

TEXAS DEPARTMENT OF AGRICULTURE



**REQUEST FOR PROPOSAL (RFP)
FOR
COMMERCIAL WAREHOUSE AND FOOD DISTRIBUTION SERVICES FOR USDA
FOODS
Statewide (All Eight Regions)**

RFP/Requisition Number: **551-20-00488**

DATE ISSUED: December **11, 2020**

PROPOSAL/RESPONSE DUE: 3:00 P.M., February 17, 2021

PROPOSAL SUBMISSION LOCATION: Texas Department of Agriculture
Stephen F. Austin Bldg.
1700 North Congress Avenue Ste. 1100
Procurement Contracting Office
Austin, Texas 78701

Lead Purchaser on the Solicitation

Segundo Sanchez, CTPM

Phone: 512-463-7499

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[CC: TDAPurchasing@TexasAgriculture.gov](mailto:CC:TDAPurchasing@TexasAgriculture.gov)

National Institute of Government Purchasing Class-Item Code:

NIGP¹ Class-Item Code: 958-94 Warehouse Management Services

¹ National Institute for Government Purchasing

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3. THE PROSPECTIVE LOWER TIER PARTICIPANT SHALL PROVIDE IMMEDIATE WRITTEN NOTICE TO THE PERSON(S) TO WHICH THIS PROPOSAL IS SUBMITTED IF AT ANY TIME THE PROSPECTIVE LOWER TIER PARTICIPANT LEARNS THAT ITS CERTIFICATION WAS ERRONEOUS WHEN SUBMITTED OR HAS BECOME ERRONEOUS BY REASON OF CHANGED CIRCUMSTANCES.64

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5. THE PROSPECTIVE LOWER TIER PARTICIPANT AGREES BY SUBMITTING THIS FORM THAT, SHOULD THE PROPOSED COVERED TRANSACTION BE ENTERED INTO, IT SHALL NOT KNOWINGLY ENTER INTO ANY LOWER TIER COVERED TRANSACTION WITH A PERSON WHO IS DEBARRED, SUSPENDED, DECLARED INELIGIBLE, OR VOLUNTARILY EXCLUDED FROM PARTICIPATION IN THIS COVERED TRANSACTION, UNLESS AUTHORIZED BY THE DEPARTMENT OR AGENCY WITH WHICH THIS TRANSACTION ORIGINATED.64

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9. EXCEPT FOR TRANSACTIONS AUTHORIZED UNDER PARAGRAPH (5) OF THESE INSTRUCTIONS, IF A PARTICIPANT IN A COVERED TRANSACTION KNOWINGLY ENTERS INTO A LOWER TIER COVERED TRANSACTION WITH A PERSON WHO IS SUSPENDED, DEBARRED, INELIGIBLE, OR VOLUNTARILY EXCLUDED FROM PARTICIPATION IN THIS TRANSACTION, IN ADDITION TO OTHER REMEDIES AVAILABLE TO THE FEDERAL GOVERNMENT, THE DEPARTMENT OR AGENCY WITH WHICH THIS TRANSACTION ORIGINATED MAY PURSUE AVAILABLE REMEDIES, INCLUDING SUSPENSION AND/OR DEBARMENT.64

SECTION I. INTRODUCTION AND PROPOSAL SUBMISSION INFORMATION

PURPOSE OF THE REQUEST FOR PROPOSALS

The Texas Department of Agriculture (TDA) invites proposals from qualified entities and individuals, including food distributors, to receive, store and deliver United States Department of Agriculture (USDA) foods to designated organizations throughout the state of Texas. The Food and Nutrition Division (F&N) contracts with and provides nutritional assistance on behalf of the USDA to school districts and similar entities primarily serving children throughout the state. TDA is dedicated to providing excellent customer service and delivering healthy food for children; TDA, therefore, requires the same customer service commitments from a selected contractor, if any, under the terms of this RFP. The awarded Respondent (“Contractor”), if any, will be expected to work with TDA staff and contracting entities (“CE”) to complete all services and deliverables required by this RFP.

This RFP will be incorporated by reference as part of any resulting Contract that may be awarded under this RFP.

PROJECT BACKGROUND

A. GENERAL INFORMATION

The National School Lunch Program (NSLP) is a federally assisted meal program administered by the Texas Department of Agriculture (TDA) providing lunches to Texas children in schools and Residential Childcare Institutions (RCCI). All schools participating in the National School Lunch Program (NSLP) are eligible to receive USDA-donated foods. TDA provides storage and distribution services of USDA Foods for participating schools and RCCIs through contracted warehousing companies. The Contractor will be responsible for receiving food deliveries, storing deliveries in a food-grade warehouse, and delivering the food to the end users. TDA’s Food and Nutrition Division is responsible for contract management, but payment for the storage services and food deliveries will be made by the CEs, schools, and childcare locations.

To efficiently service schools and childcare locations (ATTACHMENT 12 TABLE FDP Regions and Delivery Stops) across Texas, the state has been divided into eight (8) service regions (See ATTACHMENT 16 MAP List of Counties). If a contract is awarded under the terms of this RFP, TDA may award up to eight (8) separate contracts, one per region, to Contractors, i.e. individual, firm, or entity. A single Contractor may be awarded more than one region/contract.

For purposes of developing a proposal, (ATTACHMENT 12 TABLE FDP Regions and Delivery Stops see all Regions Deliveries and Stops). The foregoing attachment provides the volume (in cases), the number of delivery stops, and the total number of unique items received by Contractors in each Region, for school years (SY) 18-19 and 19-20 (See ATTACHMENT 12 TABLE FDP Regions and Delivery Stops for All Regions Deliveries and Stops). The volume of USDA Foods delivered in the region may increase or decrease based on changes at the federal level in program funding, program eligibility, or types and amounts of foods available and requested by CEs. The development of CE relationships is an ongoing process, so the number of CEs may increase or decrease during the term of any awarded contract. Historically, changes in CE participation are insignificant, amounting to less than 10 CEs per year statewide.

LEGAL AUTHORITY

This RFP is issued pursuant to TDA's authority in Chapter 12 of the Texas Agriculture Code and pursuant to Texas Government Code, Title 10, Subtitle D, Chapter 2156, Subchapter C, Sections 2156.121 – 2156.127. Competitive sealed proposals will be received until the deadline set forth below in this RFP. Pursuant to Section 2156.121(c) of the Texas Government Code and 34 TAC §20.82, the Office of the Texas Comptroller of Public Accounts (CPA) has delegated authority to TDA to publish this RFP and make an award as provided below.

DEFINITIONS

The following words and terms shall have the following meanings unless the context clearly indicates

otherwise. These definitions shall apply to this RFP, including the Attachment 1 Execution of Offer, Affirmation of Terms And Conditions And Proposal Preferences and any Contract or Amendment entered into by the parties as a result of this RFP.

- A. Allocation means the assignment of USDA Foods to CEs.
- B. Amendment means the final written agreement signed and dated by TDA and any Contractor subsequent to the Effective Date of the Contract, which amends, changes, extends, modifies, or revises the Contract.
- C. CE Delivery Order means a request placed by the CE for an arrangement of obtaining USDA Foods either by a delivery from the Contractor or pickup by the CE.
- D. Consignee means an entity that receives a shipment of USDA Foods from a USDA vendor. This term is used by USDA within the Food and Nutrition Service (FNS) Instruction 709-5.
- E. Contract means the final written agreement signed and dated by TDA and the Contractor, including the RFP and all attachments, Contractor's proposal(s), any appendices, schedules, best and final offer, or special provisions incorporated into the Contract.
- F. Contract Manager means a person designated by TDA or Contractor that is responsible for invoicing and payment under the Contract, and for monitoring the overall progress of the Scope of Work required by the Contract. Either party may designate the same individual to be both the Contract Manager and the Project Manager.
- G. Contracting Entity or "CE" means the school or organization contracted with TDA to receive nutrition assistance.
- H. Contractor means an entity or individual selected for an award as a result of this RFP, that enters into a contract to complete the Scope of Work as described in this RFP and the Contract.
- I. Effective Date means the date TDA's Deputy Commissioner or duly authorized designee signs and dates the Contract.
- J. Intellectual Property means worldwide legal rights or interests in intangible property evidenced by or embodied in: (1) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement that is capable of being patented; (2) any copyright or patent; (3) any work that is capable of being copyrighted, including moral rights or neighboring rights; (4) any trademark, service mark, certification mark, trade dress, trade name, or other indicia of source or origin; (5) any design, display, graphic design, letter or letter combination, logo, mark, number or number combination, phrase, word or word combination that indicates the origin, quality or source of goods or services and that is capable of being copyrighted; and (6) any rights, interests or property similar in kind or nature to the rights, interests or property described in Section 1.2.C(1) – (5) of this RFP. The

Intellectual Property of a party includes all worldwide intangible legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

- K. Lumper Fees means a fee assessed by the carrier to the consignee or vice versa for unloading a shipment. Lumper fees are not permitted when receiving USDA Foods.
- L. Private Storage means the period after the date of allocation of USDA Foods the Contractor may charge CEs a storage rate.
- M. Project means the purpose, result, or work to be accomplished as a result of the Contract.
- N. Project Manager means the person assigned by TDA or Contractor that is responsible for managing the day to day work of the Contract.
- O. Proposal means a response submitted to TDA as a result of this RFP.
- P. Respondent means an entity or individual that submits a Proposal.
- Q. Scope of Work means the deliverables, services, and work set out and defined in the Contract and described in Section 2 of the RFP.
- R. Surplus means the available inventory of USDA Foods that is not allocated to specific CEs.
- S. TDA means the Texas Department of Agriculture. TDA may also be referred to as the "Department."
- T. TX-UNPS means Texas Unified Nutrition Programs System, TDA's web-based system that maintains inventory and distribution data of USDA Foods
- U. USDA Vendor means a commercial food company from which USDA purchases foods for donation.
- V. Destination fees mean fees charged by USDA, TDA, or a USDA vendor for changing a delivery location less than 60 days before delivery.

LENGTH OF CONTRACT

The term of any contract awarded under this RFP shall begin May 1, 2021, and end May 31, 2022. Unless terminated in accordance with the provisions of an awarded Contract, TDA has the option to renew the Contract for up to three (3) consecutive one (1) year periods, one year at a time for all regions. The term of each renewal option is beginning on June 1 following the expiration of the preceding one-year term, through May 31 of the succeeding year of the Contract. TDA will notify Contractor of the intent to exercise the renewal term option through email to a Contractor-provided address that will remain active during the term of this Contract. Upon exercising an option to renew this Contract, a written contract amendment will be executed by all parties. In case of a renewal or extension, all original Contract terms and conditions survive the termination or expiration of the initial Contract term. The duration of the Contract is subject to change as mandated by federal laws or regulations.

Upon renewal or extension of any Contract, TDA reserves the right, which it may exercise in its sole and absolute discretion, to increase or decrease the Contract's budget or annual not-to-exceed amount. If a contract renewal or extension amendment increases the Contract budget or annual not-to-exceed amount by more than 25% of the preceding year's Contract budget or annual not-to-exceed amount, TDA may be required to republish a solicitation for the goods or services that are the subject of this Contract, using competitive bidding or other approved form of competitive procurement, because such increase may constitute a material change under the circumstances.

There shall be no exclusivity under any contract awarded pursuant to the terms of this RFP. TDA may re-solicit the services under this RFP at any time for any reason if it is in the best interests of TDA, the program, or the USDA to do so.

The parties shall manage any changes to the Contract through a written amendment.

Any proposed change to work to be performed, whether initiated by TDA or the Contractor must receive final written approval in the form of a contract amendment or a Purchase Order Change Notice (POCN).

PROPOSAL SUBMISSION REQUIREMENTS AND DEADLINES

All proposals submitted in response to this RFP must meet the following submission and receipt conditions to be considered. Failure to meet these conditions may result in disqualification of the proposal and the proposal shall receive no further consideration.

Proposals **must** be received no later than:

3:00 P.M. Central Time (CT), February 17, 2021.

Hard copy proposals and samples **shall** be delivered to:
Texas Department of Agriculture
Stephen F. Austin Bldg.
Attention: Procurement Contract Office (PCO)
1700 N. Congress Avenue, 11th Floor
Austin Texas 78701

If the Contractor hand delivers the proposal to the Stephan F. Austin Building, the Contractor must call the TDA Mail Room at (512) 463-7503 to coordinate the delivery to the TDA 11th floor.

Proposals **must** reference the solicitation number: RFP/Requisition Number:

RFP 551-00488

on the cover page. Proposal packages must be marked with “**CONFIDENTIAL**”, and the RFP number in large font on the outside of the package.

All times are Central Time, and dates are subject to change. Proposals may be modified or withdrawn at any time prior to the proposal due date. No changes or withdrawals will be allowed after the proposal due date and time.

TDA in its sole discretion determines the official time and place for purposes of receiving proposals. TDA will not consider for any reason late proposals, or proposals not delivered to TDA staff in its offices. All submitted proposals become the property of TDA after submission by the deadline. Facsimile (FAX) or email transmissions of proposals are not acceptable methods of responding to this RFP, and such will not be accepted unless approved by the lead buyer in response to a disaster directly impacting transportation and delivery services or causing the closure of TDA offices.

SCHEDULE OF EVENTS AND CRITICAL DATES

The schedule of events for this RFP is provided below. TDA reserves the right to adjust the schedule as events may require.

TABLE OF EVENTS AND CRITICAL DATES

SCHEDULE OF EVENTS	DATE
Publication of RFP in the Electronic State Business Daily (ESBD) at http://www.txsmartbuy.com/esbd	December 11, 2020
Pre-Bid Conference Meeting: The meeting is not mandatory. It you would like to attend the meeting please call in at 10:00AM (central time) (512) 910-3546. Use conference code ID 308 949 449#.	January 22, 2021
Deadline for Submitting Questions to TDA, no later than 3:00 P.M., CT	January 29, 2021

Estimated TDA's Official Response to Questions Posted on the ESBD	February 5, 2021
PROPOSAL/RESPONSE DUE: 3:00 P.M., CT	February 17, 2021
Evaluation Process, Oral Presentations, and/or negotiations	February 26, 2021
Selection of Proposal(s)	February 28, 2021
Estimated Contract Award Date	March 15,, 2021
Beginning date of Contract and commencement of work	May 1, 2021
Ending date of Contract and final product submitted to TDA (unless extended)	May 31, 2022

POINT OF CONTACT FOR INQUIRIES | IRREVOCABILITY OF OFFER

Contractors shall direct all inquiries and communications concerning this RFP to the Point of Contact listed below in writing by email. Any person wishing to obtain clarifying information concerning this RFP shall contact:

Segundo Sanchez
Contract Purchasing Lead
Texas Department of Agriculture
Phone: (512) 463-7499
Segundo.Sanchez@TexasAgriculture.gov
cc: TDA Purchasing@TexasAgriculture.gov

Contractors shall use Attachment 5 for submitting questions during the posting period (date of publication through the deadline for submitting questions) on the ESBD.

Contractors shall make no contact with other TDA personnel regarding this RFP, except as permitted by the TDA Purchaser listed above. **Failure to comply with these requirements may result in disqualification of the Contractor's Proposal.** If a contract is awarded under this RFP, Contractor shall communicate with the Project Manager, Contract Manager, or other TDA employee designated for management of the Contract.

The submitted proposal cannot be withdrawn or revoked after the submission deadline has passed. Proposals are irrevocable for 120 calendar days from the deadline for submission. This period may be extended at TDA's request if made in writing to the Contractor.

CONFLICTS OF INTEREST

In submitting a proposal in response to this RFP, Contractor represents and warrants to TDA that it and each of its Contractors have the requisite resources, qualifications, and independence to perform the services free from outside direction, control, or influence, and subject only to the accomplishment of TDA's objectives. **Contractors that cannot make this representation and warranty should not respond to this RFP.**

A. ETHICS AFFIRMATION

In submitting a proposal in response to this RFP, Contractor affirms that it has not given, nor intends to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, in connection with this procurement.

B. DISCLOSURE OF EXISTING OR POTENTIAL CONFLICTS

In its proposal, each Contractor must disclose any existing or potential conflicts of interest or possible issues that might create appearances of impropriety relative to its submission of a proposal, possible selection as Contractor, or its performance of the Contract. Contractors must disclose any proposed personnel under the Contract who are current or recent former employees of TDA or the State of Texas. Recent former employees are defined below. In Attachment 3, the *TDA Key Contracting Persons Disclosure Statement*, a list of current employees with a role or potential to have a role in the

development, management, or enforcement of the Contract is provided. Any other existing or potential conflicts can be added to Attachment 3 for compliance with this Section.

Pursuant to Section 2252.901 of the Texas Government Code, Contractors shall make full disclosure of a former or retired employee of TDA that is the Contractor's agent, consultant, contractor, or employee, or that Contractor intends to employ or retain as a contractor. Within the first twelve months of leaving employment at TDA, a former or retired TDA employee shall not perform services on a project, or fill a position with Contractor, that the former or retired TDA employee worked on or held while employed at TDA.

As part of this disclosure requirement, each Contractor must include in its proposal all past and present contractual, business, financial or personal relationships between Contractor and TDA and between Contractor's proposed agents, consultants, contractors and employees, if any, and TDA. For purposes of this disclosure requirement, "past" is defined as within the two (2) calendar years prior to the deadline for submission of proposals in response to this RFP. For purposes of this disclosure requirement, "TDA" includes the Commissioner of Agriculture and the agency's current or recent former employees. "Recent former employee" is an individual who resigned or terminated employment with TDA within the two (2) calendar years prior to the deadline for submission of proposals in response to this RFP. For each item, Contractor must provide a detailed explanation of why Contractor does or does not believe such item poses a conflict of interest, a potential conflict of interest, or appearance of impropriety issue relative to Contractor's submission of a proposal, possible selection as Contractor or its performance of the Contract.

Disclosures under this Section (Attachment 3): Key Contracting Persons Disclosure Statement) will be evaluated by TDA. An actual or perceived conflict of interest will not necessarily lead to a restriction or disqualification. Issues will be considered on a case-by-case basis in the best interests of the agency and the State of Texas. If a Contractor is in doubt about whether information should be disclosed, the Contractor should consult with its legal counsel. Failure to disclose any information required under this section may be cause for proposal disqualification or termination of a Contract. TDA reserves the right, in its sole and absolute discretion, to determine if an issue should result in proposal disqualification or Contract termination.

C. RELATIONSHIPS DEFINED

For purposes of this RFP, "personal relationship" is defined as a current or past association other than a clearly contractual, business, financial or similar relationship and includes family relationships or other connections that are more significant than simply responding to this RFP. For this purpose, "family relationship" means a relationship within the third degree of consanguinity or second degree of affinity. Chapter 573 of the Texas Government Code defines relationships that are within the third degree of consanguinity or the second degree of affinity. Associations other than family relationships fall within this definition and must be disclosed if a reasonable person could expect the connection to diminish Contractor's independence of judgment or effectiveness in the performance of Contractor's responsibilities to TDA or the state under the Contract.

Connections also fall within the scope and requirements of this section if a reasonable person could expect the connection to create a potential appearance of impropriety or conflict of interest. A relationship between TDA and another State of Texas employee may constitute a conflict of interest if the other State of Texas employee has a relationship with the Contractor that could be used to influence an individual with authority to make decisions or recommendations on state contracting, procurement, or this RFP. Those persons with authority to make such decisions or recommendations are those persons who fall within the definition of "purchasing personnel" in Section 2262.004(a)(2) of the Texas Government Code.

D. CONTINUING DUTY TO DISCLOSE

Contractor has a continuing duty to disclose an actual or perceived conflict of interest if circumstances change or additional information is obtained subsequent to submission of a proposal. A Contractor is under a continuing duty to disclose an actual or perceived conflict of interest as described in this section throughout the term of the Contract and any renewal. The duty to disclose an actual or

perceived conflict of interest does not end with the submission of a proposal or receipt of a contract award.

SECTION II. PROPOSAL CONTENT

This solicitation provides the roadmap for a successful proposal submission. Although all requested information is required, some requirements **must be included with the proposal, or the proposal will automatically be rejected as non-compliant with the solicitation.**

Failure to provide all required information, certifications, and signatures may result in disqualification of the proposal, in which case the proposal will receive no further consideration.

Failure to provide all requested information may result in a lower score during evaluation if the omission does not automatically cause rejection as non-compliant. If the requested information will not be submitted, a brief explanation for the omission should be included. This will provide context for the missing requirement rather than the assumption of error discussed.

TDA reserves the right to reject some or all proposals and to negotiate portions thereof including cost or budget. TDA reserves the right to select the best proposal considering the outcomes desired and the reasonableness of cost.

1. REQUIREMENTS FOR PROPOSAL ACCEPTANCE

A. IDENTIFYING REQUIREMENTS OR DIRECTIVES

This solicitation contains language that will identify the requirements for the proposal. Use of the words “shall”, “will”, and “must” or similar directive language indicates a requirement. Some requirements may be in bold type.

B. GENERAL REQUIREMENTS.

The proposal must include the listed requirements which should be submitted in the order of the Content and Order table–Proposal Format. **Certain requirements are essential to an accepted proposal such as:**

- (1) State of Texas Vendor Tax ID, which is located on the Vendor Information Form.
- (2) Properly marked electronic copies as defined.
- (3) Proposed project plan and proposed project schedule.
- (4) Understanding of the project and a methodology for successful completion.
- (5) Proposed budget/fees for completion of the work provided on Attachment 9 Cost Proposal Submission.
- (6) Firm and team qualifications.
- (7) Three References.

C. ASSUMPTIONS MADE IN PREPARING THE PROPOSAL

The posted solicitation will have a period for questions in which Contractors can get clarification on the solicitation. However, if the Contractor makes one or more assumptions in preparing a proposal, the assumptions **must** be included and explained.

For purposes of submission, TDA assumes that the Contractor has completely read the solicitation and has asked all questions necessary to an understanding of the requirements and obligations prior to submission of the proposal. TDA further assumes that omitted information is an error causing the submission to fail.

D. EXCEPTIONS TO SOLICITATION REQUIREMENTS

A requirement for submission of the offer includes accepting required state terms and conditions. Depending on the funding source, most of the terms are required by state or federal law. The Contractor can take exception to a term or requirement, but that exception does not override the acceptance of the terms and conditions when submitting the signed proposal. A requested exception will be reviewed at the point of any award, and either granted, granted with an amendment, or rejected by TDA in its sole discretion.

TERMS OR CONDITIONS NOT INCLUDED IN RFP

Any additional terms and conditions attached to or contained in a proposal submitted in response to this RFP will not be considered unless specifically explained in the proposal and, in TDA's sole and absolute discretion, may result in disqualification of the proposal. YOUR PROPOSAL MUST BE ACCOMPANIED WITH THE FOLLOWING SIGNED ATTACHMENTS:

- (1) Execution of Offer (Attachment 1).
- (2) Key Contracting Persons Disclosure Statement (Attachment 3).
- (3) Cost Proposal (Attachment 9A and 9B).
- (4) HUB Subcontracting Plan (Attachment 10), if applicable.

Any unsigned proposal or unsigned pages on the list above will not be accepted.

WARRANTY OF TRUE AND CORRECT SUBMISSION

By signing the required forms, the Contractor or Contractor's legally authorized agent represents and warrants that all statements within the proposal are true and correct. Discovery of any false statement in the proposal is a material breach and shall void the submitted proposal or any resulting Contract(s); in such case, Contractor shall also be removed from all bidder eligibility lists maintained by TDA.

CONTRACTOR QUALIFICATIONS

A. ELIGIBILITY TO DO BUSINESS IN THE STATE OF TEXAS

Any Contractor selected for an award under this RFP must:

- (1) have a current Texas Identification Number issued by the Texas Comptroller of Public Accounts (CPA).
- (2) be current in all required business filings, including franchise tax filings, with the CPA and the Texas Secretary of State.
- (3) be current in the payment of all local or State of Texas taxes and fees.
- (4) be registered by the Secretary of State as a foreign entity authorized to do business in Texas if incorporated in a jurisdiction outside of Texas. See statutory requirements in Chapter 9 of the Texas Business Organizations Code if meeting the definition of a foreign entity defined by Section 1.002(28) of the Texas Business Organizations Code.

Failure to meet the requirements will result in disqualification of the Proposal and/or termination of an award or Contract resulting from this RFP.

Proof of compliance with the above Eligibility Requirements must be confirmed prior to award.

B. DETAILED CAPABILITIES

Contractors **shall** provide firm and staff capabilities specific to the Statement of Work. Including any capability, knowledge, or experience Contractor believes distinguishes the Firm even if not identified as a required qualification.

Documentation that confirms qualifications is as follows.

- (1) History of the Firm
Show the year the firm started, its business philosophy and the size of the largest project of a similar type successfully delivered by the firm to date.
- (2) Organization Chart
Show the project reporting hierarchy of firm staff and sub-contracted staff.
- (3) Composition of Firm's Core Team
Provide for the core team, the names, titles, contact information, primary locations, role, and availability for the term of the Contract. For purposes of this matrix, the core team consists of management, including executive, senior, or mid-management; and non-management firm staff with subject matter experts assigned to perform in roles essential to meeting the objectives of the project.
- (4) Management Team Resumes
In resume form, document all required qualifications, the role each firm management member has in the project, and each management member's time allocation devoted to the project.
- (5) Core Team Resumes

In resume form, detail the professional background, experience, and knowledge of the subject matter for each core member required to qualify for the project, the role each core team member has in the project, and each core member's time allocation devoted to the project.

(6) Financial Responsibility Questionnaire

Complete the questionnaire in Attachment 4 as fully as possible. An omission, even if accidental, will cause the proposal to be considered non-responsive.

(7) Reference Performance Confirmation

The reference information must include, but is not limited to:

- a. Name of the company(ies) or agency(ies) served by the Contractor,
- b. The kinds of activities that were performed by the Contractor,
- c. Reference Contact name,
- d. Reference email address,
- e. Reference phone number from each contact that can verify the quality and timeliness of Contractor's work, and
- f. TDA will also check the state's Vendor Performance Tracking System (VTPS) for information.

C. CONTRACTOR MINIMUM QUALIFICATIONS

Qualifications comprise a percentage of the evaluation factors. Minimum qualifications must be demonstrated in the proposal and maintained throughout the term of the Contract. Any replacement personnel must be submitted for approval to the Contract Manager with the same level of documentation as required in the proposal. TDA will not unreasonably withhold approval, and if disapproved will provide the reasoning.

(1) Firm and Team Qualifications

The Contractor must meet or exceed qualification requirements, which must be confirmed in the proposal.

(2) Performance History

The firm cannot have any failing reports in the Texas Comptroller's Vendor Performance Tracking System (VPTS).

None of the staff assigned by the Contractor to this Contract has been disqualified from participation in any federally funded programs during the past seven years preceding this Contract and will not for the duration of this Contract.

None of the staff assigned to this Contract has been convicted of fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and/or obstruction of justice during the past seven years preceding this Contract and will not for the duration of this Contract.

Neither the Contractor's organization nor its principals or authorized representatives are presently debarred, suspended, proposed for debarment, declared ineligible, disqualified, or voluntarily excluded from participation in this transaction by any Federal/State department or agency. Contractor has an ongoing duty to inform TDA promptly if the Firm or assigned staff or representatives no longer meet the above requirements.

(3) Project Manager | Contract Manager Experience

Contractor will assign a project manager to assure the team performs on time and to expectations. Contractor will also provide a Contract Manager to assure the contractual requirements have been met. Responsibilities for both positions can be assigned to a single team member, but a single person performing both roles must meet the qualifications of each including:

CONSEQUENCE OF OMISSION

Failure to provide documentation that specified qualifications have been met will cause disqualification of the proposal as non-responsive.

PRICING REQUIREMENTS

A. GENERAL REQUIREMENTS

1. All Contractors **must** provide a complete, detailed, and itemized cost proposal. Contractors should propose a total cost deliverable as indicated in Attachment 9A and 9B. Do NOT use “TBD” (to be determined) or similar annotations in the areas for price. All blanks must be completed.
2. Contractors are encouraged but not required to propose areas where costs for requested activities and deliverables could be reduced without sacrificing the quality of the resulting product or services. All Contractors are encouraged but are not required to submit proposed “value-added” services or components for consideration and evaluation by TDA, with corresponding costs for such additional services. However, acceptance of proposed value-added services shall be at the sole discretion of TDA and there is no guarantee of acceptance of any such value-added services or components.

B. COST PROPOSAL

1. The Contractor’s submitted cost proposal covers all requirements and deliverables unless the Contractor otherwise specifies an additional cost as a value-added service.
2. Costs must be justified in terms of activities and objects of expenditure and must be reasonable (i.e., consistent with current market prices) and necessary to accomplish the work.
3. Services to be purchased from other companies or contractors, including any amounts subcontracted to HUBs, consultants, and others, must be specified. Equipment that will be purchased to provide solicited services must be specified if, either directly or indirectly, it is included in the prices proposed. Travel or equipment and supplies will not be paid or reimbursed separately.
4. The cost proposal templates are located as Attachment 9A, 9B, and must be completely and thoughtfully prepared. If assumptions are made in arriving at a cost, the assumption must be explained.

SECTION III. PROPOSAL FORMAT

1. PROPOSAL FORMAT

All Contractors **must** submit two (1) printed copies of the proposal and ONE (1) electronic DVD or USB device formatted as detailed below. Proposals must be submitted in a manner which does not carry any benefit, keepsake, or value for members of the evaluation committee.

Proposals must be formatted as follows:

A. PRINTED COPIES

- (1) Formatted and Written on 8 ½" x 11" paper.
- (2) Three-hole punched OR submitted in three-ring binders.
- (3) Sequentially numbered pages from front to back. (1, 2, 3, etc.).
- (4) Tabs between each Section, in sequence, as detailed.

B. ELECTRONIC COPIES

By submitting a proposal, permission to edit, print, copy, and distribute as authorized under public information or other law is given to TDA. Three (3) versions of the proposal must be submitted on approved electronic media as described below.

- (1) One unmarked copy of the entire proposal including all attachments. This copy must be in PDF or MSTM Word and accessible (no password) to TDA staff.
- (2) One marked copy of the entire proposal identifying claimed proprietary and confidential information. Markings can be made by highlighting the claimed information and marking it as proprietary, confidential, or both in a comment.
- (3) One redacted copy of the entire proposal that makes the confidential or proprietary information claimed in (2) above unreadable. Redaction can be made in MS WordTM by highlighting the confidential words in black. AdobeTM also has a redaction feature.
- (4) Format headings that allow for navigation to specific tabbed sections electronically.
- (5) Include tab number for each section heading by inserting a page before each section with the Tab number and title. See the above Section heading as an example of a section heading in MS WordTM. Virtual Tabs can be accomplished using the Styles or the Table of Contents feature in MS WordTM.
- (6) If submitting in PDF format, insert a page with only the Tab number and title before the section heading. Thumbnails will be created that allows for electronic movement between sections.

2. TABLE FOR CONTENTS AND ORDER OF PROPOSAL

TAB	DESCRIPTION
TAB A	Cover Page-Executive Summary / Understanding of Project Goals / Approach
TAB B	1. Assumptions Underlying the Proposal 2. Exceptions Taken to RFP Requirements
TAB C	Attachment 1 Execution of Offer, Affirmation of Terms and Conditions and Proposal Preferences
TAB D	Attachment 2 Vendor Information Form
TAB E	Attachment 3 KEY CONTRACTING PERSONS DISCLOSURE STATEMENT
TAB F	Attachment 4 Financial and Operational Capability Form
TAB G	Attachment 5 Questions and Answers
TAB H	Attachment 6 SPECIAL PROVISION C - Lobbying Certification
TAB I	Attachment 7 SPECIAL PROVISION B - Debarment and Suspension Certification
TAB J	Attachment 8 DATA SECURITY REQUIREMENTS
TAB K	Attachment 9 COST PROPOSAL/SCHEDULE Form I Rate Price Proposal Schedule Form J Rate Schedule
TAB L	Attachment 10 HUB SUBCONTRACTOR PLAN (HSP)
TAB M	Form K Contractor Structure Delivery Storage Plan and Quality Assurance
TAB N	Form L Contractor Structure Staffing Plan
TAB O	Form M Solicitation Questions Template
TAB P	Proposed Project Work Plan and Project Schedule
TAB Q	Proposed Food Safety Defense Plan
TAB R	Emergency Plan
TAB S	Organization Chart

TAB T	Brief History of The Firm, The Year the Firm Started, And the Size Of The Largest Project (Campaign, Etc.) Successfully Delivered by The Firm to Date.
TAB U	Management Team Resumes and The Role Each Has in The Project
TAB V	Three Written Client References
TAB W	List of Previous Contracts with Texas State Agencies

3. PRICING REQUIREMENTS

a. Base Pricing:

Contractors must provide a cost for each cost category submitted in Form I and Form J with their proposal. TDA defines each cost category in Form I and Form J as follows:

Attachment 9A Form I

- **a.** Per case price for Dry Storage at Contractor’s Warehouse (after 45 days) of USDA Foods and Processed commodities. *This price is what the contractor will charge the CE on the 46th day of storage.*
- **b.** Per case price for Chilled Storage at Contractor’s Warehouse (after 45 days) of USDA Foods and Processed commodities. *This price is what the contractor will charge the CE on the 46th day of storage.*
- **c.** Per case price for Frozen Storage at Contractor’s Warehouse (after 45 days) of USDA Foods and Processed commodities. *This price is what the contractor will charge the CE on the 46th day of storage.*
- **d.** Per case price for pick-up by a CE at Contractor’s Warehouse. *This price is what the contractor will charge the CE when the CE arrives at the contractor’s warehouse and the contractor loads the CE’s pick-up vehicle or a third party’s vehicle that is picking up for the CE.*
- **e.** Per case price for the handling of USDA Foods Delivered. *This price is what the contractor will add to the delivery cost (Form J) for handling each case for delivery which includes the administrative cost.*

Attachment 9B Form J

- **1.** Per case price for delivery of USDA Foods and Processed commodities. See (Form I e.) for the handling cost that shall be included within the delivery price when invoiced.

b. Price to Value (*include in federally funded procurements*)

The proposal submitted for each region shall include the work function/activities for each cost category submitted in forms I and J, and correspond with the overall work plan presented in the proposal. Contractor shall submit a budget along with Form I and Form J. The budget shall reflect that the contractor has the financial resources to accomplish the service specifications presented in each cost category in the proposal as a budget line item.

Costs must be justified in terms of activities, must be reasonable, consistent with the current market price, and necessary to accomplish the work outlined in the RFP. Services to be purchased from other agencies, subcontractors, including any amounts subcontracted to HUBs, consultants, and others must be specified. Equipment that will be purchased to provide solicited services must be specified if, either directly or indirectly, it is included in the prices proposed.

4. Demonstration of Contractor Qualifications

Contractors shall provide firm and staff capabilities specific to the Statement of Work, including but not limited to:

- Organization chart
- A brief history of the firm, the year the firm started, and the size of the largest project (campaign, etc.) successfully delivered by the firm to date.
- Management team resumes and the role each has in the project
- Key personnel resumes and the role each has in the project

- Completion of the Financial Responsibility Questionnaire (Attachment 4)

Contractors must provide three written client references on projects performed within the last three years, preferably of like agency size and project scope to this solicitation. References should provide answers to the following questions on company letterhead:

1. Name of Client
2. Contact information for the person providing the reference (name, phone, and email address)
4. What were the goods/services procured?
5. Was the project delivered on time?
6. What was the size of the project? (Over or under \$1 million, target reach, etc.)
7. Was the project delivered on or under budget?
8. Was the project competitively solicited?
9. How satisfactory was the implementation process?
10. How satisfactory is the product delivered?
11. How would you describe ongoing support/maintenance/ if any?
12. Would you recommend the proposing company to TDA for this project, and if yes, how strongly?

Failure to provide documentation of the qualifications shall be cause to reject the proposal as non-responsive.

5. DISCLOSURE OF PROPOSAL CONTENT

A. COPYRIGHTED MATERIALS

TDA will not consider any proposal bearing a copyright. **Copyrighted proposals submitted in response to this RFP will be considered non-responsive** and will receive no further consideration.

B. PUBLIC INFORMATION

Proposals are subject to the Texas Public Information Act (PIA), Texas Government Code, Chapter 552, and may be disclosed to the public upon request. All proposals and other submitted information shall be presumed to be subject to disclosure unless a specific exception to disclosure in the Act applies.

Should a request for the proposal be submitted under the Public Information Act, and should TDA decide in its sole discretion to request an Attorney General's opinion on the request, the redacted version will be provided to the requestor while the unredacted version identifying the claimed proprietary and confidential information will be submitted for opinion.

In the event TDA receives a PIA request for Contractor's unredacted proposal, TDA will notify Contractor in accordance with Section 552.305 of the Texas Government Code. However, TDA is not obligated to seek an Attorney General's opinion if it determines the material contained in the Contractor's proposal is not exempt or protected from disclosure under the PIA. In such an event, the Contractor may independently pursue its remedies provided under the PIA and applicable Texas law.

C. PROPRIETARY AND CONFIDENTIAL

If it is necessary for Contractor to include proprietary or otherwise confidential information in proposals or other submitted information, Contractor must clearly label the proprietary or confidential information and identify the specific exception to disclosure in the PIA. Merely making a blanket claim the entire proposal is protected from disclosure because it contains some proprietary information is not acceptable and shall make the entire proposal subject to release under the PIA. To initiate the process of seeking an Attorney General's opinion on the release of proprietary or confidential information, the specific provisions of proposals that are considered by Contractor to be proprietary or confidential must be clearly labeled as described below. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA. Subject to the Public Information Act, the Contractor may

protect trade and confidential information from public release. Trade secrets or other confidential information, submitted as part of a proposal, must be clearly marked on each page it appears.

D. POSTING PROPOSALS

Pursuant to Section 2261.253 of the Texas Government Code, TDA is required to post electronic copies of the awarded Contract and winning proposal on its website. To ensure that there is no release of confidential, privileged, proprietary, or trade secret material contained in Contractor's proposal, Contractor must submit a redacted copy of its proposal for posting on TDA's website, in addition to its responsive copy which identifies confidential, proprietary, privileged and trade secret material in accordance with this Section 3.3. In the event TDA receives a PIA request for Contractor's unredacted proposal, TDA will notify Contractor in accordance with Section 552.305 of the Texas Government Code. However, TDA is not obligated to seek an Attorney General's opinion if it determines the material contained in the Contractor's proposal is not exempt or protected from disclosure under the PIA. In such an event, the Contractor may independently pursue its remedies provided under the PIA and applicable Texas law.

6. AMENDMENTS TO THE SOLICITATION

Any amendment to this solicitation will be posted as an addendum on the Electronic State Business Daily (ESBD). It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Proposal. Contractor's failure periodically to check the ESBD will in no way release the Contractor from the requirements of "addenda or additional information" nor will any resulting additional costs to meet the requirements be allowed after submission deadlines pass.

7. HUB SUBCONTRACTING PLAN (HSP) REQUIREMENTS

It is the policy of TDA to promote and encourage contracting and subcontracting opportunities for the State of Texas certified Historically Underutilized Businesses (HUBs). While all solicitations will not have opportunities for subcontracting, all Contractors are encouraged to subcontract with certified HUBs when feasible. Eligible Contractors are encouraged to become HUB certified. State of Texas HUB applications and eligibility requirements may be found at: <https://comptroller.texas.gov/purchasing/vendor/hub/>.

Statement of Probability – TDA has determined that subcontracting opportunities are probable in connection with this procurement. Therefore, ALL Contractors must fill out and submit an HSP with the proposal to be considered responsive. A Contractor selected for an award under this RFP shall develop and administer an HSP as a part of its proposal in accordance with the TDA Policy on Utilization of HUBs and state law. Contractor must make a good faith effort and solicit a minimum of three Texas certified historically underutilized businesses from the state's Centralized Master Bidders List (CMBL) for work that they cannot complete with their own staff and resources. Contractors must also notify minority or women trade organizations or development centers of subcontracting opportunities.

All Contractors are required to submit an HSP for this RFP:

- A. If the Contractor is a HUB, an HSP is still required to identify the percentage of the work to be performed by subcontractors.
- B. If the Contractor (HUB or non-HUB) is not subcontracting any portion of the work, the Self Performance portion of the HSP must be completed and returned with the proposal.

The HUB subcontracting goal for this procurement is 26% minority and/or woman-owned business participation.

Failure to submit an HSP with the proposal shall result in the rejection of the proposal. Also, submission of an incomplete or incorrect HSP is a material failure to comply with this solicitation's requirements and shall result in rejection of the proposal.

The HSP shall become a provision of the contract between the awarded Contractor and TDA. Contractor can only change the HSP if (a) the Contractor complies with 34 TAC § 20.285(g)(2); (b) the Contractor provides its proposed changes to TDA for review; (c) TDA approves the Contractor's proposed changes to its HUB Subcontracting Plan; and (d) TDA and the Contractor amend the Contract incorporating the revised HSP with the changes approved by TDA.

If TDA determines that the Contractor failed to make a good-faith implementation of the HSP, TDA, in addition to any other remedies, may report Contractor's nonperformance to the Texas Comptroller in accordance with 34 TAC § 20.285(g)(5).

Eligible persons and entities are encouraged to become HUB certified. State of Texas HUB applications may be found at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/>

Definitions for State of Texas HUB certifiable businesses can be found in 34 TAC Chapter 20, Subchapter D, Division 1, which is available at: http://texreg.sos.state.tx.us/public/readtacSext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=D

C. STATUTORY THRESHOLD FOR SUBMITTING HSP

In order to be responsive to this solicitation, each Contractor submitting a proposal that meets or exceeds \$100,000 for the term of the Contract (original term plus all potential renewals identified in this RFP) must fill out a HUB Subcontracting Plan (HSP) Form, sign the form, and submit it with its proposal.

D. GOOD FAITH EFFORT

Contractor must make a good faith effort and solicit a minimum of three Texas certified historically underutilized businesses from the state's Centralized Master Bidders List (CMBL) for work that it cannot complete with its own staff and resources. Contractors must also notify minority or women trade organizations or development centers of subcontracting opportunities. Additional requirements are listed in the HSP (Attachment 10). Pursuant to 34 TAC 20.284, the HUB subcontracting goal for this procurement is **26%** minority and/or woman-owned business participation.

All Contractors are required to complete and submit one or more sections of the HSP Form.

- If the Contractor is a HUB, an HSP is still required to identify the percentage of the work to be performed by Contractors.
- If the Contractor (HUB or non-HUB) is not subcontracting any portion of the work, the Self-Performance portion of the HSP must be completed and returned with the proposal response. Page 1 of Attachment C (HSP Form) provides a checklist that details the sections to complete depending on the responding company's ownership and intended performance. The checklist is a good way to make sure the HSP is correctly completed.

E. CONTRACTS UNDER \$100,000

A HUB Subcontracting Plan (HSP) is **not** required for this procurement **if** your proposal is less than \$100,000 calculated on the original term plus all renewal opportunities defined in this RFP.

F. How to Find Texas Certified HUBs for Subcontracting Opportunities

Use the Centralized Master Bidders List (CMBL)/HUB Directory on the Comptroller of Public Accounts website

1. **Go to** the [Search for Vendor page](#).
2. **Search FOR:** ☉ HUBs Only to see registered and unregistered HUBs. If you only want to see HUBs registered on the CMBL, check ☐ HUBs on CMBL.
3. **Select** search method: Multiple Vendor Search (by NIGP Class Code)
- 4.

Examples:

Class Code: #958 – MANAGEMENT SERVICES

Item: # 44 - Food Management Services

Item: # 48 – Freight Management Services

Item: # 94 – Warehouse Management Services

Class Code: #961 - MISCELLANEOUS SERVICES, NO. 1 (NOT OTHERWISE CLASSIFIED)

Item: # 61 – Inspection and Certification Services

Item: # 82 – Transportation Services (Not Otherwise Classified)

Class Code: #962 - MISCELLANEOUS SERVICES, NO. 2 (NOT OTHERWISE CLASSIFIED)

Item: # 40 - Food Distribution Services

Item: # 86 – Transportation of Goods and Other Freight Services

Item: # 95 – Warehousing and Storage Services (Not Storage Space Rental)

Class Code: #961 – REAL PROPERTY RENTAL OR LEASE

Item: # 91 – Warehousing Rental or Lease

To see the items associated with any particular class, click on the Class number in the Commodity Book at <https://comptroller.texas.gov/purchasing/nigp/>

5. **Customize** report by selecting Fields for Output and Output Options

6. **Click** Submit Search.

Questions about the HSP Form, finding HUB vendors, or the State of Texas HUB Program, should be directed to the TDA Director of HUB/MWBE Programs, by email at HUB@texasagriculture.gov. Additional information and training regarding how to complete an HSP can be found on the CPA Website at the following link: <https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>. Additional minority and women-owned business association resources are available for subcontracting notices at <https://comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

SECTION IV. EVALUATION OF PROPOSALS

1. COMPETITIVE SEALED PROPOSALS

TDA may award contract(s) in accordance with the Competitive Sealed Proposals process as authorized by Texas Government Code §2156.121. As such, TDA will evaluate Contractors' proposals on a variety of factors in addition to the price. TDA is **not authorized** to conduct public proposal openings or tabulations prior to award of any Contract(s) awarded pursuant to this RFP.

TDA reserves the right to award contract(s) without any negotiation and reserves the right to not make any contract awards under the terms of this RFP.

2. BEST PRICE PROPOSAL

Contractor is strongly encouraged to provide its best price in its proposal because TDA makes absolutely no guarantee that there will be any opportunity to negotiate or provide alternative pricing at any point during the RFP process. TDA may limit the number of proposals to a competitive range consisting of the greatest number of proposals that will permit efficient competition among Contractors based on the proposed pricing and criteria specified in the RFP. TDA may seek additional information and solicit best and final offers only from those Contractors determined to be in the competitive range.

Discussions may be conducted with Contractors that submit proposals determined to be reasonably likely to be selected for an award, for the purpose of clarification and to ensure full understanding of all terms and conditions of a proposal submitted in response to this RFP, including the requirements of any Contract. In conducting these discussions there shall be no disclosure of any information derived from proposals submitted by competing entities.

3. REVIEW OF PROPOSALS

TDA will begin the review of proposals as soon as is practical after receipt. In TDA's sole and absolute discretion, the Contractor may be asked to make an oral presentation of its proposal at TDA's headquarters in Austin, Texas. If applicable, proposals will be rated again following oral presentations.

By law, TDA may not disclose any information regarding a proposal until a Contract is executed by both parties. Upon Contract award, TDA will post the Notice of Award on the ESBD at <http://esbd.cpa.state.tx.us/>. Additional copies of proposals **not selected for award** will be disposed of in accordance with the agency approved records retention policy.

EVALUATION CRITERIA

A. BEST VALUE SELECTION

Proposals will be evaluated and selected based on best value considerations to the state, including the demonstrated ability of each Contractor to carry out all requirements contained in this RFP. A Contractor who is in default or otherwise not in good standing under any other current or prior contract with TDA will not be eligible for award of this Contract.

TDA will evaluate the Contractor's proposal submitted in response to this RFP based on the Contractor's processes, products, and services and the criteria set forth below.

B. TABLE OF EVALUATION CRITERIA

	CATEGORIES	POSSIBLE POINTS
A	Logistical Approach and Workplan: <ul style="list-style-type: none">• fleet size and capacity• Warehouse storage size and type• Adequate QA Inventory Controls• Adequate Staffing	25
B	Understanding of project requirements <ul style="list-style-type: none">• Thoroughness of response	15

	<ul style="list-style-type: none"> • Demonstrated understanding of what is needed to successfully deliver food-grade warehousing and delivery programs • The proposal is thoughtfully developed and did not just repeat the SOW requirements • The proposal identifies areas where the firm has unique qualities to bring to the project 	
D	Experience and Qualifications: <ul style="list-style-type: none"> • Experience with similar projects • Business expertise to manage contract successfully • Expertise in food warehousing and delivery programs • Industry certifications • Financial and Human Resources to perform successfully. • Performance history; VTPS and References 	25
E	Price - Delivery	20
F	Price – Storage	10
G	Price – Pick-Up	5
	Total	100%

If a contract is awarded under the terms of this RFP, such award will be made to the Contractor that meets all criteria required by TDA and which TDA determines, in its sole and absolute discretion, represents the best value for the state.

EVALUATION PROCESS

TDA will evaluate proposals in accordance with the selection criteria specified in this RFP. Submission of a proposal is the Contractor’s acceptance of the evaluation process set forth in this RFP and Contractor’s acknowledgment that subjective judgments may be made by TDA during the evaluation process.

TDA reserves the right to reject any or all proposals or any portion of any proposal submitted which, in TDA’s opinion, is not in the best interest of TDA.

COMMUNICATION DURING SOLICITATION

TDA may conduct discussions with any Contractor that appears to be eligible for an award, pursuant to the selection criteria set forth in this RFP. In conducting the discussions, TDA will not disclose information derived from proposals submitted by competing Contractors.

TDA reserves the right to negotiate individual elements of any proposal. TDA reserves the right to meet with and negotiate terms with one or more Contractors. All Contractors acknowledge that TDA is not bound to accept the lowest-priced proposal.

BASIS OF AWARD

The selection will be based on the evaluation criteria set forth above, as well as best value considerations to the state, including demonstrated competence, experience, knowledge and qualifications, the evaluation criteria and weights outlined above, as well as the proposed fee and costs for all or each portion of the deliverables, goods, services, or work requested under this RFP as determined by TDA in its sole and absolute discretion.

All state agencies report unsatisfactory performance on purchases over \$25,000. Agencies report satisfactory and exceptional vendor performance to assist in determining the best value to the state. In accordance with Texas Government Code Sections §§2155.074 and 2155.75, the Contractor’s performance may be used as a factor in contract awards.

SELECTION OF CONTRACTOR(S)

Contractor(s) selected for an award, if any, will be the Contractor(s) whose proposal(s), as determined by TDA, represents the best value to the state. TDA has not committed itself to make an award or retain a Contractor based on the issuance of this RFP, nor does the suggested scope of services or terms of agreement below require that TDA make an award or retain a Contractor for any or all of those purposes. TDA reserves the right to make those decisions after receipt of proposals and TDA's decision on these matters is final.

Any award resulting from this solicitation will be posted on the ESD located at:

<http://esbd.cpa.state.tx.us>.

SECTION V. STATEMENT OF WORK (SOW) – SPECIFICATIONS | REQUIREMENTS

This section consists of essential contract terms.

5.1 STATEMENT OF WORK

This RFP provides an outline of the project and service specifications and requires that all Contractors provide information about their organization's viability, experience, and capability to successfully perform and to provide the requested services according to the following specifications, deliverables, and other requirements. Section 5.2 will be incorporated into any resulting contract.

5.2 SPECIFICATIONS

The contractor will provide goods and services to the following specifications.

A. Receiving Food Shipments.

1. Inbound Shipment Loads.

Contractors will receive inbound shipments directly from USDA, commercial processors, and carriers of fresh produce. A shipment of the product may be a full or partial truckload.

a. USDA Foods – Inbound shipments of USDA Foods contain one food item per load (approximately 700-2000 cases).

b. Processed Foods – Inbound shipments of processed foods are delivered by food manufacturers and contain one or more food items per load. Shipments are not derived from USDA and are not bound by policies within the FNS Instruction 709-5.

c. USDA Foods Fresh Produce – Inbound shipments of fresh produce will contain one product. Contractors must monitor USDA Foods fresh produce closely to ensure quality is not compromised. Contractors must inspect the produce upon receipt from the USDA vendor and before delivering to a CE to ensure it has not been damaged or spoiled during the delivery and storage processes. Contractors must review CE Delivery Orders to ensure the USDA Foods fresh produce are requested for receiving on their next scheduled delivery for optimal quality. Shipments derived from USDA are bound by policies within the FNS Instruction 709-5.

d. Farm to School Produce – Inbound shipments of Farm to School Produce may contain up to three food items per shipment. Contractors must inspect the produce upon receipt from the vendor and before delivering to a CE to ensure it has not been damaged or spoiled during the delivery and storage processes. Contractors must store produce at proper temperatures to ensure the product does not ripen before delivery. Contractors must review CE Delivery Orders to ensure the Farm to School produce are requested for their next scheduled delivery for optimal quality. Shipments are not derived from USDA and are not bound by policies within the FNS Instruction 709-5.

2. USDA Foods Fresh Produce Deliveries

Fresh fruit and/or vegetable shipments directly delivered to warehouse by a USDA vendor, except for apples, cannot be unloaded without an inspection conducted by a USDA representative. USDA representatives will fail any shipment that does not meet USDA specifications. The warehouse must immediately notify TDA of failed inspections.

3. Out of Condition USDA Foods Delivery

Contractors should inspect shipments of USDA Foods before unloading. If upon inspection, the Contractor observes that a portion of the USDA Foods is in an out-of-condition state (i.e. no longer fit for human consumption because of contamination, damage, or infestation) they must immediately inform TDA. TDA may request pictures of the shipment. The Contractor may request reimbursement of costs associated with unloading out-of-condition USDA Food shipments. Neither the Contractor nor USDA vendor/carrier can assess or levy lumper fees for cargo that shifts during transit.

4. Shipment Protection

a. Seals – Contractors must record the serial numbers of truck door seals and their condition. Consignees shall record inbound, and if applicable, outbound seal numbers. Contractors must reject the shipment and immediately report to TDA if seals are either broken, missing, or do not match the number on supporting documentation such as Bill of Lading (BOL). (Note: The driver is issued seals for split shipments. This does not apply to Farm to School or Processed End product shipments).

b. Cabin Temperature - The consignee must maintain documentation of the temperature of a freezer or refrigerated truck or trailer upon arrival.

5. Warehousing

1. Facility Requirements

a. Capacity – The Contractor must have sufficient storage space to handle all inbound shipments at all times including abnormal peak loads, at no additional cost to TDA or CEs. The number of cases expected to be on hand at any given time varies depending on the flow of inbound and outbound shipments.

b. Inspection – At their sole discretion, TDA, USDA, their agents, or representatives, will inspect Contractor's facilities and/or subcontractor's facilities. Inspections may be scheduled or unannounced. Contractors must cooperate with all inspections, including an annual inventory review. Inspections are to help ensure that Contractors are complying with all terms and conditions of this RFP and USDA requirements are met, including sanitation, security, and temperature. Contractors must comply with State and local health requirements.

2. Insurance Coverage for USDA Foods

a. Within thirty (30) days of notification of the contract award, the Contractor will submit to TDA, proof of insurance. The insurance must be of an amount no less than the applicable amount listed in the chart below, which sets the insurance amount by contracted region according to the volume of product stored in the regional warehouse from the prior year.

Table 2 Value of USDA Foods to Insure

Region	Value of USDA Foods
1	\$610,941.09
2	\$355,474.83
3	\$633,793.24
4	\$513,522.67

5	\$570,520.87
6	\$328,682.00
7	\$54,639.31
8	\$429,894.62

b. The insurance must be renewed annually thirty (30) calendar days prior to the contract renewal effective date. TDA will determine the required insurance amount at renewal based on a region's average volume during the contract year. TDA will calculate each region's average volume.

c. The insurance coverage is to protect the value of the USDA foods stored at the Contractor's facility per 7 CFR 250.12(f)(5).

3. Facility Location

a. Warehouse Relocation – Changes to a Contractor's address or warehouse location must be submitted by email to the designated TDA Contract Manager no later than 60 days in advance of implementation. Contractors submitting changes less than 60 days may be imposed a destination fee by TDA, USDA, or USDA vendor.

b. Sub-Contracted Warehouse – The Contractor must obtain written approval from TDA before storing USDA Foods at any facility other than the Contractor's warehouse. The approval process to subcontract the storage of USDA Foods may include a site visit by TDA. The Contractor is responsible for any USDA Foods loss by subcontractors and for pursuing recovery of funds or product from the subcontractor. If the subcontracted facility is the destination for inbound USDA Foods, changes to the address or location of a subcontractor must be submitted to TDA 60 days in advance of implementing the change. Contractors submitting changes less than 60 days may be imposed a destination fee by TDA, USDA, or USDA vendor.

c. Contractors are required to ensure that subcontractors adhere to the RFP terms and conditions, including FNS 709-5 requirements. Contractors must also ensure subcontractors cooperate with USDA and TDA's inspectors, reviewers and auditors, or their authorized agents and representatives.

d. Contractor is held responsible for all losses under the contract. If the Contractor's obtained insurance does not cover the value of USDA Foods stored at a subcontracted facility, the Contractor shall require a performance bond from the subcontractor or proof of adequate insurance to cover any losses.

4. Temporary Facilities

Should a temporary facility be needed before receiving written approval from TDA, the Contractor must immediately acquire verbal approval from the designated TDA Contract Manager, and provide the name and location of the facility, term of temporary use, and assure TDA the facility is adequate to handle foods as set forth by the approved contract with the Contractor. The verbal approval will be followed by an email from the designated TDA Contract Manager confirming the temporary approval basis. Any and all losses, thefts, or damage of USDA Foods occurring at a temporary facility is the responsibility of the Contractor.

5. Storage Fees

a. 45 Days Free Storage

Contractors will provide 45 days of free storage to CEs starting the day after TDA allocates any shipments received by the Contractor. TDA electronically allocates USDA Foods every Tuesday and Thursday each week to CEs.

Example: If USDA Foods are received on Monday, and allocated on Tuesday, day one of the 45-day free storage period for CEs begins on Wednesday.

b. Private Storage - Long Term/Short Term Storage

Short Term: On the 46th day after allocation of USDA Foods, the Contractor may charge CEs a storage rate not to exceed the contracted private storage rates (per case, per month), by storage type. Short Term is defined as USDA Foods in storage from the 46th day through the 180th day.

Long Term: On the 181st day after allocation, the Contractor may charge CEs double the approved private storage rates (per case, per month) by storage type.

Storage Fees: The Contractor shall indicate the storage fees on the price schedule proposal form.

c. TDA requires all Contractors to provide TDA with an annual summary of delivery and private storage fees paid to them by schools, no later than July 30th of each contract year.

d. Contractors must have a system for generating invoices for private storage and delivery fees. TDA requires Contractors to submit quarterly reports (July-September, October-December, January-March, April-June) of fees invoiced to CEs. The report should indicate what invoices have been paid by CEs. In the RFP response, the Contractor must identify what system will be used to generate invoices.

6. Sanitation

a. Pest Control – Contractors must conduct pest and rodent control, at least monthly, and retain records to verify compliance. Employees must be trained to detect signs of infestation by insects and rodents, to correct such problems, and to prevent infestation problems from spreading.

b. Chemical Storage – Contractors must ensure that USDA Foods are stored away from chemicals or other potentially harmful products and otherwise ensure that USDA products and/or packaging are protected from contamination and from absorbing odors through the packaging.

c. Cleaning – Contractors must maintain and keep clean all warehouse facilities, trucks, and other spaces used for storing or transporting USDA Foods.

7. Storage Temperature Requirements

TDA requires Contractors to maintain logs and record temperatures in each storage area for USDA Foods at a minimum of every other day. If closed on Saturday and Sunday, Contractors must record temperatures on Friday and Monday.

- Frozen items must be stored at 0°F or below.

- Chilled items must be stored in refrigerated space at a temperature between 35°F and 45°F.
- Dry storage for canned items and other USDA Foods must be stored at a temperature between 50°F and 70°F. The dry storage area must be well ventilated with forced air.

8. Dry, Special Care

To prevent infestation and deterioration in quality, Contractors must give special care to some packaged, bagged, or canned dry storage USDA Foods.

The Contractor must store grain products (e.g. flour, non-fat dry milk, pasta, rice) in chilled storage. Chilled storage rates will apply.

- Contractors must refrigerate these products at 50°F or less, with relative humidity not greater than 60 percent (%).
- Other dry storage USDA Foods requiring special care must be carefully stacked and stored to prevent crushing or deterioration.

9. Inventory Management

a. Stock Rotation – The Contractor must typically rotate stock on a First In, First Out (FIFO) basis by date of receipt, but dates found on the package (expiration, best-if-used-by, pack, etc.) must be considered in the overall management of inventory rotation. The TDA Contract Manager must be informed when succeeding shipments have dates that may impact FIFO. TDA may require the Contractor to bypass FIFO if a CE's decision to delay timely receipt of their USDA Foods allocations, including processed end products and Farm to School Produce, causes another CE to receive product older than the product that was allocated to them.

b. Comingling Prohibited – Contractors must store USDA Foods, including processed end products and Farm to School Produce in lot numbers, separate from the Contractor's commercial foods.

c. Short Shelf Life Items – For short shelf life items, for example, apples, Contractors shall be responsible for adding the fresh produce to the CE Delivery Order if the CE did not request the produce on their next scheduled delivery. Contractors must notify the CE before the delivery date by phone or email that the order was modified to include the fresh produce.

d. Farm to School Produce must be delivered in its entirety eight (8) days from date of receipt by Contractor.

10. Inventory Damages

The Contractor must report to the designated TDA Contract Manager, within 24 hours, on TDA's Form H1638 "Report of Loss of USDA Foods", any damage to USDA Foods, including damage occurring in the warehouse or during transporting and delivery of the USDA Foods to the CEs. Form H1638 can be submitted via the following jot form link:

<https://form.jotform.com/92187665293166>. Any supporting documentation such as pictures and/or condemnation report from a qualified health inspector should be included when completing the jot form.

11. Inventory Controls

The Contractor is required to establish the following inventory control points.

- a. Warehouse Pick List
 - b. Bill of Lading (in three parts)
 - Warehouse Copy: Contains the items from the Warehouse Pick List and is kept on file at the warehouse.
 - Carrier Copy: Driver and CE sign and Driver returns copy to Warehouse
 - CE Copy: Driver and CE sign and CE retains a copy
- Note: Electronic bills of lading must capture signatures, with the date and time of signature, from the driver and CE and the CE must be provided a copy.

12. Physical Inventory Counts

i Mid-Year Count

1. TDA requires the Contractor to conduct a mid-year physical inventory count no later than December 31st.
2. The Contractor will submit results of the mid-year count to TDA via email to CommodityOperations@TexasAgriculture.gov.
3. TDA will reconcile the mid-year inventory count results and make necessary positive and/or negative inventory adjustments. Contractor will be required to also make inventory adjustments to their inventory management system to match inventory counts in TX-UNPS. Contractor will be deemed financially liable for any losses.
4. Any gains found during the mid-year count that are not in TX-UNPS must be reported immediately after the physical count is completed. These gains must be documented with Lot numbers and Received Dates for each item.
5. Like the Annual Inventory Review, section 10.c.iii, TDA will, at its sole discretion, determine the reasonableness of gains and losses and may require the Contractor to submit a written plan to address and correct identified inventory control deficiencies.

ii. Cycle Inventory Counts

In addition to mid and annual inventory counts, the Contractor shall conduct a first quarter (July – September) and a third-quarter (January – March) cycle inventory count. Cycle counts are not considered a full inventory count, but rather a count of select or high-value items in a Contractor's inventory. Contractor shall determine the items to count, retain cycle count information and provide to TDA on October 15th and April 15th.

iii. Annual Inventory Review

Each year, TDA or TDA's agents, along with the designee(s) of the Contractor, will physically conduct an inventory of all USDA Foods, including foods stored at subcontracting facilities. This review usually takes place annually in May or June before June 30th.

During the period designated by TDA for the Annual Inventory Review, the Contractor must not schedule appointments for inbound or outbound shipments of USDA Foods or process any pending CE delivery orders.

At the request of TDA, the Contractor shall provide equipment to allow TDA and/or TDA's agents to simultaneously count USDA Food stored in a freezer, chilled, and dry storage areas.

The Contractor shall provide equipment (lifts) with safety cages and safety belts to hold at least three people if required. The Contractor will furnish freezer outerwear (freezer coats as may be necessary).

During the annual inventory review, TDA and/or TDA's agents will compare the physical count to a current inventory generated from the TX-UNPS software system. The dollar amount of gains (overages) and losses (shortages) of USDA Food products are calculated using USDA's current list of food prices.

1. Annual Physical Inventory: Final Count

On the day of and when the Annual Physical Inventory Review is complete, TDA (or TDA's agents) and the Contractor must agree to the number of cases, packages, or containers of each USDA product counted, including the number at subcontracting facilities, and each must sign the inventory count sheets to affirm agreement with the results. If a discrepancy is determined and no agreement is met, the Contractor and TDA must conduct a recount of the product(s) in question. If a continuation of a non-resolution occurs, TDA will make the final determination and approval.

2. Annual Physical Inventory Reconciliation

No later than thirty (30) calendar days after the physical inventory count, TDA will provide the Contractor with a reconciliation letter, including the results of the Annual Physical Inventory count.

No later than thirty (30) calendar days after receipt of TDA's reconciliation letter, the Contractor will provide its response to TDA's findings.

3. Annual Physical Inventory: Losses

a. Shortages of Available Inventory – The Contractor must pay TDA for the value of the unallocated inventory of USDA Foods lost (shortages).

b. Shortages of Allocated Inventory – Allocated USDA Foods belong to CEs and the Contractor must reconcile losses by negotiating with the CEs directly. At the CE's option, the Contractor must either replace the lost product with a product of equal value and equal (or greater) quality or pay the CE the value in cash. When allocated inventory is transferred from one CE to another, the inventory maintains its original allocation date. The CE that accepts the transferred inventory must take possession of inventory on the next scheduled delivery.

c. Shortages of Processed Inventory – The Contractor must pay the CE a cash payment that compensates the CE for the value of processed foods lost. TDA, at its sole discretion, will provide the Contractor with the processed food loss value.

4. Physical Inventory Gains (Overages)

TDA reserves the sole right to make the determination, and not subject to Contractor dispute or discussion, to allow the Contractor to offset shortages with gains, thus reducing the total

loss recorded from the Annual and Mid-Year inventory counts TDA will determine reasonableness for the quantity of gains or losses identified during the inventory count and decide if offsetting is appropriate. TDA reserves the right to forgo offsetting gains with losses if deemed unreasonable. TDA retains the sole discretion to determine what may or may not constitute an unreasonable quantity of gain or loss, and will consider factors including, but not limited to:

- The annual volume handled by the Contractor.
- The Contractor's previous history of performance, including any gains and losses from previous years.
- Industry standards regarding gains and losses.
- The gain and loss rates of other TDA contractors.

If TDA allows the Contractor to offset gains with losses, the following applies:

a. The Contractor and/or TDA must investigate any shortages identified during the physical count to determine the cause of the shortage(s). The results of the investigation must be supported by appropriate documentation. TDA, at its sole discretion, will review for approval, and acceptance of the investigation.

b. Any loss resulting from fraud, theft, or negligence, as determined by TDA, cannot be offset with a gain.

c. Unless required by TDA, USDA Foods included in the offset are not required to be of a like or similar kind.

d. Bonus and entitlement USDA Foods may be used for offsets.

f. Offsets are made based on value, not weight.

g. TDA must approve proposed offsets and may adjust proposed offsets if doing so is in the best interest of the program. (Note: Contractors choosing to offset shortages with gains must provide TDA with a list of proposed offsets within 5 days of completion of the physical inventory count.) TDA will approve or disapprove proposed offsets based on available information, the terms of this RFP, and the following factors:

- The value of the proposed offsets.
- The volume of USDA Foods involved in the proposed offsets.
- The desirability of the USDA Foods identified as overages and whether the foods can be distributed efficiently and without waste.
- The Contractor's previous history of offsets; and
- The results of an investigation by the Contractor and TDA as to the cause or causes for the discrepancies.

Gains remaining after allowable offsets are entered into TX-UNPS and reallocated to CEs. Gains will be added to Surplus inventory in TX-UNPS after all allowable offsets are completed. Any remaining Surplus inventory will be rolled over to the new Program Year according to established TDA procedures. Processed gains are manually allocated to CEs based on ownership, as identified by processing co-op coordinators or TDA. In addition, TDA expects Contractors to establish Control Procedures to minimize Physical Inventory Gains (Overages). TDA may require the Contractor to submit a written Corrective Action Plan to demonstrate the changes that will be implemented to fully correct all necessary procedures to reduce gains or losses.

B. Distribution of USDA Foods

Contractors will provide contact information to CE's in the form of an email and phone number. A fax number can also be included if the warehouse uses a fax machine in the normal course of business.

CEs may pick-up USDA Foods at the Contractor's storage facility or request delivery by the Contractor. Contractor is responsible for loading the food on the truck and invoicing the CE for each case CE picked up at contractors's warehouse.

Contractors must coordinate deliveries with CEs and deliver those cases and/or units of USDA Foods as requested by a CE, (See 3. Appointments) and make arrangements to load USDA Foods picked up at the Contractor's storage facility by a CE.

1. Delivery Schedule

No later than June 1 of each year, and before the distribution of USDA Foods, Contractors must survey CEs and develop a delivery schedule agreement with each, and provide TDA with a copy of the delivery schedule. The delivery schedule is effective throughout the year, including holidays and summer months, unless otherwise requested by the CE. (See 3. Appointments)

Contractors must obtain from CEs a list of delivery sites, including the addresses and directions to the sites.

A delivery schedule must specify a day during the week, Monday through Friday, and the delivery time must be between 6:30 a.m. and 2:30 p.m.

The Contractor will have final responsibility for the delivery schedule. The Contractor will work with each contracting entity's work schedule and case count to optimize the deliveries across the region. The Contractor shall notify TDA of how they intend to set up their delivery schedule.

Changes to the Delivery Schedule - The Contractor may negotiate with a CE any changes to the CE's delivery schedule and, after obtaining the CE's agreement, notify the CE of the changes at least 30 days in advance of implementation. (Exception: The Contractor may immediately implement changes to a CE's delivery schedule upon mutual agreement). The Contractor must determine if the CE participates in DoD Farm to School before making any changes. TDA must be notified of any changes to a CE delivery schedule before making changes if the CE participates in the DoD Farm to School program. The Contractor must provide TDA with a copy of the amended delivery schedule within five (5) calendar days of execution.

2. Fleet Maintenance

Contractor shall maintain a fleet of trucks and trailers to comply with the deliverables described in the RFP. Contractor's proposal shall include the capabilities of their transportation fleet that includes the year, make, and model, the number of owned and or leased trucks and trailers, and maintenance agreements with third parties and/or in-house maintenance capabilities.

3. Appointments

a. Notification of Delivery or Pickup Appointments - A CE must complete a CE Delivery Order Form in TX-UNPS at least 72 business hours before the delivery date. The Contractor must submit a written justification to TDA when requesting a CE to complete the CE Delivery Order Form in TX-UNPS more than 72 hours before the delivery date. Example: Contractor A requires CEs in its service region to complete the CE Delivery Order Form by 9:00 am (approximately four days before the delivery date). Contractor A submits a written justification. TDA approves, denies, or modifies the request.

b. Delivery Appointments - If a CE fails to provide the Contractor with specific information about volume and types of USDA Foods to be delivered at least 72 hours before a delivery appointment, Contractors must deliver all of the USDA Foods that belongs to the CE, including USDA Foods in private storage.

If a CE fails to notify the Contractor, at least 72 hours in advance, that no one will be available to receive a regularly scheduled delivery, or that the CE will refuse any part or all the items on the delivery order, (and the Contractor attempts to make the delivery) the Contractor may charge the CE the appropriate contracted rate for the delivery not accepted by the CE. Contractors would need to invoice CEs for such delivery fees from their own system as the TDA system will not accommodate billing functions.

c. Pickup Appointments - CEs must schedule pick-up appointments at least 48 hours in advance and provide the Contractor information about volume and types of food to be picked up.

4. Delivery Vehicle, Product, and Driver Conditions

a. Delivery Vehicle Conditions - Contractors must transport dry, frozen, and chilled USDA Foods, using temperature- controlled, refrigerated delivery vehicles (frozen foods at 0-10°F and chilled foods at 35-45°F at the time of delivery). TDA requires that Contractors deliver dry foods at 50-70°F.

When delivering a cargo that includes USDA Foods requiring different temperature controls (e.g. frozen and dry), Contractors must use bulkhead dividers to separate products, i.e. frozen from chilled, chilled from dry, and dry from frozen.

For safety reasons, Contractors must take proper precautions to ensure chemical and non-food items/products are not included in their delivery vehicles while transporting USDA Foods to CEs. Note: The Contractor is not prohibited from carrying USDA Foods and Commercial foods (Non-USDA Foods) on a single truck.

Securing Loaded Trucks – Contractors are required to provide reasonable precautions for their delivery trucks, and those of any subcontractors, to secure against, but not limited to, theft and the possibility of bioterrorism. Contractors are required to ensure delivery trucks are properly locked and secured between delivery drops to the CEs.

b. Product Conditions – If delivering shrink-wrapped USDA Foods, Contractors must include in the same shrink-wrapped package only products requiring the same temperature controls, i.e. dry with dry, chilled with chilled, and frozen with frozen. Contractors are not allowed to shrink-wrap together any products requiring different temperature controls.

The product must be stacked on a pallet in a manner that will avoid damage. Fresh produce should not be placed at the bottom of the stack while heavier items should be placed at the bottom of the stack.

c. Driver Conditions – Any driver transporting USDA Foods must own and possess a current non-expired Commercial Driver’s License (CDL).

5. Exchange in Possession of USDA Foods Items

a. Pick-up and Delivery Drop Areas - When CEs pick-up USDA Foods, the Contractor must bring the food across the receiving platform on exchangeable and returnable pallets. Contractor is responsible for loading the food onto the CE truck.

Using exchangeable and returnable pallets, Contractors must deliver USDA Foods to designated, secure staging areas of CE’s facility, e.g. preparation/distribution site deliveries, which are inside of the door of a walk-in grocery area, freezer, or cooler. Contractors may stack pallets in a delivery truck to maximize space but must unstack pallets when delivered to CE. Drivers are not required to stock shelves nor rotate stock.

b. Documentation of Possession Exchange - Drivers must allow CE staff a reasonable amount of time to verify quantity and quality of delivery order before making notes on and signing BOL. A copy of the signed BOL by both parties is provided to the CE.

6. Delivery and Pickup Fees

Contractors must invoice CEs for the pick-up or delivery of USDA Foods, according to the number of cases or units, at rates not exceeding contracted rates. The delivery fees will also include the per case handling cost proposed in Form I (9B exhibit).

Non-Service Sites

In some cases, there may be a CE that has a site (non-service site) that is outside their assigned Contractor’s service region. In this case, TDA may approve the non-service site to pick up USDA Foods from a Contractor that does not typically service the non-service site.

7. Minimum Delivery Fees and Pricing Structures

Contractor shall use their warehouse and distribution experience with all the tools at their disposal (business model, logistics software, other resources) to formulate a competitive proposal for each region of interest. TDA is encouraging contractors to include new and innovative distribution methods they deem necessary to accomplish a cost-effective proposal that will be sustainable throughout the contract period. Invoicing, scheduling, pricing, and delivery strategies are all open to the contractor for offering proposals. TDA is not establishing pre-determined case minimums or a 100-mile rule as has been done in the past. Each contractor will put forward their own pricing strategies based on each region’s geographic size/mileage/counties in conjunction with delivery stops and estimated volumes. This does not preclude delivery minimums and or any other pricing strategy, however, those decisions will be made by each contractor for each region in the proposal.

8. Pick-up Fees - Termination of a Contract

- a. In the event of termination, or at the end of a Contract, TDA will require CEs to take possession of inventory that has been allocated to them before a date specified by TDA.
- b. If a CE requests to transfer their allocated inventory to the new Contractor's designated warehouse, the expiring Contractor and CE negotiate the pick-up fees.
- c. The inventory transferred to the new Contractor will not be added to TX-UNPS. The transferred inventory becomes a private account between the CE and the new Contractor.
- d. The expiring Contractor may not charge a pickup fee for transferring Available inventory (not yet allocated to CEs) to the new Contractor.

D. Texas Unified Nutrition Program System (TX-UNPS)

1. TDA requires Contractors to use TX-UNPS (web-based software implemented and maintained by TDA) to track and report the receipt, storage, and distribution of USDA Foods. Invoicing is the responsibility of the Contractor and will be completed and maintained by Contractor using their invoicing system. TX-UNPS is the official record of inventory and delivery of USDA Foods.
2. TX-UNPS is a website portal that can be accessed through the Contractor's computer with internet connectivity. It is recommended to utilize a high-speed internet service for optimal performance.
3. TX-UNPS includes, but is not necessarily limited to, functionality to track the receipt, storage, and distribution of USDA Foods and generate required reports, such as warehouse inventory reports, private storage reports. The invoicing functions in TX-UNPS will not be utilized.
4. TX-UNPS access is controlled by login IDs and passwords, which serve to authenticate the accuracy of data entered.
5. TDA staff supports TX-UNPS but does not support hardware or software for the Contractor other than the TX-UNPS website.
6. TDA will provide initial TX-UNPS training to Contractors, at a time and place to be determined by TDA. Contractors are responsible for travel and accommodation costs necessary for TX-UNPS training. Contractors assume training responsibilities after the initial TDA training period for any new contractor staff working with TX-UNPS.
7. In addition to maintaining accurate data in TX-UNPS, Contractors that utilize an internal inventory system to track USDA Foods inventory must reconcile TX-UNPS inventory data monthly to ensure both systems have accurate information.
8. Contractor must take the Cybersecurity training course provided by TDA.

E. Financial Arrangements

Contractors must:

1. Invoice CEs for contracted delivery and pick-up rates either monthly, weekly, or after each pick-up or delivery of USDA Foods,
2. Not bill CEs until after the pick-up or delivery is complete, and

3. Invoice CEs for private storage charges monthly by the fifth (5th) calendar day of the month. Invoice must include a summary of tickets for each pick-up or delivery at each delivery site. The Contractor must number the pick-up and delivery tickets sequentially, listing the total number of units, cases, or packages.

With prior approval of TDA, the Contractor may impose "C.O.D." (Cash on Delivery) or cease shipments for those accounts with frequent payment delays or checks returned because of "insufficient funds". C.O.D. or "no-ship status" will be removed once the past due payment has been received by the contractor.

F. Claims and Payments for Shortages and Damages

During the term of a contract, the Contractor:

1. Is financially responsible for all USDA Foods in its care, possession, and control, and shall assume the risk for loss, damage, theft, and shortages.
2. Must fully insure USDA products, be financially responsible for shortages and damages, and submit reports to TDA as required. Damages assessed for USDA Foods include physical damage to containers, products, and infestation, or contamination due to improper storage conditions.
3. Must report to TDA within 24 hours of the incident on Form 1638, Report of Loss of USDA Foods, obtained from TDA, any USDA product lost or damaged in the warehouse, during transporting or delivery, including product in private storage. Loss of foods may include damage, theft, shortage, out-of-condition, spoiled, contaminated and other reasons
4. Must submit Form 1638 to TDA reporting lost or damaged USDA Foods and TDA establishes liability between the Contractor and the CE. Form 1638 can be found online at: <http://www.squaremeals.org/Programs/FoodDistributionProgramforCNPrograms/FDPAdministrationForms.aspx>
5. The Contractor must submit Form 1638 to TDA for outdated private storage foods that are condemned. A Contractor who fails to follow FIFO inventory practices is liable for private storage losses.
 - a. Loss of USDA Foods in Available Inventory

If determined to be liable for USDA Foods lost from available inventory, the Contractor must reimburse TDA the dollar value of the USDA Foods. Available inventory is food stored in the warehouse during the period before allocation to a CE.

b. Loss of Allocated USDA Foods in Private Storage

After receiving a report of lost or damaged USDA Foods on Form 1638 and TDA establishes a valid claim against a Contractor, the Contractor must reimburse the CE the dollar value of the foods.

1. The Contractor must submit Form 1638 to TDA reporting lost or damaged USDA Foods and TDA establishes liability.
2. If the USDA Food is in free storage, TDA will send the Contractor a collection letter.

3. At the CE's option, the Contractor must either send a check to the CE, reimbursing the dollar value of the foods, or replace them in kind (i.e. product of equal or greater quality/value) within 30 days of the claim letter.

G. Rate Changes

1. **Rates during the Term of the Contract:** The rates Contractors charge CEs for USDA Food storage, pick-up, and delivery services must be no higher than the contracted rates. In addition, except as described below for pick-up and delivery, the contracted rates are firm for the 12-month period covered by the contract.

2. **Basis for Rate Increase Requests:** A Contractor may request an increase in USDA Food delivery and/or pick-up rates during the contracted 12-month period.

The Contractor's request must be submitted to TDA in writing at least ninety (90) days before the expiration of the contract.

TDA has the discretion to grant or deny a Contractor's rate increase request and, if granted, to determine the amount or percentage of increase.

TDA will consider rate increase requests that are based on significant changes in volume and/or in services.

For changes to the cost of fuel, TDA will use the Fuel Adjustment Chart (See Attachment 20) to determine the allowable rate increase, if any, for delivery of USDA Foods (Note: **TX-UNPS** will incorporate a line item on invoices for fuel surcharge). As appropriate, **the fuel surcharge may also decrease and/or may not be applied.** TDA, at its sole discretion, based on available economic information and other considerations, may amend Fuel Adjustment Chart figures and/or instructions.

3. **Negotiated Rates:** TDA may negotiate with the Contractor to decrease rates based on significant changes in volume and/or in services. The negotiated rate must be within agreement by both parties.

H. Annual Automatic Fee Adjustment

TDA automatically adjusts rates for delivery of USDA Foods using the Consumer Price Index (CPI) for all Urban Consumers. The rate adjustment is based on increases or decreases in the CPI percentage, over a 12-month period, not seasonally adjusted, beginning with February in the year prior to the contract renewal year. The CPI chart may be found at the Bureau of Labor Statistics website at <http://www.bls.gov/cpi/>

The allowable percent change must be calculated as follows:

$$B-A \div A \times 100\% = \text{Percent of allowable price increase}$$

A = Index from the month of the due date for the response,
OR the effective date/month of the most recent approved ice increase

B = Current or latest baseline index

I. Liquidated Damages

A Contractor must maintain timely and accurate data and make it available to TDA upon request. A Contractor must take timely action to implement required changes, including but not limited to, actions and/or changes required by a Corrective Action Plan (CAP). Failure to meet these requirements may result in the assessment of liquidated damages up to \$500 per day for each violation, not as a penalty but as a reasonable estimate of damages where difficult to calculate under the circumstances. TDA may assess such damages beginning with the day the Contractor failed to meet a required deadline.

Contractors must timely enter and transmit to TX-UNPS data, as follows:

1. Normal Activity Data: Routine and normal activity (e.g. receipt of a USDA Food shipment, shipment reconciliation, etc.) must be entered by the Contractor into TX-UNPS within 24 hours from the time of the event.
2. Paper Documents: Paper documents, such as the bill of lading, pictures, documents that support required corrective actions, must be e-mailed or mailed by the Contractor to TDA within 48 hours unless otherwise specified by TDA.
3. Special Reports: Contractors must provide special reports to TDA within 48 hours of a request unless otherwise specified by TDA. Special reports include, but are not limited to, Corrective Action Plans (CAP) imposed on Contractors by TDA. CAPS are due 30 days from TDA issuance of notification unless otherwise specified by TDA.

J. USDA Food Safety and Food Defense

Contractor operations and the operations of their sub-Contractors must include food safety and food defense plans and procedures to help ensure that USDA Foods are safe and secured from intentional and unintentional food contamination and any food bio-terrorism actions. Refer to the websites below for guidance to help develop a Food Defense Plan:

<http://www.fda.gov/Food/FoodDefense/ToolsEducationalMaterials/ucm349888.htm>

http://www.fsis.usda.gov/wps/wcm/connect/1fd4849c-c982-40a1-8afa-65ebfebbd078/Guidance_Document_Warehouses.pdf?MOD=AJPERES

For a Food Safety Plan, refer to:

<http://extension.psu.edu/food/safety/farm/how-do-i-write-a-food-safety-plan>

As appropriate, TDA will provide information on food security and safety to Contractors.

According to USDA Policy Memorandum No. FD-107 dated June 9, 2010, USDA Foods that show signs of spoilage, infestations, and other visible defects should not be used or distributed, regardless of product dates or when the foods were received, as such food is generally considered not fit for human consumption. If there are no visible defects, but there is a question as to the wholesomeness or safety of USDA Foods, Contractors must have the foods inspected by State or local health authorities as soon as possible and report to TDA before taking further action.

TDA will require Contractor to provide a copy of their Food Safety and or Food Defense Plans upon contract award.

K. Performing Background Checks on All Drivers/Employees

Contractors must, at the time the contract is awarded when new employees are hired, and before all renewals, provide proof of background checks for all drivers and employees who have both direct and indirect involvement in the storage and/or delivery of USDA Foods. The background check requirement includes employees of sub-contractors with direct or indirect involvement in the storage and/or delivery of USDA Foods. Within thirty (30) days of a triggering event, the Contractor will obtain background checks on employees, as required. Contractors may obtain background checks from the Texas Department of Public Safety (TDPS). Contractors must include, in their response, their policy of conducting background checks on their employees. If a Contractor is required to conduct background checks by another state or federal law, a statement to that effect will be considered responsive. Offenses, which may be detrimental to a Contractor's bid, include, but are not limited to: driving under the influence, theft, fraud, offenses against the person (i.e., assault), and offenses that indicate an individual potentially poses a threat to children. TDA, at its sole discretion, may require proof of the background checks, at any time, and require the Contractor to replace personnel.

L. Disaster Response

TDA may be required to provide USDA Foods to an area during or after a declared disaster or a situation of distress. TDA will identify foods to be used for disaster relief from current inventory located at the sites of contracted commercial distributors. To request relief foods, TDA will contact staff from the Contractor's warehouse and identify the foods to be pulled. If necessary, TDA will contact Contractor staff at their place of residence. When necessary, deliveries of USDA Foods to appropriate disaster destinations have priority over regular deliveries to CEs, and TDA will arrange emergency deliveries with Contractors. The Contractor may submit invoices to the Department for reimbursement based on the contracted delivery rate schedule*.

*Disclosure: The contracted rate per case, or as approved by TDA.

M. Emergency Preparedness

Contractor's emergency plan must comply with the Department of Homeland Security guidelines. Refer to: <http://www.fema.gov/media-library/assets/documents/89518> Within thirty (30) days of notification of the contract award, the Contractor will provide an emergency plan.

In the event of a serious disaster, enemy attack, sabotage, or other hostile action or in the event of the imminence thereof, the Governor may declare that a state of civil preparedness emergency exists, in which event the Governor may personally take direct operational control of any or all parts of the civil preparedness forces and functions in the state.

Contractors are required to have an emergency plan in place in the event of power outages, work stoppages, computer failures, shortages, or any other emergency. As appropriate, TDA will work with the Contractor to ensure the safety of the Contractor's employees and the integrity of the Contractor's equipment.

N. Contract Timeframes

The start and end date of the commercial distribution contracts is June 1, 2021, through May 31, 2022, except as noted below for New Contractors.

Termination of the agreement by either party is permitted, upon written notification to the other party, at least sixty (60) days before the effective date of termination.

1. Ending Contractors:

- a. TDA will require CEs to take possession of food already allocated to them, but not yet delivered. (See also M.)
- b. TDA will determine liability for damaged USDA Foods in the Contractor's possession.

2. New Contractors:

- a. To provide a period of transition, TDA will overlap a new Contractor's initial contract period with the contracted period of an ending Contractor.
- b. The initial commercial distribution contract for SY 2021 will begin May 1, 2021, and continue through May 31, 2022.

Within thirty (30) days of notification of the contract, new Contractors must meet RFP bonding and insurance requirements.

During May 2021, the new Contractor will pick-up Available Inventory (not yet allocated to a CE) from an ending Contractor, at the new Contractor's expense.

3. Defaulted Contract/Terminated Contractors:

When the contract between the Contractor and TDA is terminated, with cause, the Contractor will retain inventory of USDA Foods until TDA decides where the product should be moved.

TDA will encourage CEs to accept delivery of all foods as soon as possible, and the Contractor must deliver the foods under contracted terms and conditions.

TDA will determine liability for damaged USDA Foods in the Contractor's possession. Records must be kept for seven (7) years after termination, including records from TX-UNPS (invoicing and receipts).

2.3 FIRM AND TEAM MINIMUM REQUIREMENTS

Contractor personnel included in a submitted proposal shall have, at a minimum, the following qualifications:

- a. Contractors' personnel included in a submitted proposal shall have, at a minimum, the following qualifications.
 - 1. A minimum of five (5) years of experience in providing and implementing the storage and distribution of food in localities and agencies systems of at least the size and scope of TDA.
 - 2. Shall have sufficient financial stability and capability to perform for the term of the contract.
 - 3. An experienced project team that will be assigned to perform under this contract.
 - 4. Possess full working knowledge of storage and distribution industry standards including food safety practices.
 - 5. Possess processes and technology to properly store and monitor food inventories.
 - 6. Possess a compliant health inspection that is less than a year old.

7. Possess proper food safety and driver certifications.

b. Project Plan and Change Management

The Contractor will submit a project plan for input and approval by the Contract Manager. Deliverables must be provided by the dates specified in the project plan. Any changes to the project plan must have prior written approval by the TDA Contract Manager. All change orders are subject to mutual agreement and must be in writing. Change orders that change project deliverables will be documented through a written amendment to the contract, and signed by the parties.

If additional deliverables are desired and are within the scope of this solicitation, TDA and the Contractor will mutually determine a timeline for the Contractor to provide a work plan and pricing for the additional services. A request for pricing does not constitute a notice to proceed. The addition of services must be within the scope of the solicitation and agreed upon through written amendment to the contract.

c. Performance and Service Level Expectations (See ATTACHMENT 11 Table Key Performance Indicators)

The Contractor will:

1. Perform activities to meet documented requirements.
2. Demonstrate to TDA for deliverable acceptance that all requirements have been met.
3. Notify TDA within (5) business days of changes in key staff/positions responsible for ensuring contract services and deliverables are provided.
4. Communicate timely with TDA and/or CEs concerning issues that directly impact the services provided in this Contract.
5. Provide TDA with the name, email address, and contact phone number of Contractor's staff serving as the contract manager, even if the assignment is temporary. Notice to TDA will be no later than one business day of becoming aware of the change in responsible staff.
6. Respond to support requests and resolve escalated issues within agreed upon time frames.
7. Adhere to specified deadlines for contract deliverables as outlined in this RFP.
8. Participate in meetings as scheduled by the selected TDA representative.
9. Work successfully under pressure on multiple task assignments.
10. Propose solutions that can result in cost savings.

The Texas Department of Agriculture will:

1. Designate a Contract Manager responsible for working with the Contractor to resolve problems and maintain the agreed-upon schedule.
2. Provide Contractors with technical assistance before and during program start-up and throughout the term of the contract.
3. Approve or refuse submitted work no later than five (5) workdays from receipt of the work.
4. Make available appropriate individuals with reasonable notice.
5. Manage and execute the acceptance process.
6. Review deliverable at the end of each completion based on a mutually agreed-upon timeframe.
7. Maintain a project management log of issues and resolutions, including a resolution by change order.

8. Approve the deliverable upon determination of satisfactory results of all required criteria.

SECTION VI. DELIVERABLES – TIMELINE | ACCEPTANCE CRITERIA | PERFORMANCE DOCUMENTATION

This section contains essential deliverables, terms, and conditions of the Contract.

1) DELIVERABLES

The Contractor shall deliver all requested services outlined in the Statement of Work section of this RFP and as summarized on the Key Performance Indicator document included with this RFP.

2) INVOICING

Contractors must submit payment requests to CEs based on the deliverables and service expectations. Invoices must be submitted within 30 days of acceptance of the invoiced work. Each invoice must prominently display the Purchase Order number, include detailed tasks for each expense consistent with the project budget and deliverables, acceptance date of the deliverables, provide any discount for early payment, and provide any other information requested by the CEs or TDA. The Contractor's invoicing strategies should be explained and included in their proposal.

3) 2.6 PERIOD OF PERFORMANCE

All services under the Statement of Work shall be performed at an acceptable service level as determined by TDA. The period of performance in which the Contractor shall conduct and complete the work associated with this SOW is as follows:

The Project Start Date shall begin at issuance of the Purchase Order and final Statement of Work. Contractor must provide payment-related information such as the Comptroller of Public Accounts identification number (TINS) and Internal Revenue Service Form W-9 at the time of contract execution to CEs in the awarded region.

**ATTACHMENT 1 –
EXECUTION OF OFFER, AFFIRMATION OF TERMS AND CONDITIONS
AND PROPOSAL PREFERENCES**

(The acceptances, acknowledgments, averments, certifications, conditions, mandates, provisions, references, requirements, and terms set out in this Attachment 1 constitute the general terms and conditions of any contract resulting from this RFP, and will be incorporated into any contract resulting from this RFP and made a part of such contract for all purposes.)

1. **Definitions.** The following words and terms shall have the following meanings unless the context clearly indicates otherwise:
 - a. Agency – the Texas Department of Agriculture, sometimes referred to herein as “TDA.”
 - b. Contract Manager – the individual designated by Contractor or TDA with overall responsibility for managing any contract resulting from this solicitation. See “Project Manager” below. Either Party may designate one person to be both the Contract Manager and the Project Manager.
 - c. Contractor – a Respondent selected for an award pursuant to this Solicitation.
 - d. Include – include, includes, and including are terms of inclusion and, where used in this Solicitation or resulting Contract, such terms shall be interpreted in accordance with their dictionary meaning and are deemed to be followed by the words “without limitation.”
 - e. Key Person or Key Personnel – the employee or employees designated in the Response who are responsible for the overall supervision and management of the activities, projects, services, tasks or work made the subject of this Solicitation and resulting contract, including the timely and satisfactory delivery or completion of the goods, services or work.
 - f. Parties – all signatories to any contract resulting from this Solicitation. Individual signatories may be referred to herein or a resulting contract as a “Party.”
 - g. Project Manager – the individual designated by Contractor or TDA with day to day responsibility for accomplishing the undertaking(s) made the subject of this Solicitation and resulting contract.
 - h. Respondent – an entity or person that submits an application, bid, offer, proposal, quote, or response in reply to this Solicitation.
 - i. Response – an application, bid, offer, proposal, or quote submitted in reply to this Solicitation.
 - j. Solicitation – the purchasing request made by TDA described and identified in this document, whether it be an Invitation for Bids (IFB), Quote Request, Request for Offers (RFO), Request for Proposals (RFP), Request for Qualifications (RFQ), or other form of purchase.
2. **References.** Unless explicitly stated otherwise, any references to “appendices,” “articles,” “attachments,” “exhibits,” or “sections” are deemed to be references to appendices, articles, attachments, exhibits, or sections of this Solicitation or resulting contract (if any). These General Terms and Conditions shall be automatically incorporated into any contract resulting from this Solicitation without further reference.
3. **Order of Precedence.** In the event of a conflict or inconsistency among the various documents making up any contract resulting from this Solicitation, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: (a) Signed Contract or Notice of Award; (b) Appendices, Exhibits or Attachments to the Contract or Notice of Award; (c) the Solicitation document and any questions and official responses; and (d) Contractor’s Response.
4. **Entire Agreement.** Any contract resulting from this Solicitation shall represent the entire understanding between the Parties with respect to its subject matter and shall constitute the entire agreement between the Parties, superseding and preempting any previous communications or agreements that may exist between the Parties.
5. **Federal, State, and Local Tax and Withholding Requirements.** Contractor shall demonstrate on-site compliance with federal income tax laws including the issuance of Form W-2s to employees. Contractor is responsible for federal and state unemployment insurance coverage and standard workers compensation insurance coverage. Contractor shall comply with all federal and state tax laws and withholding requirements. Neither TDA nor the State of Texas shall be liable to Contractor or its employees for any unemployment or workers compensation coverage, or federal or state withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from the Contractor’s omission under or breach of this Section.
6. **Forms, Assurances, and Reports.** Contractor shall timely make and file with the proper authorities all forms, assurances, and reports required by federal and state laws and regulations. TDA shall report any failure by Contractor that comes to TDA’s attention and may deny payment or recover payments in the event of non-compliance with this Section.
7. **Key Person or Key Personnel.** Contractor shall ensure that key persons or key personnel assigned to any contract resulting from this Solicitation shall remain available for the entirety of the project, service, or work required by the contract, unless TDA agrees, in writing, to a change in the Key Person or Key Personnel.
8. **Federal Rules, Laws, and Regulations.** Contractor shall be subject to and shall abide by all federal laws, rules, and regulations pertaining to any contract resulting from this Solicitation, including:

- a. Americans With Disabilities Act, 42 U.S.C. § 12101, and the regulations effectuating its provisions, as each may be amended from time to time;
 - b. Title VI of the Civil Rights Act of 1964, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions;
 - c. Title IX of the Education Amendments of 1972, as amended (prohibition of sex discrimination in educational institutions) and the regulations effectuating its provisions;
 - d. Section 504 of the Rehabilitation Act of 1973, as amended (nondiscrimination on the basis of handicapping condition), and the regulations effectuating its provisions;
 - e. The Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and the implementing regulations; and
 - f. The Anti-Lobbying Act, 18 U.S.C. 1913 (prohibition against the use of federal grant funds to influence legislation pending before Congress), and the Byrd Amendment on government lobbying, 31 U.S.C. 1352 (prohibition against the use of federal grant funds to influence certain Federal contracting and financial transactions).
9. **Protests.** Any actual or prospective bidder or contractor who is aggrieved in connection with the solicitation, evaluation, or award of this or any other contract by TDA may submit a formal protest to TDA in accordance with Title 4, Part 1, Chapter 1, Subchapter Q of the Texas Administrative Code. The protest procedures contained in Subchapter Q shall be the exclusive method by which anyone may challenge any aspect of TDA's contracting process.
10. **Insurance.** Contractor represents and warrants that it will obtain and maintain for the term of any contract resulting from this Solicitation all insurance coverage required to ensure proper fulfillment of the contract and its liabilities thereunder. Contractor shall insure its motor vehicles used to fulfill its duties under the contract and require its subcontractors to do the same. Such insurance shall comply with Texas statutory requirements and cover personnel being picked up or delivered in the performance of the contract. Contractor represents and warrants that all the above coverage will be obtained from companies that are licensed in the State of Texas, have an "A" rating from Best, and are authorized to provide the coverage. Contractor must provide at least 30 days written notice of its intent to cancel any insurance coverage required by the contract and provide immediate notice to TDA of replacement coverage. Further, all insurance required by the contract must include a waiver of all subrogation rights against TDA. Unless otherwise specified in this Solicitation or a resulting contract, Contractor must maintain insurance in the amounts specified below:
- a. Workers Compensation and Employee Liability
Contractor must maintain Workers Compensation insurance coverage in accordance with the following statutory limits:
Employers Liability – Each Accident \$1,000,000
Disease – Each Employee \$1,000,000
Disease – Policy Limit \$1,000,000
 - b. Commercial General Liability Coverage
Contractor must maintain the minimum general liability insurance coverage as reflected below:
Bodily Injury and Property Damage
Each occurrence limit: \$1,000,000
Aggregate limit: \$2,000,000
Medical Expense each person: \$10,000
Personal Injury and Advertising Liability: \$1,000,000 per occurrence / \$2,000,000 aggregate
Products /Completed Operations Aggregate Limit: \$2,000,000
Damage to Premises Rented to You: \$50,000
11. **Invoicing.** Invoicing should be consistent with the accepted cost proposal. Invoices for goods are to be submitted within thirty (30) days after all ordered goods have been delivered and accepted. Invoices for services delivered for an hourly rate are to be submitted on the first business day of each month for the number of hours worked the previous month. Each invoice must clearly outline the number of hours worked on each item with a detailed description of the item billed. If the hourly rate varies by staff, the staff assigned to the item must be included. Invoices for services rendered on a flat or project rate are to be submitted within thirty (30) days after all services for the item or project have been delivered and accepted. Invoices should be submitted by email to Invoices@TexasAgriculture.gov with the TDA Purchase Order Number clearly indicated on the invoice. For payment in less than 30 days, the invoice must offer a discount for early payment.
12. **Payment Approval.** No payment can be made for work provided before a Purchase Order is issued. Payment is contingent upon receipt of all items required for proper invoicing and payment, including:
- a. W-9 – Contractor's correctly completed W-9 form.
 - b. Texas Identification Number – Contractor's State of Texas taxpayer identification number.
 - c. Delivery of the Goods; Completion of Services – Payment for goods or services described in any contract resulting from this solicitation is contingent upon delivery and acceptance of the goods or satisfactory

- completion of the services. Acceptance or satisfaction will be determined by TDA, in its sole discretion. Unless otherwise stated, payment will be made upon submission of an invoice, properly prepared and certified, outlining expenditures and services by cost category. Invoices must include the contract number (if any), purchase order number, and Contractor's Texas Comptroller of Public Accounts Texas Identification Number (TIN). The cost categories or services provided in the invoice must correspond with the cost categories or services detailed in the approved budget. The invoice must detail the activities, services, or tasks completed during the billing period included in the invoice. Final payment is contingent upon satisfactory performance of all services or work required under the contract, or TDA's acceptance of the goods made the subject of the contract.
- d. **Good Standing.** In order for TDA to process payment under an invoice, the Contractor must be in good standing with the Texas Comptroller of Public Accounts. Contractor may verify its account status at <https://mycpa.cpa.state.tx.us/coa>.
 - e. **Direct Deposit.** The Texas Comptroller of Public Accounts encourages vendors to receive payment by direct deposit. To receive payments by direct deposit, contact your paying agency to obtain the form applicable to you.
13. **Prohibition of Text Messaging While Driving.** Federal grant recipients and their personnel are prohibited from text messaging while driving a government-owned vehicle or while driving their vehicle during official grant business, or from using government-supplied electronic equipment to text message or email while driving. Recipients must comply with these conditions under Executive Order 13512, "Federal Leadership On Reducing Text Messaging While Driving," effective October 1, 2009.
 14. **Antitrust Affirmation.** Contractor represents and warrants that in accordance with Section 2155.005 of the Texas Government Code, neither Contractor nor the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such a firm, corporation, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Contractor.
 15. **Buy Texas Affirmation.** In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
 16. **Child Support Obligation Affirmation.** Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
 17. **Computer Equipment Recycling Program.** Contractor certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code, and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
 18. **Dealing with Public Servants Affirmation.** Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Response.
 19. **Debts and Delinquencies Affirmation.** Contractor agrees that any payments due under the contract shall be applied towards any debt or delinquency that is owed to the State of Texas.
 20. **Disaster Recovery Plan.** In accordance with 13 TAC § 6.94(a)(9), Contractor shall provide to Agency the descriptions of its business continuity and disaster recovery plans.
 21. **Disclosure of Prior State Employment.** In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Contractor certifies that it does not employ an individual who has been employed by Agency or another agency at any time during the two years preceding the submission of the Response or, in the alternative, Contractor has disclosed in its Response the following:
 - (i) the nature of the previous employment with the Agency or the other agency;
 - (ii) the date the employment was terminated; and
 - (iii) the annual rate of compensation for the employment at the time of termination.
 22. **Dispute Resolution.** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract.
 23. **Entities that Boycott Israel.** Pursuant to Section 2270.002 of the Texas Government Code, the Contractor certifies that either
 - (i) it meets an exemption criterion under Section 2270.002; or
 - (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification in its Response.
 24. **E-Verify Program.** Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of (1) all persons employed by Contractor to perform duties within Texas; and (2) all persons,

including subcontractors, assigned by Contractor to perform work pursuant the contract within the United States of America.

25. **Excess Obligations Prohibited.** Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature.
26. **Excluded Parties.** Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
27. **Executive Head of a State Agency Affirmation.** Under Section 669.003 of the Texas Government Code, relating to contracting with an executive head of a state agency, Contractor represents that no person who served as an executive of Agency, in the past four (4) years, was involved with or has any interest in the contract. If Contractor employs or has used the services of a former executive of Agency, the Contractor shall provide the following information in the Response: name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Contractor, and the date of employment with Contractor.
28. **False Statements.** Contractor represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.
29. **Financial Participation Prohibited Affirmation.** Under Section 2155.004(b) of the Texas Government Code, Contractor certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
30. **Foreign Terrorist Organizations.** Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
31. **Former Agency Employees.** Contractor represents and warrants that none of its employees including those authorized to provide services under the contract were former employees of the Agency during the twelve (12) month period immediately prior to the date of execution of the contract.
32. **Governing Law and Venue.** The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflict of laws provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency.
33. **Indemnification. (General)** CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH TDA AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TDA AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.
34. **Indemnification. (IP)** CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS AGENCY AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) AGENCY'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO AGENCY BY CONTRACTOR OR OTHERWISE TO WHICH AGENCY HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT. CONTRACTOR AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH TDA AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TDA AND THE OAG. IN ADDITION, CONTRACTOR WILL REIMBURSE AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS,

DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF AGENCY'S COUNSEL.

35. **No Conflicts of Interest.** Contractor represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
36. **Prior Disaster Relief Contract Violation.** Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
37. **Public Information Act.** Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
38. **Signature Authority.** By submitting the Response, Contractor represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Contractor and to bind the Contractor under any contract that may result from the submission of this Response.
39. **State Auditor's Right to Audit.** The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
40. **Suspension and Debarment.** Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.
41. **Technology Access Clause.** Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairment. Accordingly, Contractor represents and warrants to Agency that the technology provided to Agency for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:
 - providing equivalent access for effective use by both visual and non-visual means;
 - presenting information, including prompts used for interactive communications, in formats intended for non- visual use; and
 - being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.
In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.
42. **Television Equipment Recycling Program.** Contractor certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.
43. **Terms and Conditions Attached to Response.** Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response.
44. **Texas Bidder Affirmation.** Contractor certifies that if a Texas address is shown as the address of the Contractor on this Response, Contractor qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

45. **Agency's Right to Audit.** Contractor will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Contractor pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Agency and the State of Texas.
46. **American's With Disabilities Act.** Contractor represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing provisions, as each may be amended.
47. **No Assignment.** Contractor shall not assign its rights under the contract or delegate the performance of its duties without prior written approval from the Agency. Any attempted assignment in violation of this Section is void and without effect.
48. **Binding Effect.** The contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees and delegates.
49. **Change in Law and Compliance with Laws.** Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without the necessity of a written amendment, and shall become effective on the date designated by such law or by regulation.
50. **Damage to Government Property.** Contractor shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. Contractor shall notify the Agency in writing of any such damage within one (1) calendar day. Contractor is responsible for the removal of all debris resulting from work performed under the contract.
51. **Disclosure of Interested Parties.** Contractor represents and warrants that if selected for award of a contract as a result of the Solicitation, Contractor will submit to Agency a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code.
52. **Discounts.** If Contractor at any time during the term of the contract provides a discount on the final contract costs, Contractor will notify Agency in writing ten (10) calendar days prior to effective date of discount. Agency will generate a Purchase Order Change Notice and send a revised Purchase Order to Contractor.
53. **Drug-Free Workplace.** Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Workplace Act of 1988 and maintain a drug-free work environment.
54. **Electrical Items.** All electrical items must meet all applicable OSHA standards and regulations and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).
55. **Equal Employment Opportunity.** Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.
56. **Federal Occupational Safety and Health Law.** Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).
57. **Force Majeure.** Neither Contractor nor Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as: (A) acts of God, acts or failure of government or governmental authorities, war, fires, explosions, hurricanes, tornadoes, floods, extreme weather, strikes, riots, civil disturbance or unrest, failure of transportation, or disruption of supply chain(s); or (B) acts, causes, circumstances, events and matters related to public health, whether local, state, regional, national or worldwide, including, without limitation, disease, epidemic, pandemic, viral or bacterial outbreaks, or contamination of or disruption to food or water supply. To constitute an event of force majeure, the act, cause, circumstance, event or matter must: (i) directly result in damage, loss, harm, destruction, disruption or calamity to the party declaring an event of force majeure of such magnitude that a reasonably competent and prepared entity or individual could not be expected to continue operations or perform services under such circumstances; (ii) be beyond the reasonable control of the party declaring a force majeure; and (iii) be of such a nature that by exercise of due foresight the party declaring a force majeure could not be reasonably have been expected to avoid, and which, by the exercise of all reasonable diligence, such party in unable to overcome. The party declaring a force majeure shall provide at least seven days written notice to the nondeclaring party of the force majeure and the actions or remedies it is taking as a result of the force majeure. If either party is unable to continue operations or provide services as a result of a force majeure, only after providing notice of a force majeure as required by this section and making a legitimate effort to continue operations and/or provide services, such party may terminate this contract by providing written notice to the nondeclaring party. If this contract is terminated because of an event of force majeure, TDA shall be responsible for payment of only reasonable and customary charges for necessary services actually provided by Contractor up to the date of termination, not to exceed the sums specified in the contract.

58. **Immigration.** Contractor represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.
59. **Independent Contractor.** Contractor acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Contractor and its personnel are not employees of the Agency or the State of Texas.
60. **Legal and Regulatory Actions.** Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Contractor or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Contractor's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. In addition, Contractor represents and warrants that it shall notify Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update Agency shall constitute breach of contract and may result in immediate termination of the contract.
61. **License Grant (Simple).** Contractor hereby grants to Agency a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the deliverables, in each case without any restrictions and without accounting to Contractor; and (b) to sublicense any or all such rights to third parties.
62. **Limitation on Authority.** Contractor shall have no authority to act for or on behalf of Agency or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Contractor may not incur any debt, obligation, expense or liability of any kind on behalf of Agency or the State of Texas.
63. **Lobbying Prohibition.** Contractor represents and warrants that Agency's payments to Contractor and Contractor's receipt of appropriated or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.
64. **Media Releases.** Contractor shall not use Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without Agency's prior written approval. Agency does not endorse any vendor, commodity, or service. Contractor is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Response or the services to which they relate without Agency's prior written consent, and then only in accordance with explicit written instructions from Agency.
65. **No Felony Criminal Convictions.** Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised Agency in writing of the facts and circumstances surrounding the convictions.
66. **No Implied Waiver.** No provision of the contract shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Agency as an agency of the State of Texas or otherwise available to Agency. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the contract or otherwise available to Agency by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.
67. **No Quantity Guarantees.** Agency makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the contract.
68. **No Third-Party Beneficiaries.** The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.
69. **Permits, Certifications, and Licenses.** Contractor represents and warrants that it has determined what licenses, certifications and permits are required under the contract and has acquired all applicable licenses, certifications, and permits.
70. **Prompt Payment.** Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.
71. **Property Rights.** For purposes of the contract, the term "Work" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code,

documentation methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the contract. Agency and Contractor Consider the Work and any and all documentation or other products and results of the services to be rendered by Contractor to be a work made for hire. Contractor and Contractor's employees will have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of Agency. Contractor acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of Agency. If for any reason the Work would not be considered a work-for-hire under applicable law, Contractor does hereby sell, assign, and transfer to Agency, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Contractor agrees to execute all papers and to perform such other property rights, as Agency may deem necessary to secure for Agency or its designee the rights herein assigned. In the event that Contractor has any rights in and to the Work that cannot be assigned to Agency, Contractor hereby grants to Agency an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later than the first calendar day after the termination or expiration of the contract or upon Agency's request, Contractor shall deliver to Agency all completed, or partially completed, Work and any and all documentation or other products and results of the services. Failure to timely deliver such Work or any and all documentation or other products and results of the services will be considered a material breach of the contract. Contractor will not make or retain any copies of the Work or any and all documentation or other products and results of the services without the prior written consent of Agency.

72. **Records Retention.** Contractor shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Contractor for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.
73. **Refund.** Contractor will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by Agency which are not expressly authorized under the contract.
74. **Restricted Employment for Certain State Personnel.** Pursuant to Section 572.069 of the Texas Government Code, Contractor certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for Agency involving Contractor within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015
75. **Secure Erasure of Hard Disk Capability.** All equipment provided to Agency by Contractor that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC § Chapter 202.
76. **Severability.** If any provision of the contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.
77. **Sovereign Immunity.** The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by the Agency or the State of Texas of any immunities from suit or from liability that the Agency or the State of Texas may have by operation of law.
78. **Subcontractors.** Contractor may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of the Agency. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of the contract. Should Contractor subcontract any of the services required in the contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), Agency is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.
79. **Survival.** Expiration or termination of the contract for any reason does not release Contractor from any liability or obligation set forth in the contract: (a) that is expressly stated to survive any such expiration or termination; (b) that by its nature would be intended to be applicable following any such expiration or termination; or (c) that is necessary to fulfill the essential purpose of the contract, including without limitation

the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

80. **Taxes.** Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Agency will furnish Tax Exemption Certificates upon request. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. Agency shall not be liable for any taxes resulting from the contract.
81. **TDA Remedies and Liquidated Damages.** TDA may utilize the following remedies in the event Contractor fails to perform under a contract resulting from this Solicitation:
- a. Upon initial breach or failure to perform, TDA will provide Contractor with written notice of same and give Contractor fourteen (14) calendar days to provide TDA with a corrective action plan (CAP) and cure the breach or failure to perform. At a minimum, the CAP must include the following items: (i) the cause of the breach or failure to perform; (ii) an outline of actions that will be taken to cure the breach or failure to perform; (iii) the expected outcome for each action; (iv) the date for completion of each action; (v) the individuals responsible for completion of each action; and (vi) all steps Contractor will take to ensure that there are no further breaches of Contract or failures to perform under the contract. TDA will provide Contractor with written acceptance or rejection of Contractor's CAP and cure within fourteen (14) calendar days after Contractor's completion of the cure. Failure to provide a CAP, or fully or properly complete a cure, as required by this Section 81.a, is a material breach of contract.
 - b. Upon a second breach or failure to perform, TDA will provide Contractor with written notice of same and give Contractor seven (7) calendar days to provide TDA a CAP that meets the requirements of Section 81.a above, and cure the breach or failure to perform. Additionally, TDA will withhold up to ten (10%) of all future payments due Contractor as liquidated damages for Contractor's breach, and as security for proper and timely performance of the contract. If Contractor fully and faithfully provides full, complete and timely performance under the contract following said breach, TDA will release all sums withheld under this Section 81.b within thirty (30) days of closing out and winding up the contract. Further, TDA will provide Contractor with written acceptance or rejection of Contractor's CAP and cure within fourteen (14) calendar days after Contractor's completion of the cure. Failure to provide a CAP, or fully and properly complete a cure, as required by this Section 81.b, is a material breach of contract.
 - c. If Contractor fails to cure the breach or fails to perform within the designated cure period specified in Sections 81.a or 81.b above, or upon a third or subsequent breach or failure to perform, TDA may immediately terminate the contract upon written notice to Contractor. Further, all sums withheld by TDA under Section 81.b above will be retained by TDA as liquidated damages to offset TDA's costs and damages resulting from Contractor's breach or failure to perform.
 - d. Notwithstanding the graduated remedies schedule and liquidated damages specified above, in the event Contractor commits a material breach of contract, TDA reserves the right to immediately terminate the contract upon written notice to Contractor. A breach is material if: (i) Contractor completely fails to perform an activity, service or task required by the contract; or (ii) the breach is substantial and prevents the contract from being completed or defeats the purpose of the contract.
82. **Termination for Cause or Convenience.** Agency reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if Agency determines that such termination is in the best interest of the agency or the state. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Agency shall only be liable for payments limited to the portion of work Agency authorized in writing and which Contractor has completed, delivered to Agency, and which has been accepted by Agency. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. Agency shall have no other liability whatsoever to any person, party or entity, including for liability for any costs associated with the termination.
83. **Trademark License.** Agency hereby grants to Contractor, to the extent expressly provided by a written contract between the parties, for the term of the contract, a limited non-exclusive, royalty-free, non-assignable, non-transferable license to reproduce Agency's trademarks, as depicted and described in the contract, on published materials in the United States related to the performance of the contract, provided that such license is expressly conditional upon, and subject to, the following: (a) Contractor is in compliance with all provisions of the contract; (b) Contractor's use of the trademarks is strictly in accordance with the quality standards and in conformance with the reproduction requirements set forth in the contract or as otherwise communicated in writing by the Agency; (c) Contractor takes no action to damage the goodwill associated with the trademarks, and refrains from any attempt to contest, attack, dispute, challenge, cancel and/or oppose Agency's right, title and interest in the trademarks or their validity; (d) Contractor makes no attempt to sublicense any rights under this trademark license; and (e) Contractor complies with any marking requests Agency may make in relation to the trademarks, including without limitation to use the phrase

“Registered Trademark”, the symbol “™”, the registered trademark symbol “®” and/or any equivalent thereof.

84. **Trademark Ownership.** Contractor hereby acknowledges and agrees that the trademarks remain the exclusive property of Agency, that all right, title and interest in and to the trademarks is exclusively held by Agency, and all goodwill associated with such trademarks inures solely to Agency.
85. **Unfair Business Practices.** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.
86. **Use of State Property.** Contractor is prohibited from using State Property for any purpose other than performing Services authorized under the contract. State Property includes, but is not limited to, Agency’s office space, identification badges, Agency information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any Agency-issued software, and the Agency Virtual Private Network (VPN client)), and any other resources of Agency. Contractor shall not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access Agency’s network or e-mail while outside of the continental United States. Contractor shall not perform any maintenance services on State Property unless the contract expressly authorizes such services. During the time that State Property is in the possession of Contractor, Contractor shall be responsible for (i) all repair and replacement charges incurred by Agency that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Contractor’s use of State Property that exceeds the contract scope. Contractor shall fully reimburse such charges to Agency within ten (10) calendar days of Contractor’s receipt of Agency’s notice of amount due. Use of State Property for a purpose not authorized by contract shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to Agency under contract, at law, or in equity.
87. **Waiver of Consequential Damages.** NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, ANTICIPATED OR OTHERWISE, OR LOSS OF REVENUES IN CONNECTION WITH OR ARISING OUT OF, OR IN CONNECTION WITH, THE SUBJECT MATTER OR THE PERFORMANCE OF THIS CONTRACT.
88. **Transition.** Contractor represents and warrants that at the expiration or termination of a contract resulting from this Solicitation, Contractor shall assist with and fully cooperate with TDA in transition of data, deliverables, documentation, reports and services to TDA or a new provider. Data, deliverables, documentation and reports shall be delivered in a form and manner acceptable to TDA. This obligation shall survive the termination or expiration of a contract resulting from this Solicitation and shall be a continuing obligation of the contract until Contractor has fully complied with all transition obligations required by this Section. Additionally, this transition obligation shall not be subject to additional costs or fees of any kind and shall be provided by Contractor at no cost to TDA or the State of Texas.
89. **Check below if preference is claimed under 34 TAC § 20.306.**
- Supplies, materials or equipment: Produced in Texas/offered by Texas bidders
 - Agricultural products produced or grown in Texas
 - Agricultural products and services offered by Texas bidders
 - Products offered by Texas Bidder owned by a Texas resident service-disabled veteran
 - USA Produced supplies, materials or equipment
 - Products of persons with mental or physical disabilities
 - Products made of recycled, re-manufactured, or environ-sensitive materials including recycled steel
 - Energy efficient products
 - Rubberized asphalt paving material
 - Recycled motor oil and lubricants
 - Products produced at facilities located on formerly contaminated property
 - Products and services from economically depressed or blighted areas
 - Vendors that meet or exceed air quality standards
 - Recycled or Reused Computer Equipment of Other Manufacturers
 - Foods of Higher Nutritional Value
90. **Binding Offer and Effect of TDA Acceptance.** By submitting a Response to this Solicitation, if such Response is not withdrawn prior to the time for opening offers arrives, Contractor understands and agrees that it is making a firm offer to enter into a contract, which firm offer may be accepted by TDA and which will result in a binding contract.

_____ (Contractor must initial and date here to show agreement)

91. **Capital Outlay.** If Contractor purchases capital outlay, such as furniture or equipment, to accomplish the contract project, title will remain with Contractor for the period of the contract. TDA reserves the right to transfer capital outlay items for contract noncompliance during the contract period, or if the items are needed after expiration or termination of the contract. This provision applies to furniture or equipment purchased by Contractor for the performance of the contract, regardless of price or how the item is classified in Contractor's accounting record.
92. **Notices.**
- a. **Delivery of Written Notices.** Any notice required under a contract resulting from this Solicitation shall be in writing and shall be addressed to the receiving party at the address specified in the notice of award. The notice shall be deemed to have been given immediately if delivered in person or by electronic transmission. If notice is given through the United States Postal Service, notice shall be deemed to have been given five days following the date the notice is deposited with the United States Postal Service, postage prepaid, for delivery by registered or certified mail with return receipt requested, addressed to the receiving party at the address specified in the notice of award or otherwise specified by Contractor in accordance with Section 91.b below.
93. **Change of Address.** Contractor shall notify TDA's Contract Manager in writing of any change in the contact person or address for delivery of notices within ten (10) calendar days of the date of such change.
94. **Human Trafficking Prohibition.** Under Section 2155.0061 of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
95. **Abortion Provider and Affiliate Transactions Prohibited.** Respondent represents and warrants that the contract is not a taxpayer resource transaction prohibited by Section 2272.003 of the Texas Government Code and that payment by Agency to Respondent and Respondent's receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.25 of the General Appropriations Act.

Failure to sign will disqualify the proposal.

Company			
Physical Address			
Website Address			
Name Title		Phone	
		Email	

Signature

Date

ATTACHMENT 2
Vendor Information & Evaluation Preferences

SECTION 1 – RESPONDENT INFORMATION				
Entity Name: D.B.A. Name (if applicable)		Respondent's Social Media links, if any Web Facebook LinkedIn Other: Twitter		
Type of Business (check one):	<input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Co. <input type="checkbox"/> Limited Partnership <input type="checkbox"/> General Partnership <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Cooperative <input type="checkbox"/> Other (specify) _____			
Federal Employee Identification Number (must be nine (9) digits and match W-9)		_____ - _____ - _____ - _____		
Texas Identification Number (if sole proprietor)		_____ - _____ - _____ - _____		
SECTION 2A. APPLICANT - List the full legal name (no aliases or nicknames) of the primary person (Partner, Manager or Owner) responsible for the business and can enter into legal agreements on behalf of the business.				
First Name		Last Name		<input type="checkbox"/> Mr. <input type="checkbox"/> Dr. <input type="checkbox"/> Ms. <input type="checkbox"/> Other _____
Mailing Address		City	State	Zip County
Business Phone () - - - - -		Cell Phone () - - - - -		E-mail Address
Title		Respondent's Website		
SECTION 2B. PRIMARY CONTACT INFORMATION – (if different from applicant) This person can answer day-to-day questions about the organization.				
Same As Above <input type="checkbox"/>				
First Name		Last Name		<input type="checkbox"/> Mr. <input type="checkbox"/> Dr. <input type="checkbox"/> Ms. <input type="checkbox"/> Other _____
Contact phone number () - - - - -		Contact E-mail Address		
Title				
SECTION 3. BUSINESS PRODUCTS				
Check below if preference in the evaluation process is claimed under Title 34, Part 1, Chapter 20, Subchapter C, Rule 20.38. Texas Administrative Code, <input type="checkbox"/> Supplies, materials or equipment: Produced in Texas/offered by Texas bidders <input type="checkbox"/> Agricultural products produced or grown in Texas <input type="checkbox"/> Agricultural products and services offered by Texas bidders <input type="checkbox"/> Products offered by Texas Bidder owned by a Texas resident service-disabled veteran <input type="checkbox"/> USA Produced supplies, materials or equipment <input type="checkbox"/> Products of persons with mental or physical disabilities <input type="checkbox"/> Products made of recycled, re-manufactured, or environ-sensitive materials including recycled steel <input type="checkbox"/> Energy efficient products <input type="checkbox"/> Rubberized asphalt paving material <input type="checkbox"/> Recycled motor oil and lubricants <input type="checkbox"/> Products produced at facilities located on formerly contaminated property <input type="checkbox"/> Products and services from economically depressed or blighted areas <input type="checkbox"/> Vendors that meet or exceed air quality standards <input type="checkbox"/> Recycled or Reused Computer Equipment of Other Manufacturers <input type="checkbox"/> Foods of Higher Nutritional Value				

ATTACHMENT 3
: KEY CONTRACTING PERSONS DISCLOSURE STATEMENT

Identification of a Key Persons relationship does not prohibit contracting, but allows the Texas Department of Agriculture to manage the contracting process with greater transparency.*

Purchase Order: _____

Contract Number: _____

Vendor:

KEY CONTRACTING PERSONS:

Texas Department of Agriculture policy defines Key Persons as those who have a reasonable expectation of participating in the solicitation, preparation, management, oversight, or enforcement of a contract. Participation is defined as having authority to make recommendations and decisions of serious import to the contracting process, whether or not that authority is exercised.

DISCLOSABLE RELATIONSHIP:

Texas Department of Agriculture policy defines a disclosable relationship as having done business with a Key Person within 2 calendar years prior to the deadline for responding to the agency's solicitation, or as having a familial relationship with a Key Person.

DOING BUSINESS WITH:

For purposes of the Key Persons policy, a person or company responding to a formal solicitation has done business with a Key Person if within 2 years prior to the contract solicitation date, the person or company responding to the solicitation:

- Paid or received in money or valuable thing worth more than \$500 in the aggregate in a calendar year, in exchange for personal services or the purchase of any property or property interest, either real or personal, either legal or equitable, or
- Loaned or received a loan of money or goods or otherwise created any legal obligation or debt with a value of more than \$500 in the aggregate in a calendar year.

Any retail transaction for goods or services sold or provided to a Key Contracting Person at a posted, published, or marked price available to the public is not required to be disclosed under this Key Persons Disclosure policy.

<u>Position Held</u>	<u>Person Holding Position</u>
Commissioner	Sid Miller
Deputy Commissioner	Jason Fearneyhough
Assistant Commissioner, Policy & External Relations	Walt Roberts
Assistant Commissioner, Trade & Business Development	Dan Hunter
Assistant Commissioner, Consumer Protection, Enforcement & Border Security	Terry Keel
Assistant Commissioner, Food & Nutrition	Angela Olige
General Counsel	Tim Kleinschmidt
Chief Financial Officer	Shirley Beaulieu
Chief Information Officer	Ruben Sanchez, Interim
Internal Auditor	Zoi Kondis
Deputy General Counsel/Ethics Officer	Susan Maldonado
Deputy General Counsel	Stephen Dillon
Deputy General Counsel	David Castillo
Assistant General Counsel	William "Clay" Harris
Assistant General Counsel	Skyler Shafer
Assistant General Counsel	Lisa Hoyt
Assistant General Counsel	Susana Esparza
Procurement & Contracting Office Director	April Bacon
Sr. Purchaser	Segundo Sanchez
Sr. Contract Specialist, Purchasing	Vacant
Purchaser	Jeffrey Trevathan
HUB/MWBE Coordinator	Jack Hammond
Budget & Financial Reporting Director	Patricia Molina
Accounting Director	Irma Rodriquez
Accounting Manager	Ann Martinez

Contracting Program Area Participants/Key Persons

Name	Procurement/Contract Role	Division

Select the response below that most accurately describes the relationship of the proposing company/team to TDA employees listed above.

- Vendor is not doing business and has not done business during the 24 month period immediately prior to the date on which this proposal is due with any key person.
- Vendor is doing business or has done business during the 24 month period immediately prior to the date on which this proposal is due with the following key persons, and attests that these listed below are the only such key persons.

1. _____
2. _____
3. _____
4. _____

These named persons will not create a conflict of interest in the solicitation or contracting processes because

96. ***The agency cannot contract with a vendor if any of the following persons have a financial interest in the vendor's business:**

- *Commissioner*
- *Deputy Commissioner*
- *General Counsel*
- *Assistant Commissioners*
- *Chief Financial Officer*
- *Procurement Director*
- *Procurement Staff*
- *A family member related to a person listed above within the second degree of blood or marital relationship.*

97. **Financial interest means a state agency employee or official who:**

- *owns or controls, directly or indirectly, at least 1% in the business, including the right to share in profits, proceeds, capital gains, or*
- *could reasonably foresee that a contract could result in a personal financial benefit.*

SIGNATURE AND DATE

I hereby attest that all information provided is complete and accurate to the best of my knowledge. I acknowledge my responsibility to submit promptly a new or amended disclosure statement if any of the above information changes during the course of the solicitation or contract if awarded to me or the company I represent.

Vendor
Signature:

Date:

Printed _____ Name _____ & _____ Company _____ Represented: _____

ATTACHMENT 4
FINANCIAL AND ORGANIZATIONAL CAPACITY

UNDER ANY NAME OR BUSINESS ENTITY:

A. During the past **three (3) years**, has the Contractor failed to file or pay any tax returns required by federal, state, or local tax laws?

No

Yes, with explanation:

B. Within the past five (5) years, has the Contractor

1. Received any formal unsatisfactory performance assessment(s) from any government entity on any contract?

No

Yes, with explanation:

1. Had any liquidated damages assessed over \$25,000?

No

Yes, with explanation:

2. Had any liens or judgments over \$25,000 filed against the company, other than UCC filings, which have not been discharged?

No

Yes, with explanation:

C. In the last seven (7) years, has the Contractor initiated or been the subject of any bankruptcy proceedings, or is any bankruptcy proceeding pending?

No

Yes, with explanation:

D. The State of Texas regulates the timing of payments. Payment cannot be made before goods are received or services rendered and have been accepted. The State has 30 days after receipt of a correct invoice to make payment. Earlier payment is contingent upon offering an early pay discount. Does the Contractor have sufficient resources available to perform as contracted notwithstanding the state's payment process?

Yes

No, with explanation:

ATTACHMENT 5

**RFP #551-00488
COMMERCIAL FOOD DISTRIBUTION SERVICES FOR USDA FOODS
Statewide (All Eight Regions)**

Questions and Answers during Proposal Submission
(This form for sending Questions to the procurement office during the Questions and Answer period)

No	Reference Corresponding RFP Section number	Contractor Questions
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

ATTACHMENT 6
SPECIAL PROVISION C - Lobbying Certification

CERTIFICATION FOR CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated-funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal-appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub- grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Authorized Signatory Name/Title

Authorized Signature

Date

Chief Financial Officer or Designee Name/Title

Chief Financial Officer or Designee Signature

Date:

ATTACHMENT 7
SPECIAL PROVISION B - Debarment and Suspension Certification
(REQUIRED FOR ALL FEDERALLY FUNDED CONTRACTS)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552(a), as amended). This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, and 2 C.F.R. §§ 180.300, 180.355, Participants' responsibilities. The regulations were amended and published on August 31, 2005, in 70 Fed. Reg. 51865-51880. Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

According to the Paperwork Reduction Act of 1995 an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0027. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal and civil fraud privacy, and other statutes may be applicable to the information provided.

(Read Instructions on Page Two Before Completing Certification)

- A. The prospective lower tier participant certifies, by submission of this contract or 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.

- B. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this contract or proposal.

Organization Name

Authorized Signatory Name/Title

Authorized Signature

Date:

ATTACHMENT 7
Instructions for Certification Debarment and Suspension

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on page 1 in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person(s) to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, at 2 C.F.R. Parts 180 and 417. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the System for Award Management (SAM) database.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ATTACHMENT 8 DATA SECURITY REQUIREMENTS

Contractor must ensure that the computer used to access TX-UNPS is using an Operating System that is supported and updated regularly. Examples are Windows 8.1 and Windows 10, Apple macOS 10.12.6 or above, or Chrome OS version 86.0. 4240.183 or above.

Contractor must ensure that the computer used to access TX-UNPS is updated monthly with Operating System patches. For Windows computers installing Windows updates monthly.

Contractor must ensure that the computer used to access TX-UNPS has a free or paid Anti-Virus product installed and set to auto-update.

Contractors using TX-UNPS shall protect their UserIDs and passwords from disclosure (i.e., not sharing passwords with anyone, not writing down passwords, and posting/keeping them in an unsecured place).

Contractor must notify (enter contact info) within 24 hours (or whatever time frame you want) if they believe their TX-UNPS user name or password has potentially been compromised.

Contractors using TX-UNPS shall change their password if compromised, i.e., someone else knows their password.

Contractors using TX-UNPS shall protect their UserIDs and passwords from disclosure (i.e., not sharing passwords with anyone, not writing down passwords, and posting/keeping them in an unsecured place).

**ATTACHMENT 9
COST PROPOSAL/SCHEDULE**

See

ATTACHMENT 9A-Form J Rate Schedule

**ATTACHMENT 9B-Form I Rate Price Proposal
Schedule**

ATTACHMENT 10

HUB SUBCONTRACTOR PLAN (HSP)

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