



TEXAS DEPARTMENT OF AGRICULTURE  
**COMMISSIONER SID MILLER**

**Texas Department of Agriculture**  
Purchasing and Contracting Office  
1700 N. Congress Avenue  
Austin, Texas 78701

**REQUEST FOR PROPOSAL (RFP)**  
**#5510000149**

**Commercial Warehouse and Food Distribution Services**

**NIGP Class-Items:**

**958-94 Warehouse Management Services**

**962-40 Food Distribution Services**

**Issue Date: September 15, 2023**

**Response Deadline: October 13, 2023; 3:00PM**

**ATTENTION:** It is the responsibility of interested parties to periodically check the Electronic State Business Daily (ESBD) website for updates to this solicitation prior to submitting a response. The Respondent's failure to periodically check the ESBD will in no way release the selected Contractor from "addenda or additional information" resulting in additional cost to meet the requirements of this solicitation.

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**SECTION I – INTRODUCTION AND STATEMENT OF WORK**

**1 INTRODUCTION**

Texas Department of Agriculture (TDA), the Food and Nutrition Department (FND) is seeking experienced warehouse and/or distribution contractors to store and/or deliver United States Department of Agriculture (USDA) Food to Contracted Entities (CE) in Texas which includes school districts and similar entities. FND contracts with and provides nutritional assistance on behalf of the USDA to CEs primarily serving children throughout the state. Respondent will be required to provide TDA with the deliverables as specified in this RFP and as agreed upon under any contract(s) resulting from this solicitation.

RESPONDENTS ARE CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFP CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

**2 BACKGROUND**

Established by the Texas Legislature in 1907, TDA was created to gather statistics on crops and livestock and to educate farmers on advanced farming methods and practices. Over time, the Department’s responsibilities expanded significantly, including the absorption of the Office of Rural Affairs and the State Office of Rural Health in 2011. Today, TDA performs a wide variety of regulatory, nutrition, economic development, and marketing activities, such as:

- Regulating the growth and transport of agricultural commodities;
- Administering federal and state nutrition assistance programs for children and adults;
- Regulating agriculture-related activities in the marketplace to protect consumers, such as the sale of agricultural commodities and the use of pesticides;
- Providing financial assistance to young farmers, rural healthcare facilities, and community infrastructure projects to promote economic development in rural Texas; and
- Promoting Texas agricultural products locally, nationally, and internationally.

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

**Program Historical Expenditures**

Information contained within the table shows the total expenditures for the last two (2) years by CE Regions.

<b>Food Distribution Program (FDP) Regions by County - RFP SY 2025</b>			
<b>Region Totals (See Attachment 3)</b>	<b>(Cases Shipped) SY 21-22</b>	<b>(Cases Shipped) SY22-23</b>	<b>Average</b>
1	560,570.00	241,567.00	401,069

2	85,373.00	90,289.00	87,831
3	528,902.00	322,601.00	425,752
4	384,462.00	199,010.00	291,736
5	223,561.00	168,919.00	196,240
6	99,536.00	81,345.00	90,441
7	32,747.00	16,704.00	24,726
8	242,781.00	121,763.00	182,272
<b>Grand Total</b>	<b>2,157,932.00</b>	<b>1,242,198.00</b>	<b>1,700,065</b>

**Regions Delivery Fee and USDA Foods Value**

Region	Delivery Fees	USDA Foods Value
1	\$1,331,216.72	\$17,555,376
2	\$581,082.56	\$3,625,645
3	\$1,443,985.03	\$16,319,041
4	\$361,023.56	\$8,057,648
5	\$1,697,832.88	\$7,356,362
6	\$312,885.84	\$5,776,995
7	\$57,215.91	\$875,337
8	\$507,261.43	\$7,570,890

**3 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.

**4 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 terms and conditions attached to the RFP, and any contract entered into by the parties as a result of this RFP.

- 1) Amendment means the final written agreement signed and dated by TDA and Respondent(s) selected for an award as a result of this RFP subsequent to the effective date of the Contract, which amends, changes, extends, modifies or revises the Contract.
- 2) CMBL means the Centralized Master Bidders List, which is a public website comprised of businesses interested in contracting with the state. It can be used by Respondents to identify potential respondents and historically underutilized businesses.
- 3) Contract means the final written agreement signed and dated by TDA and the respondent(s) selected for an award as a result of this RFP, and includes the RFP and all attachments, the proposal(s) of any respondent(s) selected for an award, any appendices, final offers, amendments to the solicitation, schedules, or special provisions incorporated into the contract. This term also includes a purchase order.
- 4) Contractor means an entity or individual selected for an award as a result of this RFP and that enters into a Contract to complete the scope of work described in this RFP and the

Contract.

- 5) 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.
- 6) Distribution Contractor means an entity or individual selected for an award for distribution services, as a result of this RFP and that enters into a Contract to complete the scope of work described in this RFP and the Contract.
- 7) Effective Date means the date TDA's Deputy Commissioner or duly authorized designee signs and dates a Contract resulting from this RFP.
- 8) ESBD or Electronic State Business Daily, means the public website for posting state contracting opportunities managed by the Comptroller of Public Accounts (CPA).
- 9) 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 created or resulting from 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.
- 10) Project means the purpose, result or work to be accomplished as a result of the Contract.
- 11) Project Manager means the person assigned by TDA or Contractor that is responsible for managing the day-to-day work of the Contract.
- 12) Proposal means a response submitted to TDA as a result of this RFP.
- 13) Respondent means an entity or individual that submits a proposal.
- 14) Scope of Work or Statement of Work (SOW) means the deliverables, services and work set out and defined in the Contract and described in Section I, Para. 5 of this RFP.
- 15) TDA means the Texas Department of Agriculture. TDA may also be referred to as the "Department."
- 16) USDA Foods means foods procured by USDA and donated to states and recipient agencies for distribution through USDA food assistance programs.
- 17) Warehouse Contractor means an entity or individual selected for an award for warehouse storage services, as a result of this RFP and that enters into a Contract to complete the scope of work described in this RFP and the Contract.

## 5 SCOPE OF WORK/SPECIFICATIONS

TDA is seeking qualified Respondent(s) to provide warehouse storage and distribution services to transport, receive, store, and deliver food shipments purchased by the USDA Food to CEs across the State of Texas. Respondents can provide either warehouse storage or distribution services and/or both. TDA intends to award multiple contracts through this RFP.

Respondent(s) must be able to accept and process orders from USDA's food ordering system, the Web Based Supply Chain Management system (WBSCM), and be responsible for all logistic functions including, but not limited to, receiving truckload commodities from vendors in

dry, refrigerated and frozen forms, receiving orders for multiple types of stored commodities from recipients for scheduled delivery dates, loading of trucks including pallets, and delivery of multiple types of commodities to recipients in full and less-than-full truckload quantities, with a potential for dry, cooler, and freezer in a single truck. The storage facility proposed must be capable of storing both dry and temperature controlled products for the various nutrition programs. Contractor must be able to track dates product is received into the contractor's warehouse and best if used by dates on all external containers and report those to USDA electronically. Respondent should have the ability to add additional routes on an as requested basis, including vendor pick up with multi-stop direct deliveries bypassing the warehouse.

## 5.1 GOALS AND OBJECTIVES

The goal of this RFP is to contract with contractors who provide the following services:

1. Warehouse storage services; and
2. Distribution services.

## 5.2 DELIVERABLES

### 5.2.1 Warehouse storage services

#### 1. Receiving food shipments

- a. Inbound shipment loads – Contractor(s) 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.
  - i. USDA Foods – Inbound shipments of USDA Foods contain one food item per load (approximately 700-2000 cases).
  - ii. 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 general standards and procedures when receiving shipments of USDA Foods as shown in the FNS Instruction number 709-5 Rev. 3 located at the following link: <https://fns-prod.azureedge.us/sites/default/files/resource-files/fns-709-5-rev-3.pdf>.
  - iii. USDA Foods fresh produce – Inbound shipments of fresh produce will contain one product. Contractor(s) must monitor USDA Foods fresh produce closely to ensure quality is not compromised. Contractor(s) 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 process. Contractor(s) must review CE delivery orders to ensure the USDA Foods fresh produce is requested for receiving on their next scheduled delivery for optimal quality. Shipments derived from USDA are bound by policies within the FNS Instruction number 709-5 Rev 3.
- b. USDA Foods fresh produce deliveries – Fresh fruit and/or vegetable shipments directly delivered to a 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 as defined in FNS Instruction number 709-5 Rev 3, Section IX, *Inspecting the Shipment*, part G, *Out-of-condition USDA Foods and required notification*. The warehouse must immediately notify TDA of failed inspections.



- c. Out of condition USDA Foods delivery – Contractor(s) must inspect shipments of USDA Foods before unloading. If upon inspection, Contractor(s) observe that a portion of the USDA Foods is in an out-of-condition state (this includes but is not limited to, no longer fit for human consumption because of contamination, damage, or infestation) they must immediately inform TDA and provide pictures of the out-of-condition product. Contractor(s) may request reimbursement of costs associated with unloading out-of-condition USDA Food shipments. Neither Contractor(s) nor USDA vendor/carrier can assess or levy lump sum fees for cargo that shifts during transit.
- d. Shipment Protection
  - i. Seals – Contractor(s) must record the serial numbers of truck door seals and their condition. Consignees shall record inbound, and if applicable, outbound seal numbers. Contractor(s) must run a preliminary check of the trailer and product (temperature readings, visible check on pallet and product appearance) but refuse unloading of the shipment and immediately report the results to TDA if seals are either broken, missing, or do not match the number on supporting documentation such as the Bill of Lading (BOL). TDA will then report to USDA for further guidance and/or approval for rejection. Only USDA has the authority to reject USDA Foods shipments. (Note: for split shipments, the driver is issued multiple seals and has an appropriate seal for each stop). This does not apply to Processed End product shipments. Processed end products are defined as raw agriculture commodities undergone any changes to its natural state, i.e., washing, cleaning, milling, cutting, chopping, heating, pasteurizing, blanching, cooking, canning, freezing, drying, and dehydrating.
  - ii. Cabin temperature – The consignee must maintain documentation of the temperature of a freezer or refrigerated truck or trailer upon arrival. Cabin temperature must always be taken and provided to TDA when request for refusal is considered and submitted.
  - iii. Condition of pallets and product – Prior to unloading, Contractor(s) must run a preliminary check on the condition of pallets and product to determine if either appears to create an unsafe and/or unsanitary environment to unload. Trailers in suspect condition must be reported to TDA for further guidance.
- e. Pickup appointments – Contractor(s) must have a process in place for CEs to submit a CE delivery order or CE pickup order and establish a timeframe the order is to be submitted by the CE prior to the delivery date. Contractor(s) must inform TDA of the process to be used and the timeframe established within the response to this RFP. Contractor(s) must immediately inform TDA whenever process or timeframe changes.
  - i. Notification of changes to pick-up appointments – Contractor(s) must provide advance written communication to the CE in the event the pickup appointment will not be honored for the scheduled pickup date and time. Within the communication, Contractor(s) must request a new date and time to which the CE must agree to. If a CE fails to provide advance notice to Contractor(s) that no one will be available to receive a regularly scheduled pickup, or that the CE will refuse any part or all the items on the delivery

order, (and the Distribution Contractor(s) attempts to make the delivery) the Distribution Contractor(s) may charge the CE the appropriate contracted rate for the delivery not accepted by the CE. TDA must be notified of these changes and these must be tracked separately from normal invoice charges submitted to TDA quarterly.

- f. Exchange in possession of USDA Foods items - Pickup areas – when CEs pick up USDA Foods, Contractor(s) must bring the foods across the receiving platform on exchangeable and returnable pallets. Contractor(s) are responsible for loading the food into the CEs truck.
- g. Pickup fees - Contractor(s) must invoice CEs for the pick-up of USDA Foods, according to the number of cases or units, at rates not exceeding contracted rates. The pick-up fees will also include the per case handling cost proposed in Exhibit C Rate Price Proposal Schedule.
  - i. 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 Contractor(s) that do not typically service the non-service site.
  - ii. Termination of a contract
    - 1. 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.
    - 2. If a CE requests to transfer their allocated inventory to the new Contractor’s designated warehouse, the expiring Warehouse Contractor(s) and CE negotiate the pick-up fees.
    - 3. The expiring Warehouse Contractor(s) may not charge a pickup fee for transferring available inventory (not yet allocated to CEs) to the new Warehouse Contractor(s).
- h. Forced deliveries (items stored in the cooler)- Dairy, fresh produce, and other sensitive shelf-life items stored in the cooler must be distributed no later than 60 days from the date of receipt. Distribution Contractor(s), in coordination with Warehouse Contractor(s), must attempt to deliver allocated cooler items to the CE upon the next available delivery date. Warehouse Contractor(s) are responsible for adding cooler items to delivery orders left off by the CE. CEs that refuse any cooler items upon delivery will still be charged for the delivery fee.

## 2. Warehousing

- a. Facility requirements
  - i. Capacity – The Contractor must have sufficient storage space to always handle all inbound shipments 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.
  - ii. 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. Contractor(s) must cooperate with all inspections, including an annual inventory review. Inspections are to help ensure that Contractor(s) are complying with all terms and conditions of this RFP and USDA requirements are met, including but not limited to sanitation, security, and temperature. Contractor(s) must comply with State, Federal and local health requirements.

b. Insurance coverage for USDA Foods (see Exhibit L, Insurance Requirements)

- i. Within thirty (30) days of notification of the contract award, Contractor(s) will submit to TDA, proof of insurance. The insurance must be of an amount no less than the applicable amount listed in Table 1 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 1 – Value of USDA Foods to Insure	
Region	Value of USDA Foods
Region 1	\$1,462,948
Region 2	\$302,138
Region 3	\$1,359,920
Region 4	\$671,471
Region 5	\$613,031
Region 6	\$481,417
Region 7	\$72,945
Region 8	\$630,908

- ii. 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.
- iii. 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).

c. Facility location

- i. 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. Contractor(s) submitting changes less than 60 days may be imposed a destination fee by TDA, USDA, or USDA vendor.
- ii. Sub-contract warehouse – Contractor(s) 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. Contractor(s) 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. Contractor(s) submitting changes less than 60 days may be imposed a destination fee by TDA, USDA, or USDA vendor.

- iii. Contractor(s) is required to ensure that subcontractors adhere to the RFP terms and conditions, including FNS Instruction number 709-5 Rev 3. Contractor(s) must also ensure subcontractors cooperate with USDA and TDA's inspectors, reviewers and auditors, or their authorized agents and representatives.
  - iv. Contractor(s) is held responsible for all losses under the Contract.
- d. Temporary facilities - Should a temporary facility be needed before receiving written approval from TDA, Contractor(s) 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 Contractor(s). 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 Contractor(s).
- e. Storage fees - Storage fees encourage the movement and distribution of USDA Foods in a timely manner to prevent products going out-of-condition. Storage fees may begin to accrue only after the USDA Foods shipment has been received and the CE has been allocated quantities from the shipment. Contractor(s) shall indicate the storage fees and timeframes for free and private storage on Exhibit C, Rate Price Proposal Schedule.
- i. Free storage – Contractor(s) must establish a defined timeframe for free storage for CEs no less than 30 days from the date of allocation of the USDA Foods shipment.
  - ii. Private storage – Contractor(s) may charge CEs a storage rate not to exceed the contracted private storage rates (per case, per month), by storage type. Storage rates cannot be applied until 30 days from date Contractor(s) have received shipment of the item to be charged. Contractor(s) may charge CEs an elevated fee the longer items are stored.
  - iii. Surplus Inventory - To fulfill USDA truckload order requirements, TDA may order additional volume of USDA Foods beyond CE demand. CEs can acquire surplus inventory upon request, to which, it is then allocated. Contractors cannot charge TDA private storage fees while it is considered surplus inventory.
  - iv. TDA requires Contractor(s) 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.
  - v. Contractor(s) must have a system for generating invoices for private storage and delivery fees. TDA requires Contractor(s) 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, Respondents must identify what system will be used to generate invoices.

f. Sanitation

- i. Pest control – Contractor(s) 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.
- ii. Chemical storage – Contractor(s) 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.
- iii. Cleaning – Contractor(s) must maintain and keep clean all warehouse facilities, trucks, and other spaces used for storing or transporting USDA Foods.

g. Storage temperature requirements - TDA requires Contractor(s) to maintain logs and record temperatures in each storage area for USDA Foods at a minimum every other day. If closed on Saturday and Sunday, Contractor(s) must record temperatures on Friday and Monday.

- i. Frozen items must be stored at 0°F or below.
- ii. Chilled items must be stored in refrigerated space at a temperature between 35°F and 45°F.
- iii. 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.

h. Dry, special care - To prevent infestation and deterioration in quality, Contractor(s) must give special care to some packaged, bagged, or canned dry storage USDA Foods. Contractor(s) must store grain products (e.g. flour, non-fat dry milk, pasta, rice) in chilled storage. Chilled storage rates will apply. Dry items stored in the cooler must not be returned to dry storage at any time and must be delivered with chilled items to CEs (or stacked on same pallet as chilled items for CE pickup).

- i. Contractor(s) must refrigerate these products at 35-45°F or less, with relative humidity not greater than 60 percent (%).
- ii. Other dry storage USDA Foods requiring special care must be carefully stacked and stored to prevent crushing or deterioration.

3. Inventory management

- a. Stock rotation – Contractor(s) 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, or use-by) must be considered in the overall management of inventory rotation. In this case, First In, First Expiring (FIFE) must be applied when succeeding shipments have dates that may impact FIFO. TDA may require Contractor(s) to bypass FIFO if a CEs decision to delay timely receipt of their USDA Foods allocations, including

processed end products, causes another CE to receive product older than the product that was allocated to them.

- b. Comingling prohibited – Contractor(s) must store USDA Foods, including processed end products in lot numbers, separate from the Contractor’s commercial foods.
- c. Short shelf-life items - For short shelf-life items, which includes but is not limited to, cooler items, Contractor(s) shall be responsible for adding to the CE Delivery Order if the CE did not request according to delivery requirements. Contractor(s) must notify the CE before the delivery date by phone or email that the order was modified to include the fresh produce.
- d. Inventory damages – Contractor(s) must report to the designated TDA Contract Manager, within 24 hours, on TDA’s Form H1638 "Report of Loss of USDA Foods" (Attachment 6), any damage to USDA Foods, including damage occurring in the warehouse or during transporting and delivery of the USDA Foods to the CEs. The USDA Sales Order Number must be reported within the JotForm submission and include pictures and any supporting documentation such as condemnation report from a qualified health inspector when completing the JotForm.

#### **Form H1638-Report of Loss of USDA Foods**

The Report of Loss of USDA Foods (Form H1638) is an electronic form used to report a loss of USDA Foods in the National School Lunch Program (NSLP) and other USDA Foods programs, as applicable. The H1638 Jot Form must be completed within **24 hours** of identifying the USDA foods loss.

#### **Link for H1638 JOT FORM**

<https://form.jotform.com/92187665293166>

- e. Inventory controls – Contractor(s) are required to establish the following inventory control points:
  - i. Warehouse Pick List
  - ii. Bill of Lading (in three parts)
    - 1. Warehouse Copy: Contains the items from the Warehouse Pick List and is kept on file at the warehouse.
    - 2. Carrier Copy: Driver and CE signature and Driver returns copy to Warehouse.
    - 3. CE Copy: Driver and CE signature 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 with a copy.

- f. Physical inventory counts
  - i. Mid-year count
    - 1. TDA requires Contractor(s) to conduct a mid-year physical inventory count no later than December 31st. No later than November 15, Contractor(s) must submit to TDA the dates the physical count is to be conducted.

2. No later than two (2) business days from the last day of the physical count, Contractor(s) will submit results of the mid-year count to TDA via email to [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov). The results must consist of Contractor's system perpetual inventory balance and physical count per USDA material item based on case unit measurement.
  3. No later than five (5) business days from the last day of the physical count, Contractor(s) will be required to make all positive and negative inventory adjustments to their inventory management system to match the physical count results.
  4. No later than two (2) business days from the last day of the system adjustments, Contractor(s) are required to submit a report to TDA that includes the following data elements:
    - a. System adjustments of inventory per USDA material item (showing gains and losses).
    - b. Adjustments made to State inventory and CE allocated inventory accounts that equate to the system inventory adjustments.
    - c. No later than thirty (30) calendar days after the last day of the physical inventory count, TDA will provide Contractor(s) with a reconciliation letter, including the financial results of the Mid-Year Physical Inventory count.
  5. TDA will, at its sole discretion, determine the reasonableness of gains and losses and may require Contractor(s) to submit a written plan to address and correct identified inventory control deficiencies.
  6. Cycle inventory counts - In addition to mid and annual inventory counts, Contractor(s) 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 Contractor's inventory. Contractor(s) shall determine the items to count, retain cycle count information and provide to TDA on October 15th and April 15th. Losses reported must be submitted on the H1638 JotForm. For gains, Contractor(s) must show the system adjustment record made.
- ii. Annual inventory review - Each year, TDA or TDA's agents, along with the designee(s) of Contractor(s), 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, Contractor(s) must not conduct any outbound shipments of USDA Foods or process any pending CE delivery orders. As feasible as possible, Contractor(s) should avoid scheduling inbound shipments of USDA Foods. However, inbound shipments must be accepted if the USDA vendor cannot accept a delivery appointment outside the designated period and/or the shipment arrives from a USDA vendor without an appointment.

1. At the request of TDA, Contractor(s) 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. Contractor(s) shall provide equipment (lifts) with safety cages and safety belts to hold at least three people if required. Contractor(s) will furnish freezer outerwear (freezer coats as may be necessary).
  2. During the annual inventory review, TDA and/or TDA's agents will compare the physical count to a current inventory generated from Contractor's inventory system. The dollar amount of gains (overages) and losses (shortages) of USDA Food products are calculated using USDA's current list of food prices.
- g. Annual physical inventory: final count - On the day of and when the Annual Physical Inventory Review is complete, TDA (or TDA's agents) and Contractor(s) 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, Contractor(s) 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.
- h. Annual physical inventory reconciliation - No later than thirty (30) calendar days after the physical inventory count, TDA will provide Contractor(s) 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, Contractor(s) will provide its response to TDA's findings.
- i. Annual physical inventory: losses
- i. Shortages of available inventory – Contractor(s) must pay TDA for the value of the unallocated inventory of USDA Foods lost (shortages).
  - ii. Shortages of allocated inventory – Allocated USDA Foods remains as overall TDA inventory but the CE is responsible for utilization throughout the school year. Contractor(s) must reconcile losses by negotiating with the CEs directly. At the CEs option, Contractor(s) 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.
  - iii. Shortages processed inventory – Contractor(s) 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 Contractor(s) with the processed food loss value.
- j. Physical inventory gains (overages) - TDA reserves the sole right to make the determination, and not subject to Contractor(s) dispute or discussion, to allow Contractor(s) 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 Contractor(s).
  - 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.
- i. If TDA allows Contractor(s) to offset gains with losses, the following applies:
1. Contractor(s) 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.
  2. Any losses resulting from fraud, theft, or negligence, as determined by TDA, cannot be offset with a gain.
  3. Unless required by TDA, USDA Foods included in the offset are not required to be of a like or similar kind.
  4. Bonus and entitlement USDA Foods may be used for offsets.
  5. Offsets are made based on value, not weight.
  6. 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 30 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:
    - a. The value of the proposed offsets.
    - b. The volume of USDA Foods involved in the proposed offsets.
    - c. The desirability of the USDA Foods identified as overages and whether the foods can be distributed efficiently and without waste.
    - d. Contractor's previous history of offsets; and
    - e. The results of an investigation by Contractor(s) and TDA as to the cause or causes for the discrepancies.

In addition, TDA expects Contractor(s) to establish Control Procedures to minimize Physical Inventory Gains (Overages). TDA may require Contractor(s) 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.

4. Warehouse Contractor(s) inventory and invoice management system
  - a. TDA requires Warehouse Contractor(s) to utilize their own TDA approved inventory management software (maintained by Warehouse Contractor(s) and TDA) to track and report the receipt, expiration dates/best-if-used-by (BIUB) dates, storage, and distribution of USDA Foods. Invoicing is the responsibility of the Warehouse Contractor(s) and will be completed and maintained by Warehouse Contractor(s) using their invoicing system. The submission of Contractor(s) inventory reports will be used as the official record of inventory and delivery of USDA Foods.
  - b. Warehouse Contractor(s) inventory management system must have Microsoft Excel compatibility. The inventory management system must have the functionality to track the receipt, expiration dates/BIUB dates, storage, distribution of USDA Foods, inventory lot reports, warehouse on hand inventory reports, private storage reports, and invoicing functions.
  - c. Minimum data elements and milestones – Warehouse Contractor(s)' inventory management system and/or other tracking processes must document the following data elements, which include but are not limited to:
    - i. Receipt of USDA Foods shipments
      1. USDA sales order number and sales order item number (for foods originating from USDA vendors)
      2. Processed end product shipment order number (derived from processor/manufacturer)
      3. USDA Foods/processor end product material description and pack size
      4. Date of physical receipt
      5. Total quantity (in cases) accepted and received into inventory
      6. Bin storage locations/lot number
      7. Pack dates
      8. If applicable: Use-by, BIUB, or expiration dates on casing and/or unit packaging
    - ii. Inventory tracking
      1. Material code/description, pack size, quantity, and date of allocation of USDA Foods to CEs
      2. Inventory adjustments, adjustment reasoning, and date of adjustment (at material and CE level)
      3. Free and private storage
    - iii. Delivery orders
      1. Generated delivery order number

2. Date of delivery
  3. CE, material code/description, quantity shipped, quantity accepted by CE
- iv. Invoicing
1. Associated generated delivery order number(s)
  2. CE, material code/description, quantity, storage charge (if applicable)
- d. The inventory management system must have a username and password login for all involved in the daily operations of USDA Foods.
- e. Warehouse Contractor(s) must submit reports to TDA when requested.
5. Web Based Supply Management System (WBSCM)
- a. TDA requires Warehouse Contractor(s) to use WBSCM (web-based software implemented and maintained by USDA) to check CE allocations and electronically report the receipt of USDA Foods. WBSCM determines CE allocations per material item per truckload sales order.
    - i. CE allocations - Each USDA Foods truckload sales order will comprise of CE requests, or requisitions, that indicate what the CE demanded and when they planned to have it delivered to the warehouse. WBSCM will be used as the resource for allocations that Contractor(s) must then apply to their inventory management system.
    - ii. State Allocations (Surplus) – A truckload sales order may have a quantity consisting of requisitions tied to the TDA, or state allocation. Surplus is available inventory, usually on a first come, first serve basis, that CEs can attain. Contractor(s) must develop a process to transfer state allocations to CE allocations when CEs claim surplus.
    - iii. Contractor(s) must enter goods receipt into WBSCM within 24 hours of physical receipt of shipment. If a shipment is received on a Friday and the warehouse is closed on Saturday and/or Sunday, then the shipment must be receipted by Monday or the next business day, whichever comes first.
  - b. WBSCM is a website portal that can be accessed through the Warehouse Contractor's computer with internet connectivity. It is recommended to utilize a high-speed internet service for optimal performance.
  - c. WBSCM includes, but is not necessarily limited to, functionality to track the receipt, allocation of USDA Foods and generate reports.
  - d. WBSCM access is controlled by login IDs and passwords, which serve to authenticate the accuracy of data entered.
  - e. WBSCM helpdesk staff supports WBSCM but does not support hardware or software for Contractor(s) other than the WBSCM website.
  - f. TDA will provide initial WBSCM training virtually to Warehouse Contractor(s), at a time and place to be determined by TDA. Warehouse Contractor(s) are responsible for travel and accommodation costs necessary for WBSCM training. Contractor(s) assumes training responsibilities after the initial TDA training period for any new

Contractor staff working with WBSCM.

- g. In addition to maintaining accurate data in WBSCM, Contractor(s) must reconcile WBSCM allocation data with its internal inventory system to ensure both systems have accurate information.

#### 5.2.2 Distribution services

1. Distribution Contractor(s) will provide distribution services and must obtain contact information to designated CEs in the form of an email and phone number. A fax number can also be included if the Distribution Contractor(s) use a fax machine in the normal course of business.
2. CEs may pick-up USDA Foods at the Contractor's Warehouse storage facility or request delivery by the Distribution Contractor(s). Warehouse Contractor(s) must provide delivery requests from the CEs to the Delivery Contractor(s) and are responsible for loading and unloading the food on the truck. Delivery Contractor(s) will be responsible for invoicing the CE for each case delivered.
3. Distribution Contractor(s) must coordinate deliveries with CEs and deliver those cases and/or units of USDA Foods as requested by a CE. Distribution Contractor(s) will coordinate with Warehouse Contractor(s) by, but not limited to the following criteria:
  - a. Distribution Contractor(s) must have logistics software approved by TDA.
  - b. Distribution Contractor(s) must provide Warehouse Contractor(s) with contact information, logistics information, and any pertinent information for the seamless execution of daily operations/deliveries. Both parties will agree to operate harmoniously.
  - c. Distribution Contractor(s) must obtain 3 copies of the BOL that include all the items ordered per delivery stop and/or any shortages/substitutions.
    - i. Distribution and Warehouse Copy: Contains the items from the Warehouse Pick List and is signed off by both the Warehouse and Distribution contractors as the handoff of inventory. The Warehouse Contractor will keep on file.
    - ii. Distribution Contractor Copy: Driver and CE sign. Driver returns copy to Distribution company to keep on file.
    - iii. CE Copy: Driver and CE sign and CE retains a copy.
  - d. Once Warehouse Contractor(s) have loaded all inventory into the delivery vehicle, Distribution Contractor(s) will be responsible for any unforeseen losses caused during transit. Distribution Contractor(s) will then need to report the loss within 24 hours of occurrence through the (Attachment 6) H1638 Form.
    - i. The driver must notate on CE's BOL the loss that occurred upon delivery of order. Reconciliation of losses will require TDA assistance.
    - ii. Distribution Contractor(s) will not store any USDA Foods at their distribution facility. Their sole purpose is meant for transporting/distributing USDA Foods.

#### 4. Delivery Schedule

- a. No later than June 1 of each year, and before the distribution of USDA Foods, Distribution Contractor(s) 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.
  - b. Distribution Contractor(s) must obtain from CEs a list of delivery sites, including the addresses and direction to the sites.
  - c. Delivery schedules must specify a day during the week, Monday through Friday and deliveries must occur between 6:30am and 2:30pm. Through an agreement between the CE, Warehouse Contractor(s), and Distribution Contractor(s), the delivery time can be before 6:30am and after 2:30pm. Furthermore, TDA allows key drops upon the agreement of the CE, Warehouse Contractor(s), and Distribution Contractor(s). however, Distribution Contractor(s) will have final responsibility for the delivery schedule. Distribution Contractor(s) will work with each CE's work schedule and case count to optimize the deliveries across the region. Distribution Contractor(s) shall notify TDA of how they intend to setup their delivery schedule.
  - d. Changes to delivery schedule - Distribution Contractor(s) may negotiate with a CE any changes to the CE's delivery schedule, and after obtaining the CE's agreement, notify the CE and Warehouse Contractor(s) of the changes at least 30 days in advance of implementation. Upon mutual agreement, Distribution Contractor(s) may immediately implement changes to a CE's delivery schedule. Distribution Contractor(s) must provide Warehouse Contractor(s) and TDA with a copy of the amended delivery schedule within five (5) calendar days of execution.
5. Fleet maintenance – Distribution Contractor(s) shall maintain a fleet of trucks and trailers to comply with deliverables described in this RFP. Distribution 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. See Exhibit C2, Structure Delivery and Storage Plan for template form.
6. Delivery appointments
- a. Delivery - Distribution Contractor(s) must have a process in place for CEs to submit a CE delivery order and establish a timeframe the order is to be submitted by the CE prior to the delivery date. Distribution Contractor(s) must inform TDA of the process to be used and the timeframe established within the response to this RFP. Contractor(s) must immediately inform TDA whenever process or timeframes change.
  - b. Notification of changes to delivery appointments – Distribution Contractor(s) must provide advance written communication to the CE in the event a delivery appointment will not be honored for the scheduled delivery date and time. Within the communication, Contractor(s) must request a new date and time to which the CE must agree to. If a CE fails to provide advance notice to Distribution Contractor(s) 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 Distribution Contractor(s) attempts to make the delivery) Distribution Contractor(s) may charge the CE the appropriate contracted rate for the delivery not accepted by the CE. TDA

must be notified of these charges and these must be tracked separate from normal invoice charges submitted to TDA quarterly.

7. Delivery vehicle, product, and driver conditions
  - a. Delivery vehicle conditions - Distribution Contractor(s) 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 Distribution Contractor(s) deliver dry foods at 50-70°F. When delivering a cargo that includes USDA Foods requiring different temperature controls (e.g. frozen and dry), Distribution Contractor(s) must use bulkhead dividers to separate products, i.e. frozen from chilled, chilled from dry, and dry from frozen. For safety reasons, Distribution Contractor(s) must take proper precautions to ensure chemical and nonfood items/products are not included in their delivery vehicles while transporting USDA Foods to CEs. Note: Distribution Contractor(s) are not prohibited from carrying USDA Foods and Commercial foods (Non-USDA Foods) on a single truck.
  - b. Securing Loaded Trucks – Distribution Contractor(s) 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. Distribution Contractor(s) are required to ensure delivery trucks are properly locked and secured between delivery drops to the CEs.
  - c. Product Conditions – If delivering shrink-wrapped USDA Foods, Distribution Contractor(s) must include in the same shrink-wrapped package only products requiring the same temperature controls, this includes but is not limited to, dry with dry, chilled with chilled, and frozen with frozen. Distribution Contractor(s) 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.
  - d. Driver Conditions – Any driver transporting USDA Foods must own and possess a current non-expired Commercial Driver’s License (CDL).
8. Exchange in possession of USDA Foods items
  - a. Delivery drop areas - Using exchangeable and returnable pallets, Distribution Contractor(s) 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. Distribution Contractor(s) 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.
9. Delivery fees - Distribution Contractor(s) must invoice CEs for the 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 Exhibit C1, Rate Schedule Chart.

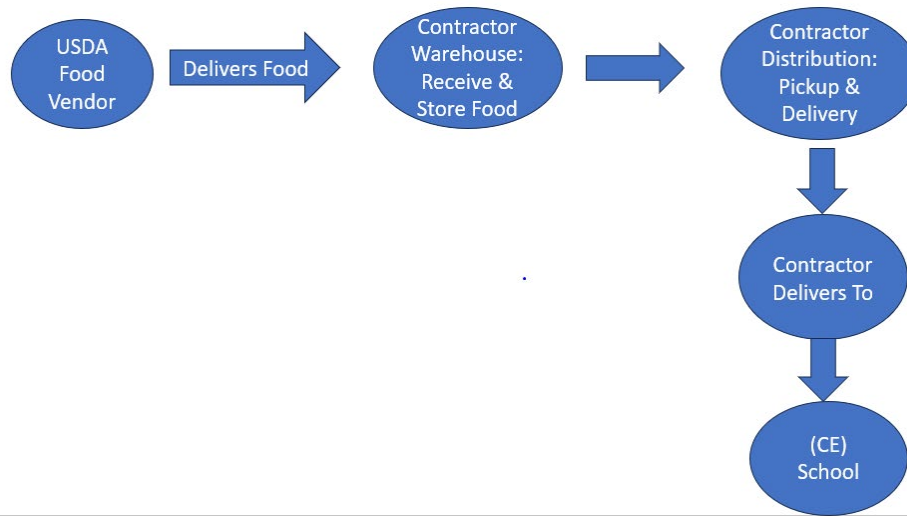
- a. Non-Service Sites - In some cases, there may be a CE that has a site (non-service site) that is outside their assigned Contractor's service region. In this case, TDA may approve the non-service site to pick up USDA Foods from a Contractor that does not typically service the non-service site. See Attachment 5, TDA Commercial Delivery for USDA Foods Regional Map, for details on counties in each region.
10. Minimum delivery fees and pricing structure – Contractor(s) 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 Respondents 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. Each Respondent 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. The number of stops listed in Attachment 2, Table FDP Regions and Delivery Stops, are an approximate number of delivery stops and could be subject to change throughout the course of the contract. See Attachment 3, Table Case Count Data by Region County, for detailed data. See Attachment 4, Regions Delivery Fee and USDA Foods Value, for detailed data by region.
11. Contractor inventory and invoice management system
- a. TDA requires Contractor(s) to utilize their own TDA approved inventory management system (maintained by Contractor(s) and TDA) to track the distribution of USDA Foods. Invoicing of delivery fees is the responsibility of the Distribution Contractor(s) and will be completed and maintained by Contractor(s) using their invoicing system. The submission of Contractor(s) inventory reports will be used as the official record of inventory and delivery of USDA Foods.
  - b. Minimum data elements and milestones – Contractor(s) inventory management system and/or other tracking processes must document the following inventory data elements:
    - i. Delivery orders
      - 1. Generated delivery order number
      - 2. Date of delivery
      - 3. CE, material code/description, quantity shipped, quantity accepted by CE
    - ii. Invoicing
      - 1. Associated generated delivery order number(s)
      - 2. CE, material code/description, quantity, delivery charge, fuel surcharge (if applicable)

To provide for a period of transition TDA may overlap a new Contractor's initial contract period with the contracting period of an existing Contractor (Ending Contractor) already under an ending contract with TDA. See Section I, paragraph 7.1.

During May 2024, Contractor(s) will pick-up available inventory (not yet allocated to a CE) from Ending

Contractors, at the Contractor(s) expense.

Warehouse Storage and Distribution Workflow:



### 5.3 PROJECT CALENDAR (IMPLEMENTATION)

The proposed schedule will ensure the completion of deliverables by specified dates. Workflow and milestones such as training, deliverables, invoicing, and quality assurance activities should be included.

### 5.4 PROJECT PLAN – PRICE TO VALUE/BEST VALUE

While price is not the sole deciding factor, TDA expects the cost proposal to be based on the best value for the price proposed. This requires submission of a Project Plan that aligns costs, resources, and activities for an overall determination of best value for the price.

The award will be made to the Respondent whose response offers the best value to the State based on all factors considered, including price. TDA will evaluate responses in accordance with the best value standard in Tex. Gov't Code § 2156.007. A Bidder's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of Texas Gov't Code §§ 2155.074, 2155.075, 2156.007, 2157.003, and 2157.125. Bidder's may fail this selection criterion for any of the following conditions:

- A score of less than a C or Legacy Unsatisfactory in the Vendor Performance System;
- Currently under a Corrective Action Plan through the Comptroller of Public Accounts (CPA);
- Having repeated negative Vendor Performance Reports for the same reason;
- Having a record of repeated non-responsiveness to Vendor Performance issues; or
- Having purchase orders that have been cancelled in the previous 12 months for non-performance (late delivery, etc.).

Contractor performance information is located on CPA's website at:

<http://www.txsmartbuy.com/vpts>. TDA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (VPTS), TDA may examine other sources of vendor performance including, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Such sources of vendor performance may include



any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the Federal government. Further, TDA may initiate such examinations of vendor performance based upon media reports. Any such investigations will be at the sole discretion of TDA, and any negative findings, as determined by TDA, may result in non-award to Bidder.

## **5.5 KEY PERFORMANCE INDICATORS**

Contractor(s) must maintain timely and accurate data and make it available to TDA upon request. See Attachment 1, Key Performance Indicators. Contractor(s) 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 Contractor(s) failed to meet a required deadline.

## **6 INVOICING AND PAYMENT**

The following procedures apply to invoicing and payment in addition to those listed in *Exhibit A, Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences, Paragraph 11 and 12.*

### **6.1 INVOICE SUBMISSION**

Contractor must submit invoices electronically to Texas Department of Agriculture, Accounts Payable, [invoices@texasagriculture.gov](mailto:invoices@texasagriculture.gov), or mail to P.O. Box 12847, Austin, TX 78711-2847.

### **6.2 INVOICES MUST INCLUDE:**

- 1) Name of Contractor exactly as shown on the contract, Texas Payee Identification Number (PIN), and correct "Remit to" address;
- 2) Receiving entity name;
- 3) Contract/Purchase Order number;
- 4) Description, quantity, unit of measure, unit price, extended price of each item;
- 5) Total price;
- 6) Discount, if applicable, extended and deducted to arrive at a NET TOTAL for invoice; and
- 7) Attach supporting documentation, if required.

### **6.3 PAYMENT:**

- 1) Payment will be made in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251. Payment normally will be made to Contractor within thirty (30) days after receipt of a properly prepared invoice or the receipt of and the acceptance of services ordered, whichever is later. State agencies are required by Chapter 2251 to pay properly submitted invoices within thirty (30) days or Contractor may charge a late payment fee established by law. Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature.
- 2) Under no circumstances shall TDA be obligated to make any payment (whether a progress payment or final payment) to Contractor, if any of the following conditions exists:
  - a. Contractor is in breach of the Contract;
  - b. Any portion of a payment is for services that were not performed in accordance with this Contract provided, however, payment shall be made for those services which were performed in accordance with this Contract;

- c. Contractor has failed to make payments promptly to consultants or other third parties used in connection with services for which TDA has made payment to Contractor;
- d. If TDA, in good faith, determines that the balance of the unpaid fees is not sufficient to complete the services in accordance with this Contract; or if Contractor has failed to achieve a level of performance necessary to maintain the project schedule. No deductions shall be made from Contractor's compensation on account of liquidated damages or other sums withheld from payments to other Contractors or on account of the cost of changes in the work other than those for which Contractor may be liable.

Payments for services purchased with state appropriated funds will be made through state warrants issued by the Texas Comptroller of Public Accounts. Payments by qualified ordering entities will be made through the entities local payment system.

Any additional expenses incurred by Contractor are the responsibility of Contractor and will not be paid by TDA.

TDA will not pay any per diem, travel, hotel, equipment, phone calls, paper, reproduction services, office space, or other incidental expenses related to performing the services required by the Contract.

#### **6.4 TDA RESPONSIBILITIES**

##### **A. TDA will:**

1. Designate a Contract Manager responsible for working with Contractor(s) to resolve problems and maintain the agreed-upon schedule.
2. Provide Contractor(s) with technical assistance before and during program start-up and throughout the term of 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.

#### **6.5 CONTRACTOR RESPONSIBILITIES**

##### **A. Contractor(s) will:**

1. Contract Oversight- Respondent represents and warrants that it will maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Demonstrate to TDA for deliverable acceptance that all requirements have been met.
2. Notify TDA within (5) business days of changes in key staff/positions responsible for ensuring contract services and deliverables are provided.
3. Communicate timely with TDA and/or CEs concerning issues that directly impact the services provided in this Contract.
4. 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.

5. Respond to support requests and resolve escalated issues within agreed-upon time frames.
6. Adhere to specified deadlines for Contract deliverables as outlined in this RFP.
7. Participate in meetings as scheduled by the selected TDA representative.
8. Work successfully under pressure on multiple task assignments.
9. Propose solutions that can result in cost savings.

B. Warehouse and Distribution Contractor(s) foundational standards/regulations:

1. Financial arrangements – Contractor(s) must:

- a. Invoice CEs for contracted delivery and pick-up rates either monthly, weekly, or after each pick-up delivery or USDA Foods.
- b. Not bill CEs until after the pick-up or delivery is complete.
- c. Invoice CEs for private storage charges (Warehouse Contractor(s)). Invoice must include a summary of tickets for each pick-up or delivery at each delivery site. Contractor(s) must number the pick-up and/or delivery tickets sequentially, listing the total number of units, cases, or packages. The CE is required to submit payment to Contractor(s) no later than forty-five (45) days from the date of the invoice. With prior written approval from TDA, Contractor(s) may impose Cash on Delivery (COD) or cease shipments for those accounts with frequent payment delays or checks returned because of “insufficient funds”. COD or “no-ship status” will be removed once the past due payment has been received by Contractor(s).

2. Claims and payments for shortages and damages – during the term of a contract, Contractor(s):

- a. Are financially responsible for all USDA Foods in its care, possession, and control, and shall assume the risk for loss, damage, theft, and shortages.
- b. Must fully ensure USDA products, be financially responsible for shortages and damages, and submit reports to TDA as required. Damages assessed for USDA Foods include but are not limited to, physical damage to containers, products, and infestation, or contamination due to improper storage conditions.
- c. Must report to TDA within 24 hours of the incident on Form 1638 (linked in paragraph below), 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 but is not limited to damage, theft, shortage, out-of-condition, spoiled, or contaminated.
- d. Must submit Form H1638 (see Attachment 6) 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> .
- e. Warehouse Contractor(s) must submit Form H1638 to TDA for outdated private storage foods that are condemned. Warehouse Contractor(s) who fails to follow FIFO inventory practices is liable for private storage losses.
  - i. Loss of USDA Foods in available inventory for Warehouse Contractor(s) - If

determined to be liable for USDA Foods lost from available inventory, Warehouse Contractor(s) 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.

- ii. Loss of allocated USDA Foods in private storage for Warehouse Contractor(s) - After receiving a report of lost or damaged USDA Foods on Form 1638 and TDA establishes a valid claim against Warehouse Contractor(s), Warehouse Contractor(s) must reimburse the CE the dollar value of the foods.
  1. Warehouse Contractor(s) must submit Form H1638 to TDA reporting lost or damaged USDA Foods and TDA establishes liability.
  2. If the USDA Food is in free storage, TDA will send Warehouse Contractor(s) a collection letter.
  3. At the CE's option, Warehouse Contractor(s) 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.

### 3. Rate changes

- a. Rates during the term of the Contract - The rates Contractor(s) charge CEs for USDA Foods storage, pick-up, and/or 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.
  - b. Basis for rate increase requests - Contractor(s) may request an increase in USDA Food delivery and/or pick-up rates during the contracted 12-month period. 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.
  - c. For changes to the cost of fuel, TDA will use the Fuel Adjustment Chart (See Attachment 7) to determine the allowable rate increase, if any, for delivery of USDA Foods (Note: Contractor(s) 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.
  - d. Negotiated rates - TDA may negotiate with Contractor(s) to decrease rates based on significant changes in volume and/or in services. The negotiated rate must be within agreement by both parties.
4. 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:
- a.  $B - A \div A \times 100\% = \text{Percent of allowable price increase}$

- i. A = index from the month of the due date for the response, OR the effective date/month of the most recent approved price increase.
  - ii. B = current or latest baseline index
5. Performing background checks on all drivers/employees – Contractor(s) 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 subcontractors with direct or indirect involvement in the storage and/or delivery of USDA Foods. Within thirty (30) days of a triggering event, Contractor(s) will obtain background checks on employees, as required. Contractor(s) may obtain background checks from the Texas Department of Public Safety (TDPS). Contractor(s) must include, in their response, their policy of conducting background checks on their employees. If Contractor(s) 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:
  - a. 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.
    - i. TDA, at its sole discretion, may require proof of the background checks, at any time, and require the Contractor to replace personnel.
6. 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 Contractor's warehouse and identify the foods to be pulled. If necessary, TDA will contact Contractor(s) 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 Contractor(s). Contractor(s) may submit invoices to TDA for reimbursement based on the contracted delivery rate schedule\*.
  - a. \*Disclosure: The contracted rate per case, or as approved by TDA.
7. Emergency preparedness - Contractor's emergency plan must comply with the Department of Homeland Security guidelines. Refer to: <https://www.ready.gov/business/implementation/emergency>. Within thirty (30) days of notification of the contract award, Contractor(s) will provide an emergency plan.
  - a. 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. Contractor(s) 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 Contractor(s) to ensure the safety of the Contractor's employees and the integrity of the Contractor's equipment.
8. Contractor(s) must timely adhere to the following:
  - a. 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 WBSCM within 24 hours from the time of the event.
  - b. Paper Documents - Paper documents, such as the BOL, pictures, documents that support

required corrective actions, must be e-mailed or mailed by Contractor(s) to TDA within 48 hours unless otherwise specified by TDA.

- c. 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:
  - i. Corrective Action Plans (CAP) imposed on Contractor(s) by TDA. CAPS are due 30 days from TDA issuance of notification unless otherwise specified by TDA.

9. USDA Food safety and food defense – Contractor(s) 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.

- a. Refer to the websites below for guidance to help develop a Food Defense Plan: <http://www.fda.gov/Food/FoodDefense/ToolsEducationalMaterials/ucm349888.htm> and [http://www.fsis.usda.gov/wps/wcm/connect/1fd4849c-c982-40a1-8afa65ebfebbd078/Guidance\\_Document\\_Warehouses.pdf?MOD=AJPERES](http://www.fsis.usda.gov/wps/wcm/connect/1fd4849c-c982-40a1-8afa65ebfebbd078/Guidance_Document_Warehouses.pdf?MOD=AJPERES).
- b. For a Food Safety Plan, refer to: <https://extension.psu.edu/food-safety-plan-video>.
- c. As appropriate, TDA will provide information on food security and safety to Contractor(s). According to USDA Policy Memorandum No. FD-107 dated November 21, 2017, 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, Contractor(s) 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(s) to provide a copy of their Food Safety and or Food Defense Plans upon proposal response.

## 6.6 PROJECT CHANGE MANAGEMENT

All change orders are subject to mutual agreement and must be in writing. Change orders that change the scope of the Project will be documented through written amendment to the contract and signed by the parties. Change orders will be made as necessary within the budget. A material change in the scope may require a new solicitation to maintain a fair solicitation process.

### 6.6.1 Amendment

The parties shall initiate changes to the Contract in a written instrument signed by an authorized Project or Contract Manager for each party. However, any proposed change to the contract amount or work to be performed, or extension for the time of performance, 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), which must be signed by authorized representatives of TDA and Contractor who have authority to bind TDA and Contractor, respectively. The agreement to make the contract change must indicate the reason the change, amendment or POCN is necessary.

If additional deliverables are desired and are within the scope of this solicitation, TDA and Contractor(s) will mutually determine a timeline for Contractor(s) 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.

## **7 CONTRACT TERM**

### **7.1 INITIAL CONTRACT TERM:**

The Contract award(s) shall commence on June 1, 2024, and continue through May 31, 2025, unless terminated sooner under the terms of the contract(s) except as noted below. Any work done outside the period of performance shall be provided at no cost to TDA.

To account for transition periods, TDA may choose to award contract(s) with a start date of May 1, 2024. The transition period will be from May 1, 2024, to May 31, 2024. Contract(s) with a transition period shall commence on May 1, 2024, and continue through May 31, 2025, unless terminated sooner under the terms of the contract(s).

### **7.2 RENEWAL OPTION:**

The Contract may be renewed for up to four (4) additional one (1) year periods. TDA will notify the Contractor of its intent to renew and will send a contract amendment to the Contractor. Any extensions shall be in accordance with the original terms and conditions plus any approved changes. If renewal options are exercised, TDA will provide the new timeline and delivery schedule to Contractor. Options may be exercised more than once, but the total duration of performance under an optional renewal term shall not exceed three (3) one-year renewals to be exercised by TDA at its discretion.

TDA may exercise an option to renew upon thirty (30) calendar days' prior written notice to Contractor.

### **7.3 CONTRACT EXTENSIONS:**

In the event that the Contract(s), if any, resulting from the award of this RFP shall terminate or be likely to terminate prior to the making of an award for a new contract for the identified products and/or services, TDA may, with the written consent of the awarded Respondent, extend the Contract for a period of time as may be necessary to permit TDA continued supply of the identified products and/or services (not to exceed the prior term of the Contract or twelve month extension period, whichever is shorter). The successful Respondent agrees that TDA may require continued performance, beyond the initial or any renewal Contract term, of any of the within described products and/or services at the rates specified in the Contract. This option may be exercised more than once, but the total extension of performance hereunder shall not exceed three (3) one-year renewal to exercised by TDA at its discretion. Such extension of services shall be subject to the requirements of the Contract, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision.

TDA may exercise this option upon thirty (30) calendar days' written notice to the Successful Respondent.

### **7.4 TERMINATION:**

The Contract shall terminate upon full performance of all requirements contained in the contract, unless otherwise extended or renewed, in accordance with the Contract terms and conditions. Termination of the agreement by either party is permitted, upon written notification to the other party, at least ninety (90) days before the effective date of termination.

If Contract between Contractor(s) and TDA is terminated, with cause, Contractor(s) 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 Contractor(s) 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 WBSCM and the Contractor’s inventory and invoicing systems (invoicing and receipts).

**8 NO EXCLUSIVITY IN AWARD**

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 or the State of Texas to do so.

**SECTION II – ADMINISTRATIVE INFORMATION**

**1 SCHEDULE OF EVENTS**

TDA intends to proceed according to the following schedule. These dates represent a tentative schedule of events. TDA reserves the right to change the dates in the schedule of events above upon written notification to prospective respondents through a posting on the Electronic State Business Daily as an Addendum.

Event	Date/Time
RFP Publication on the Electronic State Business Daily (ESBD) at <a href="http://www.txsmartbuy.com/esbd">http://www.txsmartbuy.com/esbd</a>	September 15, 2023
Pre-proposal Conference	September 26, 2023, 1:30 PM CT
Deadline for Questions:	September 27, 2023, 3:00 PM CT
Addendum Posted on ESBD:	October 3, 2023 (estimated)
Response Due Date:	October 13, 2023; 3:00 PM CT
Response Review, Selection of Vendor:	November 2023 (estimated)
Beginning Date of Contract:	Effective Date
Ending Date of Contract:	May 31, 2024

**2 INQUIRIES**

**2.1 SOLE POINT OF CONTACT**

All requests, questions, or other communications about this RFP must be made in writing to TDA’s Purchasing and Contracting Office, addressed to the following person:

Tyler Rayner, CTCD CTCM  
 E-mail: [Tyler.Rayner@texasagriculture.gov](mailto:Tyler.Rayner@texasagriculture.gov)  
 Texas Department of Agriculture  
 1700 N. Congress, 11th Floor  
 Austin, TX 78701

Respondents shall make no contact concerning this RFP with other TDA personnel, except as



permitted by the point of contact. **Failure to comply with this requirement at any point prior to contract award may result in disqualification.** This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

## 2.2 QUESTIONS AND CLARIFICATIONS:

TDA will allow written questions and requests for clarification of this Solicitation. Questions must be e-mailed to the Contact listed above. Questions must be submitted on **Exhibit E, Respondent Solicitation Questions Form** of this solicitation. Responses to questions or other written requests for clarification will be posted on the ESBD.

**Note:** Questions or other written requests for clarification must be received by the sole point of contact by the deadline set forth in Section II of this solicitation.

## 2.3 CHANGES, AMENDMENT OR MODIFICATION TO SOLICITATION

In order to assure that no prospective respondent may obtain a competitive advantage because of acquisition of information unknown to other prospective respondents, TDA will provide any additional information that is different from or in addition to, information provided in the RFP only in response to written inquiries. TDA will provide answers to all such inquiries via an Addendum on the Electronic State Business Daily (ESBD) at <http://www.txsmartbuy.com/sp>. Respondent names will be removed from questions in the responses released. TDA reserves the right to amend answers prior to the response submission deadline. If Respondents do not have Internet access, copies may be obtained through the point of contact listed above.

**Note:** It is the responsibility of interested parties to periodically check the ESBD for updates to the procurement prior to submitting a response. Respondent's failure to periodically check the Electronic State Business Daily (ESBD) will in no way release the selected Respondent from "Addenda or additional information" resulting in additional costs to meet the solicitation requirements.

## 2.4 INFORMALITIES

TDA reserves the right to waive minor informalities in a solicitation response if it is in the best interest of TDA. A "minor informality" is an omission or error that, in TDA's determination if waived or modified when evaluating solicitation responses, would not give one Respondent an unfair advantage over other Respondents or result in a material change in the solicitation response or solicitation requirements.

## 2.5 PROHIBITED COMMUNICATIONS

Upon issuance of this solicitation, TDA, its representative(s), or partners will not answer questions or otherwise discuss the contents of this solicitation with any potential Respondent or its representative(s), except for the written inquires described in Section II, paragraph 2. Attempts to ask questions by phone or in person will not be allowed or recognized as valid. **Failure to observe this restriction may disqualify Respondent.** Respondent shall rely only on written statements issued through or by TDA's Purchasing staff. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this solicitation.

## 3 SUBCONTRACTING AND HUB SUBCONTRACTING PLAN

Refer to *Exhibit A – Execution of Offer, Affirmation of Terms and Conditions, and Proposal*

*Preferences Paragraph 78 – Subcontractors.*

- 1) Respondent must complete, sign and submit **Exhibit B, HUB Subcontracting Plan**, with their response submission and in accordance with the following instructions. **ALL RESPONDENTS RESPONDING TO THIS RFP, INCLUDING THOSE THAT ARE HUB CERTIFIED OR THOSE WHO DO NOT PLAN TO SUBCONTRACT, MUST COMPLETE A HUB SUBCONTRACTING PLAN (HSP) IN ACCORDANCE WITH THE STATE’S POLICY ON UTILIZATION OF HUBs. FAILURE TO COMPLETE AND SUBMIT THE HUB SUBCONTRACTING PLAN (HSP) WITH THE RFP RESPONSE WILL RESULT IN DISQUALIFICATION OF THE RESPONSE FROM CONSIDERATION.**
- 2) In accordance with Texas Government Code, §2161.252 and Texas Administrative Code, Title 34, §20.14, TDA has determined that subcontracting opportunities are probable under this contract, and that the contract value may exceed \$100,000. This probability is based on HUB availability, HUB utilization, geographic location of the project, the contractual scope of work, or other factors. TDA estimates the value of this contract to be greater than \$100,000 and further sets the HUB subcontracting goal at 26 % of the contract’s value.
- 3) It is Respondent’s determination if it chooses to subcontract any of the work under the contract with a Texas certified Historically Underutilized Business (HUB) or other businesses. Respondent shall identify all proposed HUB and other subcontractors at the time of response submittal by completing and submitting *Exhibit B – HUB Subcontracting Plan*.
- 4) A list of potential subcontracting opportunities is attached to the HUB subcontracting forms.
- 5) Respondents may also access a list of HUB subcontractors who may be able to perform this work by searching the Centralized Master Bidder’s List (CMBL), as maintained by the Texas Comptroller of Public Accounts. The main CMBL search page is located here: <https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>.
- 6) For a list of minority and women trade organizations and development centers that you may contact to announce your opportunity (as specified in the HSP, Method B) visit: <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.
- 7) HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report (PAR): After award of the Contract, Contractor shall report all HUB and non-HUB subcontractor information using the HSP Prime Contractor Progress Assessment Report form. The report shall be submitted to the TDA HUB Program monthly. The report shall be submitted monthly even during the months the successful Respondent is not invoicing TDA. All payments made to subcontractors shall be reported. TDA may verify the amounts being reported as paid by requesting copies of cancelled checks paid to subcontractors.

#### 4 PRE-PROPOSAL VENDOR CONFERENCE

Attendance is strongly encouraged, but not required. Failure to attend in person, participate on the conference call, or participate in the webinar will not disqualify a Respondent.

##### 4.1 ATTENDANCE LOG

For conference calls and webinars, participants will be added to the attendance log with the following information ready and properly announced or submitted:

- a) Legal business entity name or name of individual which will be used if submitting a response to this solicitation or subcontractor acting on behalf of the legal business entity;
- b) Name and title of each representative on the call; and
- c) E-mail address for the sole point of contact.

##### 4.2 WEBINAR VENDOR CONFERENCES

TDA will conduct a webinar vendor conference on the date and time identified in the

Procurement Schedule (Section II), or on the date and time established in subsequent Addenda. The conference will provide a review of the requirements, scope of work, terms and conditions, and all components of this Solicitation. Respondents must pre-register for the vendor conference prior to the schedule date and time identified in the Procurement Schedule (Section II), or on the date and time established in subsequent Addenda.

The conference will be held via TEAMS which may be accessed at:

- <https://events.teams.microsoft.com/event/fe0a7be9-5a06-465a-829a-43e049d3f7b4@0d16d504-d03a-4e2e-8316-8408747d7c7ff>

#### 4.3 QUESTIONS OR REQUESTS FOR CLARIFICATION

The vendor conference allows participants to ask TDA questions or request clarifications. Questions are required to be submitted, either prior to or immediately after the conference, in writing, by e-mail, to the Sole Point of Contact, Section II, paragraph 2. The questions and requests for clarifications must be submitted on Exhibit E of this solicitation.

##### 4.3.1 Answers During the Conference

- During the conference, TDA may provide responses to questions or requests for clarification; however, these answers will not be considered official;
- After the conference, the official responses to questions and requests for clarifications received during the conference and those received by the Deadline identified in the Procurement Schedule or deadlines established in subsequent Addenda, will be posted in an Addendum on the ESD and;
- TDA reserves the right to amend the answers previously posted at any time prior to the Response Deadline or deadlines established in subsequent Addenda. Amended answers will be posted on the ESD in a separate, new Addendum or Addenda.

## 5 SOLICITATION RESPONSE COMPOSITION AND DELIVERY

### 5.1 RESPONSE SUBMISSION

Proposals must be submitted in a manner which does not carry any benefit, keepsake, or value for members of the evaluation committee. Responses submitted by facsimile, or any other method not specified in this Solicitation, will NOT be accepted, or considered.

Respondents have two (2) options for submitting responses detailed below. Regardless of the method of submission, responses must be received prior to the response due date listed on the cover page of this solicitation.

#### 5.1.1 SUBMISSION METHOD OPTION 1: E-Mail Submission

Respondent is solely responsible for ensuring that the electronic response is complete and submitted to and **RECEIVED** by TDA before the Response Deadline identified in the Procurement Schedule (cover page) or deadline established in subsequent Addenda. **TDA is not responsible for lost, misdirected or late responses.** Late responses will be disqualified.

The solicitation response, including all documentation required by this Solicitation and Appendix, must be sent in its entirety in one or more e-mails as warranted by the size of each attachment. Responses sent by e-mail must be sent to: [bidroom@texasagriculture.gov](mailto:bidroom@texasagriculture.gov)

##### A. E-mail Subject Line

The e-mail subject line must contain the Solicitation number, title as indicated on the cover page and number quantity of e-mails if more than one (e.g., 1 of #, etc.).

## B. Body of E-mail

The body of each e-mail must include the following information:

- Respondent's name
- Contact Name for Respondent
- Phone number for Respondent's Contact
- Solicitation number from cover page
- Purchaser Name (Sole Point of Contact, Section II, Paragraph 2.1).

TDA takes no responsibility for e-mailed solicitation responses that are captured, blocked, filtered, quarantined, or otherwise prevented from reaching the proper destination server by any TDA anti-virus or other security software.

## C. Additional Information Regarding Electronic Submission by E-Mail

All documents should be submitted in Microsoft Office® formats (Word® and Excel®, as applicable) or in a form that may be read by Microsoft Office® software. Any documents with signatures shall be submitted as an Adobe® portable document format (pdf) file, or DocuSign. **TDA is not responsible for documents that cannot be read or converted. Unreadable responses may be, in TDA's sole discretion, rejected as nonresponsive.**

## D. Email Attachment Naming Convention

Respondents must name email attachments in accordance with Response Submission Checklist, Section VIII.

*Example: Respondents **Execution of Offer, Terms and Conditions and Proposal Preferences** may be submitted in PDF format with PDF name of Exhibit A.pdf.*

- E. By submitting a proposal, permissions to edit, print, copy, and distribute as authorized under public information or other law is given to TDA. Two (2) versions of the proposal must be submitted on approved electronic media as described below.
- a. One original proposal, that includes all attachments (Original Proposal) and identifies claimed proprietary or confidential information, if any, by highlighting such claimed information and clearly labelling it as proprietary, confidential, or both in a comment. The Original Proposal must be in portable document format (PDF) or Microsoft Word and accessible (no password) to TDA staff.
  - b. One redacted copy of the entire proposal that makes the claimed confidential or proprietary information, if any, unreadable. Redaction can be made in MS Word™ by highlighting the confidential words in black. Adobe™ also has a redaction feature. If no proprietary or confidential information is claimed in the Original Proposal, then submission of a copy of the Original Proposal with redactions is not required.

### 5.1.2 SUBMISSION METHOD OPTION 2: Electronic USB Device

Submit one (1) electronic USB device formatted as detailed below.

#### 1) Electronic Copies

By submitting a proposal, permissions to edit, print, copy, and distribute as authorized

under public information or other law is given to TDA. Two (2) versions of the proposal must be submitted on approved electronic media as described below.

- a. One original proposal, that includes all attachments (Original Proposal) and identifies claimed proprietary or confidential information, if any, by highlighting such claimed information and clearly labelling it as proprietary, confidential, or both in a comment. The Original Proposal must be in portable document format (PDF) or Microsoft Word and accessible (no password) to TDA staff.
- b. One redacted copy of the entire proposal that makes the claimed confidential or proprietary information, if any, unreadable. Redaction can be made in MS Word™ by highlighting the confidential words in black. Adobe™ also has a redaction feature. If no proprietary or confidential information is claimed in the Original Proposal, then submission of a copy of the Original Proposal with redactions is not required.

TDA will not be held responsible for any solicitation response that is mishandled prior to receipt by TDA. It is Respondent's responsibility to mark appropriately and deliver the solicitation response to TDA by the specified date and time. Solicitation response must be delivered in a way that TDA can clearly mark the date and time response was received (i.e., in an envelope or shipping box). TDA will not be responsible for any technical issues that result in late delivery, inappropriately identified documents, or other submission error that may lead to disqualification (including substantive or administrative) or nonreceipt (in whole or in part) of Respondent's proposal.

## 5.2 CONFIDENTIAL OR PROPRIETARY INFORMATION

### 5.2.1 Public Information Act

#### A. Respondent Requirements Regarding Disclosure

Proposals and any resulting contracts are subject to the Texas Public Information Act (PIA), [Texas Government Code Chapter 552](#), and may be disclosed to the public upon request. Other legal authority also requires TDA to post certain contracts and Solicitation responses on its public website and to provide such information to the Legislative Budget Board for posting on its website.

TDA will strictly adhere to the requirements of the PIA regarding the disclosure of public information. As a result, by participating in this solicitation process, Respondent acknowledges that all information, documentation, and other materials submitted in the Solicitation Response in response to this Solicitation may be subject to public disclosure under the PIA. TDA does not have authority to agree that any information submitted will not be subject to disclosure. Disclosure is governed by the PIA and by rulings of the Office of the Texas Attorney General. TDA assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by Respondent.

Under the PIA, all information held by governmental bodies is open to public disclosure unless it falls within one of the PIA's specific exceptions to disclosure. Respondent must submit **Exhibit N, Confidential or Proprietary Information** as part of their proposal response. If Respondent asserts that information provided in its Solicitation Response is exempt from disclosure under the PIA, Respondent must:

- 1) Mark Original Proposal

- a. Mark the Original Proposal, on the top of the front page, the words “CONTAINS CONFIDENTIAL OR PROPRIETARY INFORMATION” in large, bold, capitalized letters (the size of, or equivalent to, 12-point Times New Roman font or larger); and
  - b. Mark the bottom of each page on the Original Proposal that contains information Respondent claims is exempt from public disclosure with the words “CONTAINS CONFIDENTIAL OR PROPRIETARY INFORMATION”.
- 2) Submit a separate “Public Information Act Copy” of the Original Proposal (in addition to the original and all copies otherwise required under the provisions of this Solicitation). The Public Information Act Copy must meet the following requirements:
- a. The copy must be clearly marked as “Public Information Act Copy” on the front page in large, bold, capitalized letters (the size of, or equivalent to, 12-point Times New Roman font or larger);
  - b. Each portion Respondent claims is exempt from public disclosure must be redacted (blacked out);
  - c. The copy must contain contact information for a named individual designated to respond to inquiries regarding public information requests, including a phone number and email address, so that TDA may contact Respondent concerning any public information requests it receives for Respondent’s Proposal; and
  - d. The only difference in required markings and information between the Original Proposal and the “Public Information Act Copy” of the proposal will be redactions - which can only be included in the “Public Information Act Copy” and contact information for a named individual designated to respond to inquiries regarding public information requests. There must be no redactions in the Original Proposal.
- B. Respondent should not submit a Public Information Act Copy indicating that the entire proposal is exempt from disclosure. Merely making a blanket claim that the entire proposal is protected from disclosure because it contains any amount of confidential, proprietary, trade secret, or privileged information is not acceptable. By submitting a response to this solicitation, Respondent agrees that, if Respondent does not mark the Original Proposal contains information claimed as proprietary, confidential, or both; provide the required certification; and submit a Public Information Act Copy, Respondent’s solicitation response may be considered to be public information that may be released to the public without notice to the Respondent.
- C. For more information concerning the types of information that may be withheld under the PIA or questions about the PIA, refer to the Public Information Act Handbook published by the Office of the Texas Attorney General (OAG) or contact the OAG Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To access the [Public Information Act Handbook](http://www.texasattorneygeneral.gov), visit the attorney general’s website at <http://www.texasattorneygeneral.gov>.
- D. Solicitation responses should not be marked or asserted as copyrighted material. If Respondent asserts a copyright to any portion of its Proposal, by submitting a Proposal, Respondent agrees to reproduction and posting on public websites by the State of Texas, including TDA and all other state agencies, without cost or liability.

### 5.3 DELIVERY OF RESPONSES

- 5.3.1 Responses may be returned via E-mail to [bidroom@texasagriculture.gov](mailto:bidroom@texasagriculture.gov). Due to the uncertainty surrounding the Coronavirus (COVID-19), E-mail submittals are preferred and highly encouraged for this solicitation. Late responses will not be considered under any circumstance. Proposals shall be submitted to TDA by one of the following methods:

U.S. Postal Service	Overnight/Express Mail	Email
Texas Department of Agriculture Purchasing & Contracting Office P.O. Box 12847 Austin, TX 78711-2847	TDA – Mail Room Attn: Purchasing & Contracting Office 1700 N. Congress, 11th Floor Austin, TX 78701 Hours – 8:00 AM to 5:00 PM	<a href="mailto:bidroom@texasagriculture.gov">bidroom@texasagriculture.gov</a>
<p style="text-align: center;">NOTE: Proposals must be date stamped by TDA prior to the due date and time.</p>		

- 5.3.2 Respondents are responsible for all costs of response preparation.
- 5.3.3 Telephone and facsimile responses are NOT acceptable forms of submission. All submitted responses become the property of TDA after the RFP submittal due date/ deadline. Responses submitted shall constitute an offer for a period minimum of ninety (90) days or until selection is made by TDA, whichever is earlier. Proposals, if accepted, shall remain valid for the life of the Contract.

**6 EXCEPTIONS**

TDA will more favorably evaluate responses that offer no or few exceptions, reservations, or limitations to the terms and conditions of the Solicitation.

Respondents are highly encouraged, in lieu of including exceptions in their solicitation responses, to address all issues that might be advanced by way of exception by submitting such issues by written questions or clarifications pursuant to Section II, paragraph 2. Any exception included in a Solicitation Response may result in a Respondent not being awarded a Contract. If a Respondent includes exceptions in its Solicitation Response, Respondent is required to use **Exhibit G, Exceptions Form** and provide all information requested on the form (Solicitation Section Number, Solicitation Section Title, Language to which Exception is Taken, Proposed Language, and Statement as to whether or not, by indicating only "yes" or "no," Respondent still wants to be considered for a Contract award if the exception is denied). Any exception that does not provide all required information without qualification and/or legally sustainable reason in the format set forth in **Exhibit G, Exceptions Form** may be rejected without consideration.

No exception, nor any other term, condition, or provision in a Solicitation Response that differs, varies from, or contradicts this Solicitation will be considered to be part of any Contract resulting from this Solicitation unless expressly made a part of the Contract in writing by TDA.

In the event of prolonged contract negotiations due to the number and/or significance of exceptions taken, lack of responsiveness, or other failure to close contract negotiations on the part of Respondent that are not due to a failure on the part of TDA, TDA may, in its sole discretion, bypass the Respondent and commence negotiations with the next-highest scoring Respondent, or continue with the current Respondent with a shorter contract term.

**CAUTION: Respondent's Proposal may be disqualified if their number of exceptions are asserted as part of the response are deemed excessive, or if Respondent lists exceptions to non-negotiable terms, specifically those terms, conditions, certifications, and assurances required or recommended by the Texas Comptroller of Public Accounts.**

## **7 ASSUMPTIONS**

Respondent must identify on **Exhibit G1, Assumptions Form** any business, economic, legal, programmatic, or practical assumptions that underlie the Respondent's response to the Solicitation, including cost proposal. TDA reserves the right to accept or reject any assumptions. All assumptions not expressly identified and incorporated into any Contract resulting from this Solicitation are deemed rejected by TDA.

## **SECTION III – SOLICITATION RESPONSE EVALUATION AND AWARD PROCESS**

### **1 EVALUATION CRITERIA**

#### **1.1 CONFORMANCE WITH STATE LAW**

Responses shall be evaluated in accordance with Texas Government Code, [Sections 2155.074](#) and [2155.075\(a\)](#); and <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2156.htm> Section 2156.007.

Sections 2155.074 and 2156.007 provide the best value standard for the purchase of goods or services and for the award, which includes consideration of the purchase price and whether Respondent meets all requirements of this solicitation. TDA shall not be obligated to accept the lowest priced solicitation response but shall make an award to Respondent that provides the best value to the State of Texas.

#### **1.2 QUALIFICATIONS AND EXPERIENCE**

##### **1.2.1 Eligibility to do Business in the State of Texas**

Prior to contract award under this solicitation, Contractor 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.

##### **1.2.2 Minimum Qualifications and Experience:**

Respondents must meet the minimum qualifications listed below. Furthermore, solicitation responses that appear unrealistic in terms of technical commitment, that show a lack of technical



competence, or that indicate a failure to comprehend the risk and complexity of a potential Contract may be rejected, in the sole discretion of TDA. Respondent must provide evidence of its services capabilities, including but not limited to:

- 1) Outline of capability to deliver the required services, including process, functional and technical expertise;
- 2) 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;
- 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;
- 8) Shall be in good financial standing. TDA reserves the right to request a copy of Respondent’s audited or un-audited financial statement;
- 9) Respondents must be financially solvent and adequately capitalized; and
- 10) Respondent must be authorized to do business in the State of Texas;

**1.3 PASS/FAIL CRITERIA**

In addition to the weighted criteria listed below TDA also reviews additional Pass/Fail criteria as follows:

- A. Financial Information is a Pass/Fail review conducted by the Finance Group based on the Respondent’s financial stability.
- B. Completion and signing of a HUB Subcontracting Plan; and
- C. Compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov’t Code. Respondents may fail this selection criterion for any of the following conditions:
  - i) A score of less than “C” in the Texas Comptroller of Public Accounts CPA Vendor Performance Tracking System (VPTS);
  - ii) Currently under a Corrective Action Plan through the CPA, having repeated negative Vendor Performance Reports; and
  - iii) Having purchase orders that have been cancelled in the previous twelve (12) months for non-performance (including but not limited to late delivery, etc.).

**1.4 WEIGHT EVALUATION CRITERIA**

Solicitation responses shall be consistently evaluated and scored in accordance with the following criteria:

Evaluation Criteria	Weight
Respondent Qualifications and Experience	30%
Respondent’s Proposed Plan for Providing Services	30%

Reasonableness of Proposed Cost	40%
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## 1.5 OTHER INFORMATION

TDA may contact references provided in response to this solicitation, contact Respondent's clients, or solicit information from any available source, including CPA's VPTS (required).

### 1.5.1 Performance History

Respondent cannot have any failing reports in the CPA's VPTS.

- None of the staff assigned by Respondent to any resulting Contract has been disqualified from participation in any federally funded programs during the past seven (7) years preceding this Contract and will not for the duration of this Contract.
- None of the staff assigned to any resulting 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 Respondent'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.
- Respondent has an ongoing duty to inform TDA promptly if the business entity or assigned staff or representatives no longer meet the above requirements.

## 1.6 INITIAL COMPLIANCE SCREENING

TDA will perform an initial screening of all solicitation responses received. Unsigned solicitation responses, and solicitation responses that do not meet Section III, Paragraph 1.2 above and/or do not include all required forms and information may be subject to rejection without further evaluation.

## 1.7 COMPETITIVE RANGE AND BEST AND FINAL OFFER

TDA may determine that certain solicitation responses are within the competitive range and may use this range to award multiple Contracts or as a basis to request a Best and Final Offer ("BAFO") from Respondents. If TDA elects to limit award consideration to a competitive range, the competitive range will consist of the solicitation responses that receive the highest or most satisfactory ratings, based on the published evaluation criteria and procedures governing this procurement. TDA, in the interest of administrative efficiency, may place reasonable limits on the number of solicitation responses that will be included in the competitive range.

TDA may, at its discretion, request that any or all Respondents provide a BAFO. If BAFOs are requested by the State and submitted by Respondent(s), they will be evaluated (using the evaluation criteria stated in Section III, Paragraph 1.3, scored, and ranked by the evaluation committee. The State reserves the right to conduct more than one BAFO. The award will then be granted to the highest scoring Respondent. However, a Respondent should provide its best offer in its original proposal. Respondents should not expect or assume that the State will request a BAFO. A request for a BAFO from TDA does not guarantee an award or further negotiations.

**1.8 ORAL PRESENTATIONS**

TDA reserves the right to require an oral presentation from any or all Respondents to make a determination for award recommendation. Information from the oral presentation will be used to score the solicitation response and supplement the base evaluation score using the evaluation scoring criteria listed in Section III, Paragraph 1.3. Respondents will be provided with advance notice of any such oral presentation and are responsible for their own presentation equipment. Advance notice will include an agenda for the oral presentation specifying the areas expected to be elaborated or presented by Respondent in its presentation. Failure to participate in the requested presentation may eliminate Respondent from further consideration. TDA is not responsible for any costs incurred by Respondent in preparation for any oral presentation.

**1.9 QUESTIONS OR REQUESTS FOR CLARIFICATION BY TDA**

TDA reserves the right to ask questions or request clarification from any Respondent at any time during the Solicitation process, including during Oral Presentations, or during the BAFO process.

**2 AWARD**

TDA reserves the right to award a contract to a single Respondent, or award to more than one Respondent, whichever provides the best value to TDA in performance of these services. TDA will be the sole judge of best value.

**SECTION IV – RESPONDENT’S NARRATIVE PROPOSAL****1 EXECUTIVE SUMMARY**

Provide a high-level overview of Respondent's approach to meeting the requirements contained in Section I, Paragraph 5 Scope of Work. The summary must demonstrate an understanding of TDA's goals and objectives for this Solicitation.

**2 HISTORY OF RESPONDENT’S BUSINESS ENTITY AND EXPERIENCE**

Show the year the business entity started, its business philosophy, and the size of the largest project of a similar type successfully delivered by Respondent to date. Respondent shall provide a description of relevant firm experience, especially in projects of similar size, scope, and length. Be specific and identify projects, dates, and results. In addition, describe any experience the media firm has in working with local governments and/or state governments.

**3 PROJECT WORK PLAN**

Describe Respondent's proposed processes and methodologies for providing all components of the Scope of Work described in Section I, Paragraph 5 Scope of Work, including the Respondent's approach to meeting the Project schedule. Respondent should identify all tasks to be performed, including all Project activities, materials and other products services and reports to be generated during the Contract period and relate them to the stated purposes and specifications described in this Solicitation. Respondent should also describe the how data will be organized and how it will be made accessible to TDA. Deliverables must be provided by the dates specified in the project plan.

**4 VALUE-ADDED BENEFITS**

Describe any service or deliverables that are not required by this Solicitation that the Respondent proposes to provide at no additional cost to TDA. Respondents are not required to propose value-added benefits, but inclusion of such benefits may result in a more favorable evaluation.

## 5 KEY STAFFING PROFILE

Respondent must provide a key staffing profile and resumes for staff that will be responsible for the performance of the services requested under this Solicitation. See Exhibit C3, Contractor Structure Staffing Plan. Respondent should also include:

- Total number of employees;
- The number of employees assigned to this project;
- Project manager(s) assigned to this project;
- Description of specialty areas; and
- An organization chart that shows the project reporting hierarchy of business entity's staff and sub-contracted staff.

In order for TDA to gauge whether the proposed fee(s) for key personnel are competitive in the marketplace, Respondent shall provide a detailed description of the key personnel's qualifications and experience and the corresponding fees Respondent expects to charge for projects of this nature. Key personnel descriptions shall include, but not limited to:

- Subject matter expertise to the project
- Role in the project, and
- Time allocated to the project.

## SECTION V – REQUIRED RESPONDENT INFORMATION

Respondent must provide satisfactory evidence of its ability to manage and coordinate the types of activities described in this solicitation and to produce the specified goods or services on time.

### 1 RESPONDENT NARRATIVE

Provide a detailed narrative explaining why Respondent is qualified to provide the services enumerated in Section I, Paragraph 5, Scope of Work, focusing on its company's key strengths and competitive advantages. Reference Section IV – Respondent's Narrative Proposal.

### 2 AFFIRMATIONS AND CERTIFICATIONS

Respondent must complete and return the following listed forms:

- A. ***Exhibit A- TDA Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences;***
- B. ***Exhibit B – HUB Subcontracting Plan.*** Reference Section II, Para.3;
- C. ***Exhibit H – Key Contracting Persons Disclosure Statement;***
- D. ***Exhibit I - Certification Regarding Lobbying; and***
- E. ***Exhibit J – Debarment and Suspension Certification;***

### 3 COMPANY PROFILE

Complete ***Exhibit D - Vendor Information & Evaluation Preferences.*** In addition, provide a

company profile to include:

- A. The company ownership structure (corporation, partnership, LLC, or sole proprietorship), including any wholly owned subsidiaries, affiliated companies, or joint ventures. If Respondent is an Affiliate of, or has a joint venture or strategic alliance with, another company, Respondent must identify the percentage of ownership and the percentage of the parent's ownership. The entity performing the majority of the work under a Contract, throughout the duration of the Contract, must be the primary Respondent. Finally, please provide your proposed operating structure for the services requested under this Solicitation and which entities (i.e. parent company, Affiliate, Joint Venture, subcontractor) will be performing them.
- B. The year the company was founded and/or incorporated. If incorporated, please indicate the state where the company is incorporated and the date of incorporation;
- C. The location of company headquarters and any field office(s) that may provide services for any resulting Contract under this Solicitation;
- D. The number of employees in the company, both locally and nationally, and the location(s) from which employees will be assigned;
- E. The name, address, and telephone number of Respondent's point of contact for any resulting Contract under this Solicitation; and
- F. Indicate whether the company has ever been engaged under a contract by any Texas state agency. If "Yes," specify when, for what duties, and for which agency.

**Note:** *If Respondent is an out-of-state company, a Certificate of Authority from the Texas Secretary of State to do business in Texas must be provided prior to award consideration.*

#### 4 FINANCIAL RESPONSIBILITY QUESTIONNAIRE

Complete the questionnaire in **Exhibit F, Financial and Organizational Capacity**, as fully as possible. An omission, even if accidental, will cause the proposal to be considered non-responsive.

#### 5 ETHICS AFFIRMATION

In submitting a Proposal, Respondent 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.

#### 6 REFERENCES

In its Proposal, Respondent must provide a list of three (3) entities other than TDA for which Respondent has provided services and/or products described in this Solicitation during the past three (3) years. For each of the three references, Respondent must include dates when items that were the same or similar to those requested in this Solicitation were provided, and the names, telephone numbers and email addresses of the entity's contact person. Respondent must provide the reference information in a format similar to the following:

- 1) Entity Name:  
Date Item(s) Provided:  
Name of Entity's Contact Person:  
Telephone Number of Entity's Contact Person:

Email Address of Entity's Contact Person:

- 2) Entity Name:  
 Date Item(s) Provided:  
 Name of Entity's Contact Person:  
 Telephone Number of Entity's Contact Person:  
 Email Address of Entity's Contact Person:
- 3) Entity Name:  
 Date Item(s) Provided:  
 Name of Entity's Contact Person:  
 Telephone Number of Entity's Contact Person:  
 Email Address of Entity's Contact Person:

In TDA's sole discretion, TDA may contact Respondent's references by electronic mail or telephone. TDA will not notify Respondent of its reference-checking activities. Respondent is responsible for ensuring the references identified in its solicitation response are: (1) willing to provide information to TDA regarding the contracts and services provided by Respondent, and (2) are available to respond to TDA's inquiry for the three-week period following the deadline for submission of solicitation response. In the event Respondent provides more than three references, TDA will contact only the first three references listed in Respondent's solicitation response.

TDA is not obligated to contact Respondent in the event incomplete reference information is submitted in the Proposal. Consequently, Respondent's failure to provide all or part of the requested reference information in its Proposal may be reflected as a score of "0" for the applicable evaluation criterion. Additionally, Respondent's score for a reference for the applicable evaluation criterion shall be "0" in the following circumstances: (1) there is a requirement for a Respondent representative to schedule, monitor or otherwise participate in TDA's reference-check activities, or (2) Respondent's reference fails to respond to TDA's inquiry by TDA's specified due date. TDA is not responsible for undelivered emails or non-responsive references.

TDA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the VPTS, as authorized by Section 2262.055 of the Texas Government Code, TDA may examine other sources of Respondent performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports and non-renewals of contracts. Such sources of Respondent performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state or the Federal government. Further, TDA may initiate such examinations of Respondent performance based upon media reports. Any such investigations shall be at the sole discretion of TDA, and any negative findings, as determined by TDA, may result in a non-award to Respondent. Information pertaining to VPTS is located on the CPA website at:

<https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>.

## 7 CONFLICT OF INTEREST

In submitting a Proposal in response to this RFP, Respondent represents and warrants to TDA

that it and each of its affiliated entities or subcontractors who may provide work, service, or other deliverables under the Contract, 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. Respondents that cannot make this representation and warranty should not respond to this RFP.

## 7.1 DISCLOSURE OF EXISTING OR POTENTIAL CONFLICTS

- A. In its Proposal each Respondent 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. Respondents 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 ***Exhibit H, Key Contracting Persons Disclosure Statement***, a list of current employees with a role or potential to have a role in development, management, or enforcement of the Contract is provided. Any other existing or potential conflicts can be added to Exhibit H for compliance with this Section. Pursuant to Section 2252.901 of the Texas Government Code, Respondents shall make full disclosure of a former or retired employee of TDA that is the Respondent'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 Respondent, that the former or retired TDA employee worked on or held while employed at TDA.
- B. 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 Respondent'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, potential conflict of interest, or appearance of impropriety issue relative to Respondent's submission of a proposal, possible selection as Contractor or its performance of the Contract.
- C. Disclosures under this Section (***Exhibit H, 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, 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.

## 7.2 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 providing a response 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 Respondent’s independence of judgment or effectiveness in the performance of Respondent’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 Respondent 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.

## 7.3 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 submission of a proposal or receipt of contract award.

## SECTION VI – RATE PRICE PROPOSAL SCHEDULE

Cost information must not be included with Respondent’s Narrative Proposal. Respondent must submit a cost proposal for the services listed in Section I, Paragraph 5 Scope of Work in the format set forth in ***Exhibit C, Rate Price Proposal Schedule and Exhibit C1, Rate Schedule***. Hourly rates should include all labor, materials, tools, supplies, equipment, and personnel, including but not limited to, travel expenses, associated costs, and incidental costs necessary to provide the deliverables and services according to the minimum specifications, requirements, provisions, and terms set forth in this solicitation. Expand the rows under each itemized line as needed.

Cost proposal should include cost estimates for each deliverable based on number of tasks defined in proposed work breakdown structure and monthly costs, as applicable. Cost proposal should allow for scalability based on deliverables defined Section I, Paragraph 5 Scope of Work.

## SECTION VII – ADDITIONAL TERMS AND CONDITIONS

Respondent must abide by all established TDA rules, processes, and standards, as well as any changes during the Contract term.



## **1 AMENDMENT**

TDA reserves the right to alter, amend or modify any provision of this Solicitation, or to withdraw this Solicitation, at any time prior to award, if it is in the best interest of the State.

## **2 OFFER PERIOD**

Solicitation responses shall be binding for a period of 240 calendar days after the due date for submission of solicitation responses. Each Respondent may extend the time for which its solicitation response will be honored. Upon Contract execution, prices agreed upon by Respondent(s) are an irrevocable offer for the term of the Contract and any Contract renewals or extension(s). No other costs, rates, or fees shall be payable to Respondent unless expressly agreed upon in writing by the TDA.

## **3 COSTS INCURRED**

Respondents understand that issuance of this solicitation in no way constitutes a commitment by TDA to award a Contract or to pay any costs incurred by Respondent in the preparation of a response to this Solicitation. TDA is not liable for any costs incurred by Respondent prior to issuance of or entering into a formal agreement, Contract, or purchase order. Costs of developing solicitation responses, preparing for or participating in oral presentations and site visits, or any other similar expenses incurred by Respondent are entirely the responsibility of the Respondent, and will not be reimbursed in any manner by TDA or the State of Texas.

## **4 CONTRACT RESPONSIBILITY**

TDA will look solely to Respondent for the performance of all contractual obligations that may result from an award based on this solicitation. Respondent shall not be relieved of its obligations for any nonperformance by its subcontractors.

## **5 RESPONDENT WAIVER – INTELLECTUAL PROPERTY**

SUBMISSION OF ANY DOCUMENT TO TDA IN RESPONSE TO THIS SOLICITATION CONSTITUTES AN IRREVOCABLE WAIVER, AND AGREEMENT BY THE SUBMITTING PARTY TO FULLY INDEMNIFY THE STATE OF TEXAS FROM, ANY CLAIM OF INFRINGEMENT BY TDA REGARDING THE INTELLECTUAL PROPERTY RIGHTS OF THE SUBMITTING PARTY OR ANY THIRD PARTY FOR ANY MATERIALS SUBMITTED TO TDA BY THE SUBMITTING PARTY.

## **6 TEXAS STATE AUDITOR'S OFFICE**

Contractor understands that acceptance of state funds under this Contract acts as acceptance of the authority of the Texas State Auditor's Office (SAO) to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the SAO in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the SAO authority to audit state funds and the requirement to cooperate fully with the SAO is included in any subcontracts it awards. Additionally, the SAO shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, audit documentation, and records of Respondent relating to this

Contract for any purpose.

### **Reporting Suspected Fraud and Unlawful Conduct**

Respondent represents and warrants that it will comply with Section 321.022 of the Texas Government Code which requires that suspected fraud and unlawful conduct be reported to the State Auditor's Office.

## **7 INSURANCE**

For the duration of any Contract resulting from this solicitation, Respondent shall acquire insurance, bonds, or both, if applicable with financially sound and reputable independent insurers, in the type and amount customarily carried within the industry, in accordance with **Exhibit L, Insurance Requirements**. Within 30 days of notification of Contract award, Contractor(s) must meet RFP bonding and insurance requirements. Failure to maintain insurance coverage or acceptable alternative methods of insurance shall be deemed a breach of Contract. TDA reserves the right to require a Respondent performance bond.

## **8 PROTEST**

If a Respondent wishes to file a protest with this RFP, they may formally do so in accordance with the rules adopted by TDA at Texas Administrative Code, Title 4, Part 1, ch.1, subch. Q.

## **9 COMPLIANCE WITH LAWS, RULES, AND REQUIREMENTS**

Respondent represents and warrants that it will comply, and assure the compliance of all its contractors, with all applicable federal and state laws, rules, regulations, and policies in effect or hereafter established. In addition, Respondent represents and warrants that it will comply with all requirements imposed by the awarding agency concerning special requirements of law, program requirements, and other administrative requirements. In instances where multiple requirements apply to Respondent, the more restrictive requirement applies.

## **10 REPORTING COMPLIANCE**

Respondent represents and warrants that it will submit timely, complete, and accurate reports in accordance with the grant and maintain appropriate backup documentation to support the reports.

## **11 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

Respondent represents and warrants that it will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

## **12 DISASTER RECOVERY PLAN**

In accordance with 13 Texas Administrative Code § 6.94(a) (9), Respondent shall provide to Agency the descriptions of its business continuity and disaster recovery plans, upon request.

## **13 FEDERAL SOLID WASTE DISPOSAL ACT**

Respondent represents and warrants that it will comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

**14 EXCESS OBLIGATIONS PROHIBITED.**

Any contract resulting from this Solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature or availability of grant funds. The contract or grant is subject to termination or cancellation, either in whole or in part, without penalty to Agency if such funds are not appropriated or become unavailable.

## SECTION VIII – EXHIBITS & SUBMISSION CHECKLIST

This checklist is provided for Respondent's convenience only and identifies documents that are requested in this Solicitation.

RFP Section # Reference	Submission List	Information, Required or Optional	<input checked="" type="checkbox"/>
Section IV	Narrative Proposal	Required	
Section V, Para. 6	References	Required	
Section V, Para. 7	Conflict of Interest	Required	
Section V, Para. 5	Ethics Affirmation	Required	
Section V, Para. 2	Exhibit A – Execution of Offer, Affirmations of Terms and Conditions and Proposal Preferences	Required	
Section V, Para. 3	Exhibit B – HUB Subcontracting Plan (HSP)	Required	
Section VI	Exhibit C – Rate Price Proposal Schedule	Required	
Section I, Para 5.2.2(9), and Section VI	Exhibit C1 – Rate Schedule	Required	
Section I, Para. 5.2.2(5)	Exhibit C2 – Structure Delivery and Storage Plan	Required	
Section IV, Para. 5	Exhibit C3 - Contractor Structure Staffing Plan	Required	
Section V, Para. 3	Exhibit D – Vendor Information and Evaluation Preferences	Required	
Section II, Para 2.2	Exhibit E – Respondent Solicitations Questions Form	Optional	
Section V, Para. 4	Exhibit F – Financial and Organizational Capacity	Required	
Section II, Para. 6	Exhibit G – Exceptions Form	Optional	
Section II, Para. 7	Exhibit G1 Assumptions Form	Optional	
Section V, Para. 7.1	Exhibit H -Key Contracting Persons Disclosure Statement	Required	
Section V, Para. 2	Exhibit I – Certification Regarding Lobbying	Required	
Section V, Para. 2	Exhibit J – Special Provision B - Debarment and Suspension Certification	Required	
Section VII, Para. 7	Insurance Requirements	Required	

Section II, Para. 5.2	Exhibit N – Confidential or Proprietary Information	Required	
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## **ATTACHMENTS**

1. Attachment 1 – Key Performance Indicators
2. Attachment 2 – FDP Regions and Delivery Stops
3. Attachment 3 – Case Count Data by Region County
4. Attachment 4 – Map List of Counties
5. Attachment 5 – Fuel Adjustment Chart