addendum to the solicitation by signing and returning the addendum with the bid, by identifying the addendum number and date in the space provided for this purpose on the bid form, or by letter. The acknowledgment must be received by the MDE with the bid packet.

Please note: No telephone request will be answered. Any non-compliant bid offered as a result of a verbal response to a telephone request will be rejected. Any protest based on such a rejection will not be heard!

2.0.6 Bid Acceptance:

MDE reserves the right to reject any or all bids, or any part of any or all bids, to waive any informality and unless otherwise specified by the bidder, to accept any item on the bid. If a bidder fails to stipulate otherwise, it is understood and agreed that MDE has ninety (90) days to accept.

2.0.7 Corrections:

Corrections may not be made on the Bid Information pages or the Bid Summary pages once bids have been printed. Information on the on-line bid pages will take precedence over any printed information submitted with the in the bid packet. Bidders should print the Bid Information pages and carefully review them prior to completing the Bid Solicitation process. Once the bid submission process has been completed the information will be the only information considered.

2.0.8 Bid Pricing

Each item will be priced separately in the MAPS system. Payment term discounts will not be considered. All items for each Region for which the bidder plans to submit a bid must be priced. The MAPS system will not accept a bid unless all items have pricing.

2.0.9 Brand Identification:

Brand identification is not applicable to this bid. Products will be identified by pack, size, and USDA Grade. Bidders must bid on the specific product cited in this Invitation to Bid. Bids offered on other grades and **packs** will not be considered. Refer to the "Blue Book" for details regarding raw products.

2.0.10 Liability:

Subsequent to the awarding of a contract the contractor will be liable for any expense, including legal fees, incurred by MDE, any school district or any other qualified entity as a result of violations of the contract terms by any contractor (See Section 3.1.11 Default).

2.0.11 Submission of Bid:

Bids shall be submitted in compliance with the following criteria:

Bids will be submitted both electronically and on paper.

- a. On-line bidding will be completed as instructed on the attached bid instructions and submitted in compliance with the bid instructions and requirements in the MAPS bidders' requirements. **The user name and password are included (specific to each vendor) in the attached bid cover letter. At the initial log-in the bidder will be prompted to change the password to one of his/her choice. Please make note of the user name and password and keep them so they can be used throughout the bid process.**
- b. Bids (along with the completed and signed page 1 of this document and the signed debarment form and the bid summary page generated in the MAPS system) must be submitted signed and sealed to the location specified on the Invitation to Bid. The Bid Information sheets containing the actual bids should be printed, signed and placed in a separate envelope. Both envelopes should be placed in the provided pink envelope. The bid file number, time and date of bid opening and the term, "Child Nutrition Statewide Produce Bid" shall be noted on the face of each envelope in the lower left corner. It shall not be necessary that any other sections of this document be returned with the bid. The envelope containing Sections I and V shall be plainly marked in the lower left corner "Bid # 17-2150-PR601" and shall have the name and return address of the bidding company appropriately shown on the face of the envelope. **Return the bid forms in the enclosed pink envelope with the necessary information printed on the space provided.**
- c. Bids delivered in Federal Express, UPS, or any other such deliverer's envelope shall be sealed in a separate envelope inside the deliverer's packaging. Failure to do this may cause the bid to be inadvertently opened and thus rejected. **Bids sent via regular or express mail must be sent to the Office of Child Nutrition, P.O. Box 771, Jackson, MS 39205. The U.S. Post Office will not deliver mail to 500 Greymont, Suite F.**
- d. Fax bids will not be accepted.
- e. Only bids submitted on bid forms furnished with this solicitation, the signed completed bid page and summary page generated by the OCN MAPS system or copies thereof will be considered. **Signed bid forms must be original signature.**
- f. The bid contract must be used without alterations.
- g. Section I, Invitation to Bid (Page 1), On-line generated Bid Summary Form, and Debarment Certification Form (Page 2) shall be in a sealed envelope with the company name, bid file number and opening date on the outside of the envelope. It should be marked "Section I".

2.0.12 Error in Bid:

If, prior to bid award, MDE staff knows or has reason to conclude that a mistake has been made, it will request the bidder to confirm the bid. If the bidder alleges mistake, the bid may be corrected or withdrawn if the following conditions are met:

- (a) If the mistake and the intended correct bid are clearly evident on the bid document, the bid shall be corrected on the intended correct bid and may not be withdrawn.

Examples of mistakes that may be clearly evident on the bid document are typographical errors, errors in extending unit prices, and mathematical errors.

- (b) If the mistake and the intended correct bid are not clearly evident a bidder may be permitted to withdraw a low bid if: 1) the mistake is clearly evident on the bid, but the intended correct bid is not similarly evident, or 2) if the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

MDE staff reserves the right to correct mathematical errors which are limited to correcting an extension error brought about when multiplying the unit cost by the usage. Such corrections may be made without confirmation from the low bidder.

2.0.13 Award:

- a. Contracts will be established between the lowest responsible, responsive bidder and MDE except as may otherwise be specified in the Invitation for Bid. Awards will be based on the total price as presented on the Bid Summary Page.
- b. MDE reserves the right to ascertain, subsequent to the bid opening, whether or not a bidder meets the requirements to be considered a responsible bidder. If it is determined that the bidder is not a responsible bidder and the determination is substantiated and justified to the satisfaction and approval of the Mississippi Board of Education, bids submitted by that bidder will be rejected. The criteria used to determine responsibility shall include, but is not limited to, the following:
 - 1. **Delivery Ability:**
Bidder must demonstrate or has demonstrated to MDE the ability to promptly and efficiently deliver all the items on the bid list.
 - 2. **Capacity:**
Bidder must demonstrate to MDE that they have the physical as well as financial capacity to procure and store the merchandise covered by the contract in the volume necessary to efficiently administer the provisions of the contract.
 - 3. **Reliability:**
For a bidder to be declared a responsible vendor they must have a proven record of service in the administration of a contract of this size and this type. A distributor may be considered unreliable thus non-responsible if for any reasons, other than reasons beyond their control, they have violated any of the requirements listed herein or have caused the termination of a contract of this type or have failed to properly communicate with participating entities on matters essential to a contract of this type.
 - 4. **Accounting Procedures:**
A bidder, to be considered for award, must clearly demonstrate to MDE the capability to provide accurate, reliable and timely invoices, statements, and credits. Further, they must demonstrate the ability and capability to provide any and all data necessary to accomplish an accurate and time-efficient audit

of cost on items being purchased for this contract.

5. **Facilities and Equipment:**
Bidder must have the warehouse facilities required to safely and securely store the products required by these specifications. Refrigeration facilities used for storing chilled and frozen products must meet recommendations of the Refrigeration Research Council. Delivery temperatures of frozen and chilled food shall be in compliance with AFDOS code as recommended by the Federal Food and Drug Administration. The MDE reserves the right to pre-qualify any or all bidders and to reject any bidder not meeting the requirements in the areas of warehouse facilities and equipment associated with and necessary for the safe and sanitary storage and delivery of the food items requested in these specifications. The facilities and operating practices must, at all times, be in compliance with the United States Food, Drug, and Cosmetic Act as well as any State and local Statute, Regulation or Ordinance.
 6. **Delivery Equipment:**
Bidders must show evidence of ownership or the ability to lease, rent or otherwise obtain vehicular equipment necessary to affect an efficient day-to-day delivery schedule to participating entities within the bidder's region of responsibility. MDE does not presume to dictate the type of trucks or tractor trucks necessary to accomplish an efficient day-to-day delivery schedule. However, bidders should know that all delivery sites do not provide state-of-the-art unloading and food handling facilities. Some sites, in fact, fall far short of that standard. Some sites will not accommodate trailer rigs and in fact are not easily accessible with bob trucks having overall lengths in excess of twenty-seven (27) feet. Bidders having no experience in making deliveries to the sites in the region being bid should visit all sites and discuss the delivery requirements with food service personnel at each of these sites which may prove detrimental to the task of accomplishing an efficient delivery process.
 7. The successful bidder must satisfactorily complete an annual, federal or ***nationally recognized independent***, third-party food-safety inspection and/or audit (such as USDA GAP/GHP, Cook and Thurber, ASI, AIB, SQF 2000, ISO 22000 , etc.) and provide MDE with a certificate showing they have successfully completed the inspection upon bid award and upon renewal. *Certificates from Mississippi Department of Health are not adequate for this purpose.*
- c. After bids have been opened and tabulated, the bid evaluation team will check all aspects of the low bidder's proposal. If the proposal is found to be error free and does, in fact, represent the lowest responsive, responsible offering, that bid will then be presented to the Mississippi Board of Education with recommendation for approval. If, however, an error is discovered and the error is a mistake in the extension, the correct extension will be applied. Should a corrected extension cause the bid price to be escalated to such an extent that the bid was no longer "low" then the same evaluation would be applied to the next low bidder's offering until a true low bid would be selected.
 - d. Each bidder must complete the appropriate sections of the bid form for each region

on which a bid is submitted. Although it is unlikely that the state will award a contract for the entire state to one firm (warehouse), state officials reserve the right to award on the basis of conditions as stated in Section 2.0.13, paragraph b. In addition, MDE reserves the right to award regions based on what is clearly in the best interest of recipient agencies and the state.

2.0.14 Taxes:

Purchases made under provisions of any contract established as a result of this invitation are exempt from Federal, state and local taxes and bidders should quote prices that do not include such taxes. There may be private non-profit organizations included which may be required to pay some level of sales tax.

2.0.15 Gifts, Rebates, Gratuities:

Acceptance of gifts from contractors and the offering of gifts by contractors is prohibited. No employee of MDE or any organization within the state or any other entity purchasing or receiving food under provision of the contract issued as a result of this invitation shall accept or receive, either directly or indirectly, from any person, firm or corporation to whom any contract for the purchase of commodities, equipment or services has been issued, any gift, rebate or gratuity. Violations of this provision are punishable under the laws of the State of Mississippi.

2.0.16 Bid Information:

Subject to the requirements of the MS Public Records Act, bid files may be examined by bid participants during normal working hours. Non-participants may have access to the files only after the award has been made. No files will be removed from the MDE offices and department personnel will not make copies nor will copy machines, facsimile machines or other such equipment be made available to the public for the purpose of copying bid documents.

2.0.17 Proprietary Information:

A bidder may declare certain information submitted as a part of the bid to be proprietary or confidential in nature. **Declaration of proprietary information should be included with the computer-generated Bid Information sheets (working papers) in the bid packet.** If such declaration is made, it will be handled in compliance with Section 25-61-9, Mississippi Code 1972, and any applicable opinion issued by the State Attorney General's Office. Should the declaration be challenged by any person or firm, a notification of the challenge will be issued by the MDE to the affected bidder. If the affected bidder wishes to and does obtain a court issued restraining order against the challenge, the information will remain confidential and will not be released. If no court order is to be obtained, and MDE is not notified in writing within fourteen (14) days after notification, the information will be released in compliance with Mississippi's open records law.

2.0.18 Application:

It is understood and agreed to by the vendor that this contract is entered into solely for the convenience and for any economic advantage afforded to school districts and other qualified

entities of the State of Mississippi. All purchases made by or for these organizations of products included under provisions of this contract shall be purchased from the distributor receiving the award, and shall be the products as specified by the contract. The distributor will not be permitted to substitute any item, pack, or quality level without specific prior approval of the MDE.

2.0.19 Disclaimer:

Employees of the MDE and participating organizations have acted exclusively as agents of the state for the award, consummation and administration of this contract and are not liable for any performance or non-performance on the part of any school district, or other qualified participant or any third party participant.

2.0.20 Alternate Bids:

Alternate bids will not be considered unless specifically requested by the provisions of this bid document. Where product identifications list specific labeled products, only those bids offering the specific products listed will be considered.

2.0.21 Bid Openings:

Bid openings will be conducted open to the public. The openings will serve only to open, read and tabulate the bid prices of each bid. No discussion will be entered into with any vendor as to the quality or provisions of the specifications and no award will be made either stated or implied at the bid opening. Any vendor making provisions to service a contract on the basis of information obtained at the bid opening does so at their own risk. The MDE has no obligation to any contract except as would be authenticated by a written notification of award from MDE.

2.0.22 Substitute Distributor:

The term substitute distributor for purposes of this document shall mean the distributor selected to take over the administration of a contract terminated by the original contractor. The selection of a substitute contractor will be made on the basis of a new competitive bid process. If a new competitive bid process is required, a bid from the distributor causing termination will not be considered. (See Section 3.1.11 [Default]).

2.0.23 Termination:

This contract shall be in effect for **twelve (12)** months with the option to renew for one additional one-year period, unless terminated by MDE **or the contractor as herein provided.** If this contract is terminated for cause **by MDE and a rebid is required,** the prime contractor who was terminated by MDE will not be permitted to bid. Further, that contractor, by having the contract terminated for cause, shall have forfeited the right to bid on any contract originating from this office for the remaining contract period of the original contract plus an additional contract period or for twenty-four (24) months, whichever is greatest.

The Mississippi Department of Education or the Contractor may terminate this agreement for any reason after giving thirty (30) days' written notice specifying the effective date thereof to the other party. In accordance with 7 CFR 250.14(d)(6), the contract may be terminated for cause by the state or the contractor upon 30 days written notice.

In accordance with 7 CFR 250.14(d)(5), the contract may be canceled by the state immediately due to noncompliance on the part of the warehouse management. If this contract is terminated for non-compliance by MDE and a rebid is required, the prime contractor who was terminated by MDE will not be permitted to bid. Further, that contractor, by having the contract terminated for non-compliance, shall have forfeited the right to bid on any contract originating from this office for the remaining contract period of the original contract plus an additional contract period or for twenty-four (24) months, whichever is greatest.

The Mississippi Department of Education, by written notice, may terminate this contract, in whole or in part, if funds supporting this contract are reduced or withdrawn.

In the event of a termination initiated by the contract distributor, the distributor will be required to honor all orders or requisitions issued by organizations prior to the effective date of the termination and received by the distributor within a seven (7) day period subsequent to the effective date of the termination. Any orders covered by this clause will be delivered at a price that does not exceed the price set by the contract. Termination by the State does not relieve the distributor of any liability arising out of a default or non-performance. (See Section 3.1.11 Default, Special Conditions).

2.0.24 Standard Contract Conditions:

- a. This contract shall be governed in all aspects as to validity, construction, capacity, and performance or otherwise by the laws of the State and the United States.
- b. Contractors providing service under this invitation for bids, herewith, assures the MDE that they are conforming to the provisions of the Civil Rights Act of 1964 as amended.
- c. Contractors shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Labor regulations (41 CFR Part 60).
- d. State Sales and Use Tax Certificate of Exemption form will be issued upon request.
- e. In accordance with Federal Law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability.

To file a complaint of discrimination, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call toll free (866) 632-9992 (Voice). Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer.

- f. The contractor agrees to retain all books, records and other documents relative to this agreement for three (3) years after final payment. The MDE, its authorized agents and/or state/federal representatives shall have full access to, and the right to examine any of said materials during said period. If an investigation or audit is in progress, records shall be maintained until stated matter is closed.
- g. Any product offered which is not labeled in such a manner as to permit interstate transport will be rejected. Packers and/or producers located within the State of Mississippi must understand that Mississippi Department of Agriculture inspection labels will not qualify under provisions of this Invitation to Bid.
- h. Contractors shall comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 {h}), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and Environmental Protection Agency regulations, (40 CFR Part 15), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.
- i. All patents and other legal rights in or to inventions created in whole or in part under the contract must be available to the state for royalty-free and non-exclusive licensing. Both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable properly recreated under the contract.

In the event of any claim by any third part against the purchaser that the products furnished under this contract infringe upon or violate any patent or copyright, the purchaser shall promptly notify the contractor. The contractor shall defend such claim, in the purchaser's name or its own name, as appropriate, but at the contractor's expense. The contractor will indemnify the State against all costs, damages, and attorney's fees that accrue as a result of such claim, if the purchaser reasonable concludes that its interest are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

If any product furnished is likely to or does become the subject of a claim or infringement of a patent or copyright, then the contractor may, at its option, procure for the purchaser the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the purchaser shall be prevented by injunction, the purchaser will determine if the contract has been breached.

- j. By signing this document, the contractor certifies that this bid is made without prior understanding, agreement or connection with any corporation, firm or person submitting a bid for the same materials, supplies or equipment, and is in all respects fair and without collusion or fraud. The contractor certifies that collusive bidding is a violation of federal law and can result in fines, prison sentences and civil damage awards.
- k. The contract distributor shall be liable for gross receipt taxes in accordance with Mississippi statutes.

- l. The contractor shall perform all services as an independent contractor and shall discharge all of its liabilities as such. No act performed or representation made, whether oral or written, by the contractor with respect to third parties shall be binding on the Mississippi Department of Education.
- m. Authority to Contract: Contractor warrants (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind, and (d) notwithstanding any other provision of this agreement to the contrary, that there is no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.
- n. Modification or Renegotiation: This agreement may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or State revisions of any applicable laws or regulations make changes in this agreement necessary.
- o. Representation Regarding Contingent Fees: The contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.
- p. Contractor/Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Senate Bill 2988 from the 2008 Regular Legislative Session) and will register and participate in the status verification system for all newly-hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and upon request of the State, to provide a copy of each such verification to the State. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of each cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor/Seller by an agency, department, or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

2.0.25 Non-Appropriation

This contract will span more than one appropriation period, therefore, a non-appropriation clause shall be in effect. This clause provides that should a contract be terminated for reasons of non-availability of funds, termination would take effect on the last day of the appropriation period for which funding was available. In this case, the date would be June 30 of any year during which the contract is in effect. In the event of a termination for reasons of non-availability of funding, the participating entities will issue no purchase orders subsequent to the June 30 date, and will not be obligated to purchase any items remaining in inventory. All purchase orders issued prior to the effective date of the termination will be valid. It should be noted that vendors will be notified as soon as practicable of a pending termination.

2.0.26 Additional Items

The specific items included in this contract are those that are used on a frequent basis and sufficient quantities to justify an ongoing contract. There are other products which are used on an irregular basis in limited quantities for special functions or other activities.

In order for participating organizations to purchase these items in a contractual manner, we have developed a process to establish the price and fees for such items based on product costs.

The successful distributors will furnish and deliver the product covered by this category and will be reimbursed on the basis of cost plus a fixed fee as set forth in the chart below. Any rebates or other incentives earned by the distributor and applicable to any item included in this category may be passed on to the user, but shall not be considered for audit purposes.

A. The fixed fee for any item not in the proposal shall be:

Cost Per unit	Fee per unit (case)
\$ 15.00 -- Or Less	\$ 1.50
\$ 15.01 -- \$ 20.00	\$ 2.00
\$ 20.01 -- \$ 25.00	\$ 2.50
\$ 25.01 -- \$ 30.00	\$ 3.00
\$ 30.01 -- \$ 35.00	\$ 3.50
\$ 35.01 -- \$ 40.00	\$ 4.00
\$ 40.01 -- \$ 45.00	\$ 4.50
\$ 45.01 -- \$ 50.00	\$ 5.00
\$ 50.01 -- \$ 55.00	\$ 5.50
\$ 55.01 -- \$ 60.00	\$ 6.00
\$ 60.01 -- \$ 65.00	\$ 6.50
\$ 65.01 -- \$ 70.00	\$ 7.00
\$ 70.01 -- \$ 75.00	\$ 7.50
\$ 75.01 -- \$ 80.00	\$ 8.00
\$ 80.01 -- Over	\$ 8.50

B. Organizations should notify the contractor at least two weeks in advance of delivery of noncontract items covered above.

2.0.27 Breakage Fee:

Orders will be transmitted to distributors via the on-line ordering system by item number and bid unit pack size as identified in Section V. For example, **Item 4012**, Green Salad Mix, will transmit as a case of 4/5 lb. bags. However, there may be smaller organizations that cannot utilize a full case of product. If a request is made by an organization to the distributor to break a case and ship an item by individual bags, the distributor may charge that organization a fee to break the case. The maximum fee that a distributor may charge for this service is \$1.00 per bag. ***However, if the bid unit for that item at bid is "per bag" the breakage fee will not apply. Any handling will have to be factored into the fixed fee and remain constant for the live of the contract.***

2.0.28 Service Level:

The contractor shall fill all original orders at a monthly average of 99% or above on the scheduled delivery day. This section is for contract items and does not include items covered under section 2.0.26.

2.0.29 ASSIGNMENT:

The contractor shall not assign, sell or subcontract in whole or in part, its rights or obligations under this agreement without prior written consent of the MDE. Any attempted assignment or sale of the contract without said consent shall be void and of no effect.

SECTION III INFORMATION AND SPECIAL CONDITIONS

3.0 SCOPE

3.0.1 Purpose:

The purpose of this Request for Bid is to establish a contract or contracts between the Mississippi Department of Education, Office of Child Nutrition and distributors for produce and the distribution of those items. This contract will establish a maximum fixed fee (delivery) that participating school districts and other qualified entities will pay for any item covered by the contract during the term of that contract. The actual produce cost will be established between MDE and the successful bidder based on price requests submitted by the produce distributor and third-party market bulletins (i.e. AMS). **Price changes will only occur when the cost of produce has changed by a full .15/case.**

The successful distributor(s) will be responsible for purchasing, warehousing and distributing the produce products. Distributors are obligated to furnish the items covered by the contract at prices that do not exceed the contract price.

3.0.2 Term

The term of these contracts shall be for a period of twelve (12) months with the option to renew for one additional one-year period. The effective date is expected to be August 1, 2017, through July 31, 2019. The Mississippi Department of Education reserves the right to extend the term for up to 90 days to continue a source or sources of supply until new or replacement contracts are completed. Any contract extension is contingent upon approval by MDE and the contractor(s).

3.0.3 Volume:

The quantities indicated on the bid form are based on previous years purchases and are accurate to the best of our ability to gather the data. However, bidders must understand that the fact that a quantity is stated on an item does not constitute a guarantee to purchase any amount in excess of requirements. It is to be understood that if an item is listed on the contract, recipients will not accept delivery of any other than the specific product listed on the contract **unless prior approval for substitution is granted by MDE.**

3.0.4 Restriction:

No purchase shall be made, under the provisions of the contract, of items not specifically listed and authorized by the contract. Non-contract items purchased by participating organizations shall be based on distributors' cost plus fixed fee as stated in Section 2.0.26.

3.0.5 Additions/Deletions/Changes:

The MDE reserves the right to add or delete items and to make changes that are within the original scope of the contract during the term of the contract. This will specifically include the addition/deletion of new or different pre-cut items and/or packaging that may come on to the market subsequent to bid award but during the scope of the initial contract. In addition,

the MDE reserves the right to change products from category to category (i.e. whole to precut categories and vice versa).

3.0.6 Other Agreements:

Upon the effective date of the contract, all other agreements or portions of other agreements held by participating entities which pertain to items covered by the contract shall be void.

3.1 SPECIAL CONDITIONS:

3.1.1 Bids Based on State Specifications:

Bidders are requested to bid on items set forth in the product identification listing. Where specific pack size and/or quality levels or specifics, i.e., U.S. No. 1, bids offered on any other specified product will not be considered.

3.1.2 Alternate Bids:

Alternate bids will not be considered unless specifically requested in the specifications.

3.1.3 Unit Price:

Each item is to be priced separately by offering the standard unit price as per bid unit designation in Section V.

3.1.4 Firm Bid Price:

- a. Fixed Fee:** The fixed fee will remain constant throughout the duration of the contract. However, any change to a different pack size that is approved by MDE will result in a corresponding adjustment to the fixed fee. For example, the distributor's fixed fee was based on a 25# box of tomatoes and the pack size changes to a 20# box, then the fee will be adjusted accordingly.

The term fixed fee as used in this document shall mean the amount the distributor will be paid for receiving, storing and delivering the items covered by the contract. All freight charges incurred in the delivery to the user entity as well as mark up or profit shall be recovered in the fixed fee bid by the distributor.

b. Cost:

On **Wednesday, July 26, 2017**, successful bidders must submit current unit costs (unit cost includes all freight, pallet, and any other charges for each item identified in Section V); MDE understands that due to the nature of the produce industry, it is not practical to maintain a set cost for produce items over a long period of time.

Therefore, prices may be adjusted on a monthly basis. Monthly price changes must be submitted to MDE no later than the last Wednesday of each month. Prices will become effective the first Monday after the last Friday of the preceding month.

If an event or events should occur that, through no fault of the contractor, would cause an unusual escalation it would be unreasonable to wait until the next scheduled time for a price change, MDE will listen to a request for price adjustments at that time. In the event that there is an unusual, uncustomary drop in the market price of any item or items covered by the contract, MDE will request a voluntary reduction in pricing by the contractor.

The term cost is defined as suppliers invoice price of product delivered to the distributor's warehouse, ***less any discounts, rebates and other applicable credits***. **Unit costs must include all incoming freight, pallet charges, and all other pricing considerations.** MDE reserves the right to audit successful bidder's invoices according to Section 2.0.24 Standard Contract Conditions (f).

3.1.6 Payment Term Discounts:

Payment term discounts are not required and will not be used in the award process.

3.1.7 Promotional Allowances, and Volume Incentives:

Promotional allowances and volume incentives will not be an award criteria.

3.1.8 Freight:

A separate freight factor is not requested.

3.1.9 Packaging:

All packaging shall conform to current standards acceptable to the trade and required by ICC Regulations.

3.1.10 Frozen Food: Not applicable.

3.1.11 Default

In case of default on the part of a contractor, the Mississippi Department of Education will authorize acquisition of items affected by the default from other sources with MDE holding the defaulting contractor responsible for excess cost occasioned by the default. Provided, however, that the substitute items shall be equal in quality and quantity and approved by the PMC (Purchasing Management Committee). In the event that any contractor shall default, terminate or caused to have terminated, the contract, that contractor shall have forfeited the right to bid for contracts originating from this office for twenty-four (24) months or two contract periods, whichever is the longer.

3.1.12 Reports:

Upon request, contract distributors will be required to furnish MDE with reports of sales made under provisions of the contracts. These reports may include but are not limited to: Total line item sales to participating organizations.

3.1.13 Contract Application:

The terms and conditions set forth in this invitation for bids shall become a contract binding on the successful bidder. Any documents submitted to satisfy a requirement of this invitation and any assurances made by the successful bidder in satisfaction of the Invitation for Bids shall become a part of the agreement between the MDE and the successful bidder. MDE shall have the right to rely upon the documents and assurances submitted by the successful bidder.

3.1.14 Transmittal of Orders:

The order-entry procedure will require that distributors provide automated receiving capabilities that shall necessitate the utilization of a software package capable of receiving information from MDE.

Member organizations will place their orders through the CNP web site via the internet. Distributors would then retrieve these orders via text file from the CNP web site. The distributor would pick up this text file and run it against their inventory. The distributor will then modify this text file for product availability and upload the modified text file to the CNP web site. Distributors shall have the capability to receive multiple files containing food, non-food, and produce orders via the internet after the order cut off time of 11:00 a.m. Distributors shall have the capability to check each order, note shortages, and transmit shortage data, if applicable, back to the member organizations on their receiving report via the internet within 24 hours. Also, the distributors shall have ordering capability for organizations to order items that have been identified as short or out.

MDE will provide detailed requirements for the automated order entry system. MDE systems personnel will coordinate the information with all prospective bidders.

In case of a system malfunction, the MDE and ordering entities will need to phone in orders or fax orders to the distributors.

3.1.15 Produce Deliveries:

- a. All produce shall be transported in refrigerated vehicles. All produce products are to be delivered in equipment appropriate to the item. Pre-cuts and other refrigerated produce items should be delivered at temperatures from 34 -40 degrees. Other items such as bananas and tomatoes need to be delivered close to 60 degrees. This may be accomplished with two compartment refrigerated trucks (refrigerated and dry section) If the distributor does not have two compartment, refrigerated trucks, the distributor must establish with MDE how they will maintain produce temperatures. This method will be approved by MDE prior to bid award.
- b. Based on negotiation between the Distributor and MDE, each organization and site will be assigned a specific order day and delivery day with a minimum of one delivery to each site weekly. Once determined, this will remain constant. Changes may be made to accommodate holidays, etc, but only with MDE approval. Summer schedules will be subject to change based on scope of operation.

- c. **Deliveries to member organizations will be made Monday through Friday** between the hours of 7:00 a.m. and 3:00 p.m. No deliveries may be made outside operating hours resulting in product not being checked in and signed for. Any product delivered without a signed delivery ticket by an authorized representative will be done **SOLELY** at the risk of the deliverer. Unattended delivery of products to member organizations is not acceptable.
- d. All orders will be placed a minimum of seven days in advance of delivery. Produce will need to be in inventory or sourced to meet this schedule. If produce is not available due to market conditions, notification must be made to MDE and member organizations to allow time for the member organization to select a substitute item. Substitutions by the Distributors are. including item, variety, pack, quality, or price, must be approved by MDE in advance.

3.1.16 Order Frequency

Each participating organization will be entitled to a minimum of **once each week** delivery at each designated delivery site. For school districts this is normally ten months each year with vacation periods at major holidays and parts of June, July, and August. Some organizations do operate throughout the summer, but both the product mix and volume will be reduced substantially.

3.1.17 Market Conditions

Due to the seasonal nature of some produce items and its effect on availability, quality, and costs, the MDE reserves the right to add and/or delete items based on market conditions. We expect distributors to communicate these conditions to us promptly and assist in planning for and implementing strategies to address such conditions.

No product changes can be made without the expressed written approval of the MDE.

3.1.18 Product Condition

All precut produce shall have a "pack" date or "use by" date to ensure freshness. This date must appear on the exterior of the case as well as the individual package. This date will appear as 01/16, 01/16, etc. **Unless otherwise specified, precuts must arrive at the school site with a minimum of 5 schooldays of shelf life remaining. Products that arrive without at least 5 school days remaining will be rejected by the school and the distributor shall be responsible for redelivery within 24 hours. Pre-sliced apples (Item 649 and 650) must arrive with a minimum of 10 days shelf life remaining.**

Raw product must be fresh and comply with the USDA grades and conditions as cited by the USDA and the Blue Book. Distressed Product is not acceptable. We may have USDA regrade product on a random basis and for cause to ensure the quality level. These re-inspections will occur at participating organizations, as well as the Distributor's Warehouse.

Under grade or distressed product will be returned to the Distributor. In these confirmed cases, the Distributor will be required, at the discretion of the school district, to deliver the correct product within 24 hours of notification.

Contractor(s) facilities shall be subject to inspection by the MDE at all times for sanitary

conditions. If sanitary conditions are found by the MDE to be unsatisfactory, the contract shall be subject to cancellation.

3.1.19 Audits

MDE personnel shall have the right to audit distributor reports relative to any transaction conducted under the provisions of the contract established pursuant to this Invitation for Bids.

- a. Audits may be made of a contractor(s) cost records as follows:
 1. Prior to contract award on items supported by 3rd party invoice
 2. In response to any request for price increase
 3. At any time that price reviews indicate that a problem might exist
- b. The contractor shall provide acceptable documentation as follows:
 1. Supplier invoices
 2. Freight bills
 3. Inventory records
 4. Market bulletins – used for distributor manufactured items and inner-company billing items when price changes are requested.
- c. Recurring or excessive pricing errors shall be reason for contract termination

3.1.20 Product Loss and Damage

The distributor will retain liability of product until such time as the local organization receipts for the product. Local organizations are then responsible for loss through damage and or mishandling. **Product determined to be out-of-condition with no evidence of damage or mishandling shall rest with the distributor.**

3.1.21 Payment Terms

Each member organization is responsible for timely payment of their account based on invoices from the Distributor. All payments must be made within 45 days after receipt of goods and correct invoice. Distributor should notify MDE of any delinquencies.

If a recipient agency falls more than sixty (60) days in arrears in payments, a distributor may suspend issues. However the distributor must notify the MDE no less than 10 working days prior to initiating a suspension of deliveries.

SECTION IV.

4.0 Bid Instructions

4.0.1 Bid Package:

The bid package consists of the following:

- . Section I Invitation to Bid
Debarment Certification
- . Section II General Conditions
- . Section III Special Conditions
- . Section IV Bid Instructions
- . Section V Bid Summary and Bid Information forms – Working Papers (See Below)

The Bid Summary document and the bid worksheets will be generated on the OCN MAPS bidders' on-line site.

4.0.2 Invitation to Bid Form: (Return this form complete.)

All information requested on the Invitation to Bid Form (Page 1) must be completed and include original signature. Incomplete and/or unsigned (original signature) forms may be rejected. Special attention should be given to general and special conditions. This along with the computer-generated Bid Summary Form and the Debarment Certification (Page 2) should be in a separate, sealed envelope marked "Bid File No. 17-2150-PR601, 11:00 a.m. Friday, May 19, 2017." **Bidder must use the enclosed pink envelope to return bid documents.**

4.0.3 Bid Information forms: (Working Papers) (Return these forms complete, printed and signed for each region)

Pricing must be presented on Bid Information forms generated by the OCN MAPS on-line bidders' site. The use of any other form, unless prior approval for such deviation is granted by MDE, will be rejected.

The computer-generated, signed, Bid Information forms are considered to be working papers to be used by MDE for verification of bids. They will not be considered at the official bid opening. These forms shall be enclosed in a separate envelope and will be opened and validated for the apparent low bidder subsequent to bid opening. Please mark "Item Bid Worksheet". The sealed envelope containing the working papers should be placed in the pink envelope. **Corrections cannot be made to the Bid Information forms once the bid submission process has been completed. Changes to Bid Information forms and/or Bid Summary forms that are not reflected in the on-line bidding will mean bids will be rejected.**

Working papers containing proprietary information should be identified as such.

CONTRACT SECTION V

5.0 Product Requirements

5.0.1 Product Identification Listings (ID):

The item identifications (descriptions) listed herein are not specifications. Product identifications are limited to requirements, which can be verified on delivery or information essential for communication between contractor and school district. USDA Grades are used in the identifications and are subject to verification by USDA. These are supplemented by descriptions and conditions in the Blue Book.

5.0.2 Product Protection Guarantees:

Participating Organizations have "automatic" product protection recourse against suppliers for product safety. According to federal regulations, the supplier whose name and address appear on the package is the responsible party. Contractors are expected to take immediate action to correct any situation in which product integrity is violated.

5.0.3 Import Products:

The Buy American Provision of the National School Lunch Act requires that whenever possible and practicable we purchase and use only domestic product. There are exceptions for products not produced in the U.S., such as grapes and bananas. In some cases, the supply and cost situation will be seasonal, and we may opt not to purchase the item during these periods. **Any changes to this provision must be approved by MDE.**

5.0.4 Brand "Quoting On":

Not applicable to this bid.

5.0.5 Harvest of the Month Products:

MDE is asking that one item per month be purchased from local sources. The distributor will bid a fixed fee for this item only (as with the rest of the items listed on this bid). At monthly pricing submission time, the distributor will submit pricing for a product that is grown within the state of Mississippi or within 50 miles of the border. Pricing and acceptance of the product offered will be negotiated between MDE and the distributor. The accepted product will be delivered during that month to schools which order it.

Further whenever a distributor is delivering products grown inside the state of Mississippi, they will identify it as such so that MDE can identify locally grown products in the on-line ordering system.

5.0.6 Units of Purchase:

The Unit of Purchase is specified on the Product Identification Form. We are aware that the Purchase Unit may vary during the duration of this contract as a result of market conditions and seasonal variations. Any proposed change must be submitted to and approved by the

MDE in advance of the change.

5.0.7 Terms of Reference Specific to Product Identification:

- a. **Grades:** Grades as specified in identifications shall be considered to be the current standard for grades issued by the U.S. Dept. of Agriculture.
- b. **Blue Book:** Produce Book describing products, grades, conditions, defects, sizes, etc.
- c. **Good Delivery Guidelines:** Refer to the Blue Book.
- d. **Distributor:** This company will provide the precut and raw produce products identified in the contract, as well as, the delivery of these products to local sites.