



**STATE OF TENNESSEE
DEPARTMENT OF AGRICULTURE**

**REQUEST FOR PROPOSALS
FOR
RECEIPT, STORAGE, AND DISTRIBUTION
OF USDA COMMODITY FOODS**

RFP # 32501-00118

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1. INTRODUCTION

The State of Tennessee, Department of Agriculture, hereinafter referred to as “the State,” has issued this Request for Proposals (RFP) to define minimum contract requirements; solicit responses; detail response requirements; and, outline the State’s process for evaluating responses and selecting a contractor to provide the needed goods or services.

Through this RFP, the State seeks to procure necessary goods or services at the most favorable, competitive prices and to give ALL qualified businesses, including those that are owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises, an opportunity to do business with the state as contractors, subcontractors or suppliers.

1.1. Statement of Procurement Purpose

The State intends to secure a contract for receipt, storage, and distribution of USDA commodity foods to Tennessee schools and agencies participating in the National School Lunch Program and located in the Region 1 distribution area (Attachment A of the *pro forma* contract, RFP attachment 6.6)

1.2. Scope of Service, Contract Period, & Required Terms and Conditions

The RFP Attachment 6.6., *Pro Forma* Contract details the State’s requirements:

- Scope of Services and Deliverables (Section A);
- Contract Period (Section B);
- Payment Terms (Section C);
- Standard Terms and Conditions (Section D); and,
- Special Terms and Conditions (Section E).

The *pro forma* contract substantially represents the contract document that the successful Respondent must sign.

1.3. Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this RFP or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

1.4. RFP Communications

1.4.1. The State has assigned the following RFP identification number that must be referenced in all communications regarding this RFP:

RFP # 32501-00118

1.4.2. **Unauthorized contact about this RFP with employees or officials of the State of Tennessee except as detailed below may result in disqualification from consideration under this procurement process.**

1.4.2.1. Prospective Respondents must direct communications concerning this RFP to the following person designated as the Solicitation Coordinator:

Bob Melching
Tennessee Department of Agriculture
P.O. Box 40627

Nashville, TN 37204
 615-837-5312
 Bob.Melching@tn.gov
 Fax 615-837-5448

Private Carrier Shipping Address:

Bob Melching
 Tennessee Department of Agriculture
 Budget Office, Bruer Building
 406 Hogan Road
 Nashville, TN 37220

- 1.4.2.2. Notwithstanding the foregoing, Prospective Respondents may alternatively contact:
- a. staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, Tennessee service-disabled veteran owned, and small businesses as well as general, public information relating to this RFP (visit <http://www.tn.gov/generalservices/article/godbe-general-contacts> for contact information); and
 - b. the following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Tom Womack
 Tennessee Department of Agriculture
 P.O. Box 40627
 Nashville, TN 37204
 615-837-5118
 Tom.Womack@tn.gov
- 1.4.3. Only the State's official, written responses and communications with Respondents are binding with regard to this RFP. Oral communications between a State official and one or more Respondents are unofficial and non-binding.
- 1.4.4. Potential Respondents must ensure that the State receives all written questions and comments, including questions and requests for clarification, no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.4.5. Respondents must assume the risk of the method of dispatching any communication or response to the State. The State assumes no responsibility for delays or delivery failures resulting from the Respondent's method of dispatch. Actual or digital "postmarking" of a communication or response to the State by a specified deadline is not a substitute for the State's actual receipt of a communication or response.
- 1.4.6. The State will convey all official responses and communications related to this RFP to the prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to RFP Section 1.7).
- 1.4.7. The State reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this RFP. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, Internet posting, or any other means deemed reasonable by the State. For internet posting, please refer to the following website: <http://tn.gov/generalservices/article/request-for-proposals-rfp-opportunities>.

- 1.4.8. The State reserves the right to determine, at its sole discretion, the appropriateness and adequacy of responses to written comments, questions, and requests related to this RFP. The State's official, written responses will constitute an amendment of this RFP.
- 1.4.9. Any data or factual information provided by the State (in this RFP, an RFP amendment or any other communication relating to this RFP) is for informational purposes only. The State will make reasonable efforts to ensure the accuracy of such data or information, however it is the Respondent's obligation to independently verify any data or information provided by the State. The State expressly disclaims the accuracy or adequacy of any information or data that it provides to prospective Respondents.

1.5. **Assistance to Respondents With a Handicap or Disability**

Prospective Respondents with a handicap or disability may receive accommodation relating to the communication of this RFP and participating in the RFP process. Prospective Respondents may contact the Solicitation Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.

1.6. **Respondent Required Review & Waiver of Objections**

- 1.6.1. Each prospective Respondent must carefully review this RFP, including but not limited to, attachments, the RFP Attachment 6.6., *Pro Forma* Contract, and any amendments, for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "questions and comments").
- 1.6.2. Any prospective Respondent having questions and comments concerning this RFP must provide them in writing to the State no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.6.3. Protests based on any objection to the RFP shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the Written Questions & Comments Deadline.

1.7. **Notice of Intent to Respond**

Before the Notice of Intent to Respond Deadline detailed in the RFP Section 2, Schedule of Events, prospective Respondents should submit to the Solicitation Coordinator a Notice of Intent to Respond (in the form of a simple e-mail or other written communication). Such notice should include the following information:

- the business or individual's name (as appropriate)
- a contact person's name and title
- the contact person's mailing address, telephone number, facsimile number, and e-mail address

A Notice of Intent to Respond creates no obligation and is not a prerequisite for submitting a response, however, it is necessary to ensure receipt of any RFP amendments or other notices and communications relating to this RFP.

1.8. **Response Deadline**

A Respondent must ensure that the State receives a response no later than the response Deadline time and date detailed in the RFP Section 2, Schedule of Events. A response must respond, as required, to this RFP (including its attachments) as may be amended. The State will not accept late responses, and a Respondent's failure to submit a response before the deadline will result in disqualification of the response. It is the responsibility of the Respondent to ascertain any additional security requirements with

respect to packaging and delivery to the State of Tennessee. Respondents should be mindful of any potential delays due to security screening procedures, weather, or other filing delays whether foreseeable or unforeseeable.

2. RFP SCHEDULE OF EVENTS

2.1. The following RFP Schedule of Events represents the State's best estimate for this RFP.

EVENT	TIME (central time zone)	DATE
1. RFP Issued		May 8, 2017
2. Disability Accommodation Request Deadline	2:00 p.m.	May 11, 2017
3. Notice of Intent to Respond Deadline	2:00 p.m.	May 12, 2017
4. Written "Questions & Comments" Deadline	2:00 p.m.	May 17, 2017
5. State Response to Written "Questions & Comments"		May 22, 2017
6. Response Deadline	2:00 p.m.	June 1, 2017
7. State Completion of Technical Response Evaluations		June 7, 2017
8. State Opening & Scoring of Cost Proposals	2:00 p.m.	June 8, 2017
9. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	June 12, 2017
10. End of Open File Period		June 19, 2017
11. State sends contract to Contractor for signature		June 20, 2017
12. Contractor Signature Deadline	2:00 p.m.	June 27, 2017

2.2. **The State reserves the right, at its sole discretion, to adjust the RFP Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events shall constitute an RFP amendment, and the State will communicate such to prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to section 1.7).

3. RESPONSE REQUIREMENTS

3.1. Response Form

A response to this RFP must consist of two parts, a Technical Response and a Cost Proposal.

- 3.1.1. **Technical Response.** RFP Attachment 6.2., Technical Response & Evaluation Guide provides the specific requirements for submitting a response. This guide includes mandatory requirement items, general qualifications and experience items, and technical qualifications, experience, and approach items all of which must be addressed with a written response and, in some instances, additional documentation.

NOTICE: A technical response must not include any pricing or cost information. If any pricing or cost information amounts of any type (even pricing relating to other projects) is included in any part of the technical response, the state may deem the response to be non-responsive and reject it.

- 3.1.1.1. A Respondent must use the RFP Attachment 6.2., Technical Response & Evaluation Guide to organize, reference, and draft the Technical Response by duplicating the attachment, adding appropriate page numbers as required, and using the guide as a table of contents covering the Technical Response.
- 3.1.1.2. A response should be economically prepared, with emphasis on completeness and clarity. A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½" x 11" pages (although oversized exhibits are permissible) and use a 12 point font for text. All response pages must be numbered.
- 3.1.1.3. All information and documentation included in a Technical Response should respond to or address a specific requirement detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will not contribute to evaluations.
- 3.1.1.4. The State may determine a response to be non-responsive and reject it if:
- a. the Respondent fails to organize and properly reference the Technical Response as required by this RFP and the RFP Attachment 6.2., Technical Response & Evaluation Guide; or
 - b. the Technical Response document does not appropriately respond to, address, or meet all of the requirements and response items detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide.

- 3.1.2. **Cost Proposal.** A Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.3., Cost Proposal & Scoring Guide.

NOTICE: If a Respondent fails to submit a cost proposal exactly as required, the State may deem the response to be non-responsive and reject it.

- 3.1.2.1. A Respondent must only record the proposed cost exactly as required by the RFP Attachment 6.3., Cost Proposal & Scoring Guide and must NOT record any other rates, amounts, or information.

- 3.1.2.2. The proposed cost shall incorporate ALL costs for services under the contract for the total contract period, including any renewals or extensions.
- 3.1.2.3. A Respondent must sign and date the Cost Proposal.
- 3.1.2.4. A Respondent must submit the Cost Proposal to the State in a sealed package separate from the Technical Response (as detailed in RFP Sections 3.2.3., *et seq.*).

3.2. Response Delivery

3.2.1. A Respondent must ensure that both the original Technical Response and Cost Proposal documents meet all form and content requirements, including all required signatures, as detailed within this RFP.

3.2.2. A Respondent must submit original Technical Response and Cost Proposal documents and copies as specified below.

3.2.2.1. One (1) original Technical Response paper document labeled:

“RFP # 32501-00118 TECHNICAL RESPONSE ORIGINAL”

and four (4) digital copies of the Technical Response each in the form of one (1) digital document in “PDF” format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive labeled:

“RFP # 32501-00118 TECHNICAL RESPONSE COPY”

The digital copies should not include copies of sealed customer references, however any other discrepancy between the paper Technical Response document and any digital copies may result in the State rejecting the proposal as non-responsive.

3.2.2.2. One (1) original Cost Proposal paper document labeled:

“RFP # 32501-00118 COST PROPOSAL ORIGINAL”

and one (1) copy in the form of a digital document in “PDF” format properly recorded on separate, blank, standard CD-R recordable disc or USB flash drive labeled:

“RFP # 32501-00118 COST PROPOSAL COPY”

In the event of a discrepancy between the original Cost Proposal document and the digital copy, the original, signed document will take precedence.

3.2.3. A Respondent must separate, seal, package, and label the documents and copies for delivery as follows:

3.2.3.1. The Technical Response original document and digital copies must be placed in a sealed package that is clearly labeled:

“DO NOT OPEN... RFP # 32501-00118 TECHNICAL RESPONSE FROM [RESPONDENT LEGAL ENTITY NAME]”

3.2.3.2. The Cost Proposal original document and digital copy must be placed in a separate, sealed package that is clearly labeled:

“DO NOT OPEN... RFP # 32501-00118 COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.3.3. The separately, sealed Technical Response and Cost Proposal components may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled:

“RFP # 32501-00118 SEALED TECHNICAL RESPONSE & SEALED COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.4. A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events at the following address:

Bob Melching
Tennessee Department of Agriculture
P.O. Box 40627
Nashville, TN 37204

Private Carrier Shipping Address:

Bob Melching
Tennessee Department of Agriculture
Budget Office, Bruer Building
406 Hogan Road
Nashville, TN 37220

3.3. Response & Respondent Prohibitions

- 3.3.1. A response must not include alternate contract terms and conditions. If a response contains such terms and conditions, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.2. A response must not restrict the rights of the State or otherwise qualify either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal. If a response restricts the rights of the State or otherwise qualifies either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.3. A response must not propose alternative goods or services (*i.e.*, offer services different from those requested and required by this RFP) unless expressly requested in this RFP. The State may consider a response of alternative goods or services to be non-responsive and reject it.
- 3.3.4. A Cost Proposal must be prepared and arrived at independently and must not involve any collusion between Respondents. The State will reject any Cost Proposal that involves collusion, consultation, communication, or agreement between Respondents. Regardless of the time of detection, the State will consider any such actions to be grounds for response rejection or contract termination.
- 3.3.5. A Respondent must not provide, for consideration in this RFP process or subsequent contract negotiations, any information that the Respondent knew or should have known was materially incorrect. If the State determines that a Respondent has provided such incorrect information, the State will deem the Response non-responsive and reject it.
- 3.3.6. A Respondent must not submit more than one Technical Response and one Cost Proposal in response to this RFP, except as expressly requested by the State in this RFP. If a Respondent submits more than one Technical Response or more than one Cost Proposal, the State will deem all of the responses non-responsive and reject them.

- 3.3.7. A Respondent must not submit a response as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own responses. Such may result in the disqualification of all Respondents knowingly involved. This restriction does not, however, prohibit different Respondents from offering the same subcontractor as a part of their responses (provided that the subcontractor does not also submit a response as a prime contractor).
- 3.3.8. The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this RFP:
- 3.3.8.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
- 3.3.8.2. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
- 3.3.8.3. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

3.4. **Response Errors & Revisions**

A Respondent is responsible for any and all response errors or omissions. A Respondent will not be allowed to alter or revise response documents after the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by the State.

3.5. **Response Withdrawal**

A Respondent may withdraw a submitted response at any time before the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events by submitting a written request signed by an authorized Respondent representative. After withdrawing a response, a Respondent may submit another response at any time before the Response Deadline. After the Response Deadline, a Respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the Respondent.

3.6. **Additional Services**

If a response offers goods or services in addition to those required by and described in this RFP, the State, at its sole discretion, may add such services to the contract awarded as a result of this RFP. Notwithstanding the foregoing, a Respondent must not propose any additional cost amounts or rates for additional goods or services. Regardless of any additional services offered in a response, the Respondent's Cost Proposal must only record the proposed cost as required in this RFP and must not record any other rates, amounts, or information.

NOTICE: If a Respondent fails to submit a Cost Proposal exactly as required, the State may deem the response non-responsive and reject it.

3.7. **Response Preparation Costs**

The State will not pay any costs associated with the preparation, submittal, or presentation of any response.

4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

4.1. RFP Amendment

The State at its sole discretion may amend this RFP, in writing, at any time prior to contract award. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential Respondents to meet the response deadline and revise the RFP Schedule of Events if deemed appropriate. If an RFP amendment is issued, the State will convey it to potential Respondents who submitted a Notice of Intent to Respond (refer to RFP Section 1.7). A response must address the final RFP (including its attachments) as amended.

4.2. RFP Cancellation

The State reserves the right, at its sole discretion, to cancel the RFP or to cancel and reissue this RFP in accordance with applicable laws and regulations.

4.3. State Right of Rejection

4.3.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all responses.

4.3.2. The State may deem as non-responsive and reject any response that does not comply with all terms, conditions, and performance requirements of this RFP. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, minor variances from full compliance with this RFP. If the State waives variances in a response, such waiver shall not modify the RFP requirements or excuse the Respondent from full compliance, and the State may hold any resulting Contractor to strict compliance with this RFP.

4.4. Assignment & Subcontracting

4.4.1. The Contractor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFP without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.

4.4.2. If a Respondent intends to use subcontractors, the response to this RFP must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFP Attachment 6.2., Section B, General Qualifications & Experience Item B.14.).

4.4.3. Subcontractors identified within a response to this RFP will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors prior to signing the Contract.

4.4.4. After contract award, a Contractor may only substitute an approved subcontractor at the discretion of the State and with the State's prior, written approval.

4.4.5. Notwithstanding any State approval relating to subcontracts, the Respondent who is awarded a contract pursuant to this RFP will be the prime contractor and will be responsible for all work under the Contract.

4.5. Right to Refuse Personnel or Subcontractors

The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing goods or services in the performance of a contract resulting from this RFP. The State will document in writing the reason(s) for any rejection of personnel.

4.6. **Insurance**

From time-to-time, the State may require the awarded Contractor to provide a Certificate of Insurance issued by an insurance company licensed or authorized to provide insurance in the State of Tennessee. Each Certificate of Insurance shall indicate current insurance coverages meeting minimum requirements as may be specified by this RFP. A failure to provide a current, Certificate of Insurance will be considered a material breach and grounds for contract termination.

4.7. **Professional Licensure and Department of Revenue Registration**

- 4.7.1. All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Respondent provides for consideration and evaluation by the State as a part of a response to this RFP, shall be properly licensed to render such opinions.
- 4.7.2. Before the Contract resulting from this RFP is signed, the apparent successful Respondent (and Respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. The State may require any Respondent to submit evidence of proper licensure.
- 4.7.3. Before the Contract resulting from this RFP is signed, the apparent successful Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation. For purposes of this registration requirement, the Department of Revenue may be contacted at: TN.Revenue@tn.gov.

4.8. **Disclosure of Response Contents**

- 4.8.1. All materials submitted to the State in response to this RFP shall become the property of the State of Tennessee. Selection or rejection of a response does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full response contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.
- 4.8.2. The State will hold all response information, including both technical and cost information, in confidence during the evaluation process. Notwithstanding the foregoing, a list of actual Respondents submitting timely responses may be available to the public, upon request, after technical responses are opened.
- 4.8.3. Upon completion of response evaluations, indicated by public release of a Notice of Intent to Award, the responses and associated materials will be open for review by the public in accordance with *Tennessee Code Annotated*, Section 10-7-504(a)(7).

4.9. **Contract Approval and Contract Payments**

- 4.9.1. After contract award, the Contractor who is awarded the contract must submit appropriate documentation with the Department of Finance and Administration, Division of Accounts.
- 4.9.2. This RFP and its contractor selection processes do not obligate the State and do not create rights, interests, or claims of entitlement in either the Respondent with the apparent best-evaluated response or any other Respondent. State obligations pursuant to a contract award shall commence only after the contract is signed by the State agency head and the Contractor and after the Contract is approved by all other state officials as required by applicable laws and regulations.

- 4.9.3. No payment will be obligated or made until the relevant Contract is approved as required by applicable statutes and rules of the State of Tennessee.
- 4.9.3.1. The State shall not be liable for payment of any type associated with the Contract resulting from this RFP (or any amendment thereof) or responsible for any goods delivered or services rendered by the Contractor, even goods delivered or services rendered in good faith and even if the Contractor is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the Contract start date or after the Contract end date.
- 4.9.3.2. All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this RFP (refer to RFP Attachment 6.6., *Pro Forma Contract*, Section C).
- 4.9.3.3. If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of goods or services as a component of contract performance or otherwise provides for the reimbursement of specified, actual costs, the State will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, the State shall not remit, as funding or reimbursement pursuant to such provisions, any amounts that it determines do not represent reasonable, necessary, and actual costs.

4.10. **Contractor Performance**

The Contractor who is awarded a contract will be responsible for the delivery of all acceptable goods or the satisfactory completion of all services set out in this RFP (including attachments) as may be amended. All goods or services are subject to inspection and evaluation by the State. The State will employ all reasonable means to ensure that goods delivered or services rendered are in compliance with the Contract, and the Contractor must cooperate with such efforts.

4.11. **Contract Amendment**

After contract award, the State may request the Contractor to deliver additional goods or perform additional services within the general scope of the contract and this RFP, but beyond the specified scope of service, and for which the Contractor may be compensated. In such instances, the State will provide the Contractor a written description of the additional goods or services. The Contractor must respond to the State with a time schedule for delivering the additional goods or accomplishing the additional services based on the compensable units included in the Contractor's response to this RFP. If the State and the Contractor reach an agreement regarding the goods or services and associated compensation, such agreement must be effected by means of a contract amendment. Further, any such amendment requiring additional goods or services must be signed by both the State agency head and the Contractor and must be approved by other state officials as required by applicable statutes, rules, policies and procedures of the State of Tennessee. The Contractor must not provide additional goods or render additional services until the State has issued a written contract amendment with all required approvals.

4.12. **Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the State and Respondents will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

4.13. **Next Ranked Respondent**

The State reserves the right to initiate negotiations with the next ranked Respondent should the State cease doing business with any Respondent selected via this RFP process.

5. EVALUATION & CONTRACT AWARD

5.1. Evaluation Categories & Maximum Points

The State will consider qualifications, experience, technical approach, and cost in the evaluation of responses and award points in each of the categories detailed below (up to the maximum evaluation points indicated) to each response deemed by the State to be responsive.

EVALUATION CATEGORY	MAXIMUM POINTS POSSIBLE
General Qualifications & Experience (refer to RFP Attachment 6.2., Section B)	30
Technical Qualifications, Experience & Approach (refer to RFP Attachment 6.2., Section C)	30
Cost Proposal (refer to RFP Attachment 6.3.)	40

5.2. Evaluation Process

The evaluation process is designed to award the contract resulting from this RFP not necessarily to the Respondent offering the lowest cost, but rather to the Respondent deemed by the State to be responsive and responsible who offers the best combination of attributes based upon the evaluation criteria. (“Responsive Respondent” is defined as a Respondent that has submitted a response that conforms in all material respects to the RFP. “Responsible Respondent” is defined as a Respondent that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

5.2.1. **Technical Response Evaluation.** The Solicitation Coordinator and the Proposal Evaluation Team (consisting of three (3) or more State employees) will use the RFP Attachment 6.2., Technical Response & Evaluation Guide to manage the Technical Response Evaluation and maintain evaluation records.

5.2.1.1. The State reserves the right, at its sole discretion, to request Respondent clarification of a Technical Response or to conduct clarification discussions with any or all Respondents. Any such clarification or discussion will be limited to specific sections of the response identified by the State. The subject Respondent must put any resulting clarification in writing as may be required and in accordance with any deadline imposed by the State.

5.2.1.2. The Solicitation Coordinator will review each Technical Response to determine compliance with RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A—Mandatory Requirements. If the Solicitation Coordinator determines that a response failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the response and document the team’s determination of whether:

- a. the response adequately meets RFP requirements for further evaluation;
- b. the State will request clarifications or corrections for consideration prior to further evaluation; or,
- c. the State will determine the response to be non-responsive to the RFP and reject it.

5.2.1.3. Proposal Evaluation Team members will independently evaluate each Technical Response (that is responsive to the RFP) against the evaluation criteria in this RFP,

and will score each in accordance with the RFP Attachment 6.2., Technical Response & Evaluation Guide.

- 5.2.1.4. For each response evaluated, the Solicitation Coordinator will calculate the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, and record each average as the response score for the respective Technical Response section.
- 5.2.1.5. Before Cost Proposals are opened, the Proposal Evaluation Team will review the Technical Response Evaluation record and any other available information pertinent to whether or not each Respondent is responsive and responsible. If the Proposal Evaluation Team identifies any Respondent that does not to meet the responsive and responsible thresholds such that the team would not recommend the Respondent for Cost Proposal Evaluation and potential contract award, the team members will fully document the determination.
- 5.2.2. **Cost Proposal Evaluation.** The Solicitation Coordinator will open for evaluation the Cost Proposal of each Respondent deemed by the State to be responsive and responsible and calculate and record each Cost Proposal score in accordance with the RFP Attachment 6.3., Cost Proposal & Scoring Guide.
- 5.2.3. **Total Response Score.** The Solicitation Coordinator will calculate the sum of the Technical Response section scores and the Cost Proposal score and record the resulting number as the total score for the subject Response (refer to RFP Attachment 6.5., Score Summary Matrix).

5.3. **Contract Award Process**

- 5.3.1 The Solicitation Coordinator will submit the Proposal Evaluation Team determinations and scores to the head of the procuring agency for consideration along with any other relevant information that might be available and pertinent to contract award.
- 5.3.2. The procuring agency head will determine the apparent best-evaluated Response. To effect a contract award to a Respondent other than the one receiving the highest evaluation process score, the head of the procuring agency must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.
- 5.3.3. The State will issue a Notice of Intent to Award identifying the apparent best-evaluated response and make the RFP files available for public inspection at the time and date specified in the RFP Section 2, Schedule of Events.

NOTICE: The Notice of Intent to Award shall not create rights, interests, or claims of entitlement in either the apparent best-evaluated Respondent or any other Respondent.

- 5.3.4. The Respondent identified as offering the apparent best-evaluated response must sign a contract drawn by the State pursuant to this RFP. The contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma* Contract. The Respondent must sign the contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed contract by this deadline, the State may determine that the Respondent is non-responsive to this RFP and reject the response.
- 5.3.5. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited negotiation prior to contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State's best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT materially affect the basis of response evaluations or negatively impact the competitive nature of the RFP and contractor selection process.

- 5.3.6. If the State determines that a response is non-responsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated response.

RFP # 32501-00118 STATEMENT OF CERTIFICATIONS AND ASSURANCES

The Respondent must sign and complete the Statement of Certifications and Assurances below as required, and it must be included in the Technical Response (as required by RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A, Item A.1.).

The Respondent does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:

1. The Respondent will comply with all of the provisions and requirements of the RFP.
2. The Respondent will provide all services as defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma Contract* for the total contract period.
3. The Respondent, except as otherwise provided in this RFP, accepts and agrees to all terms and conditions set out in the RFP Attachment 6.6., *Pro Forma Contract*.
4. The Respondent acknowledges and agrees that a contract resulting from the RFP shall incorporate, by reference, all proposal responses as a part of the contract.
5. The Respondent will comply with:
 - (a) the laws of the State of Tennessee;
 - (b) Title VI of the federal Civil Rights Act of 1964;
 - (c) Title IX of the federal Education Amendments Act of 1972;
 - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
 - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the knowledge of the undersigned, the information detailed within the response submitted to this RFP is accurate.
7. The response submitted to this RFP was independently prepared, without collusion, under penalty of perjury.
8. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Respondent in connection with this RFP or any resulting contract.
9. Both the Technical Response and the Cost Proposal submitted in response to this RFP shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the RFP.
10. The Respondent affirms the following statement, as required by the Iran Divestment Act Tenn. Code Ann. § 12-12-111: "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to §12-12-106." For reference purposes, the list is currently available online at: <http://www.tn.gov/generalservices/article/Public-Information-library>.

By signing this Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. If the signatory is not the Respondent (if an individual) or the Respondent's company *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to bind the Respondent.

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE RESPONDENT

SIGNATURE:

PRINTED NAME & TITLE:

DATE:

**RESPONDENT LEGAL ENTITY
NAME:**

RFP ATTACHMENT 6.2. — Section A

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION A: MANDATORY REQUIREMENTS. The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

The Solicitation Coordinator will review the response to determine if the Mandatory Requirement Items are addressed as required and mark each with pass or fail. For each item that is not addressed as required, the Proposal Evaluation Team must review the response and attach a written determination. In addition to the Mandatory Requirement Items, the Solicitation Coordinator will review each response for compliance with all RFP requirements.

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		The Response must be delivered to the State no later than the Response Deadline specified in the RFP Section 2, Schedule of Events.	
		The Technical Response and the Cost Proposal documentation must be packaged separately as required (refer to RFP Section 3.2., <i>et. seq.</i>).	
		The Technical Response must NOT contain cost or pricing information of any type.	
		The Technical Response must NOT contain any restrictions of the rights of the State or other qualification of the response.	
		A Respondent must NOT submit alternate responses (refer to RFP Section 3.3.).	
		A Respondent must NOT submit multiple responses in different forms (as a prime and a sub-contractor) (refer to RFP Section 3.3.).	
	A.1.	Provide the Statement of Certifications and Assurances (RFP Attachment 6.1.) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification.	
	A.2.	Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall cause to deliver goods or perform services under the contract has a possible conflict of interest (<i>e.g.</i> , employment by the State of Tennessee) and, if so, the nature of that conflict. NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.	
	A.3.	Provide a current bank reference indicating that the Respondent's business relationship with the financial institution is in positive standing. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.	
	A.4.	Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.	
	A.5.	Provide an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a satisfactory credit score for the Respondent (NOTE: A credit bureau report	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		number without the full report is insufficient and will <u>not</u> be considered responsive.)	
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>			

RFP ATTACHMENT 6.2. — SECTION B

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION B: GENERAL QUALIFICATIONS & EXPERIENCE. The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. Proposal Evaluation Team members will independently evaluate and assign one score for all responses to Section B— General Qualifications & Experience Items.

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
	B.1.	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.
	B.2.	Describe the Respondent's form of business (<i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).
	B.3.	Detail the number of years the Respondent has been in business.
	B.4.	Briefly describe how long the Respondent has been providing the goods or services required by this RFP.
	B.5.	Describe the Respondent's number of employees, client base, and location of offices.
	B.6.	Provide a statement of whether there have been any mergers, acquisitions, or change of control of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.
	B.7.	Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, involved in the delivery of goods or performance of services on a contract pursuant to this RFP, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details.
	B.8.	Provide a statement of whether, in the last ten (10) years, the Respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, include an explanation providing relevant details.
	B.9.	Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFP or is likely to have a material adverse effect on the Respondent's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent's performance in a contract pursuant to this RFP. NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.
	B.10.	Provide a statement of whether there are any pending or in progress Securities Exchange Commission investigations involving the Respondent. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it will impair the Respondent's performance in a contract pursuant to this RFP. NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the

RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		Respondent to submit proof of license for each person or entity that renders such opinions.
	B.11.	Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this RFP (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.).
	B.12.	Provide a narrative description of the proposed project team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to deliver the goods or services required by this RFP.
	B.13.	Provide a personnel roster listing the names of key people who the Respondent will assign to meet the Respondent's requirements under this RFP along with the estimated number of hours that each individual will devote to that performance. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual's title, education, current position with the Respondent, and employment history.
	B.14.	Provide a statement of whether the Respondent intends to use subcontractors to meet the Respondent's requirements of any contract awarded pursuant to this RFP, and if so, detail: <ul style="list-style-type: none"> (a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each; (b) a description of the scope and portions of the goods each subcontractor involved in the delivery of goods or performance of the services each subcontractor will perform; <u>and</u> (c) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this RFP.
	B.15.	Provide documentation of the Respondent's commitment to diversity as represented by the following: <ul style="list-style-type: none"> (a) <u>Business Strategy</u>. Provide a description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable. (b) <u>Business Relationships</u>. Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises. Please include the following information: <ul style="list-style-type: none"> (i) contract description; (ii) contractor name and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled); (iii) contractor contact name and telephone number. (c) <u>Estimated Participation</u>. Provide an estimated level of participation by business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises if a contract is awarded to the Respondent pursuant to this RFP. Please include the following information: <ul style="list-style-type: none"> (i) a percentage (%) indicating the participation estimate. (Express the estimated participation number as a percentage of the total estimated contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics only and DO NOT INCLUDE DOLLAR AMOUNTS); (ii) anticipated goods or services contract descriptions; (iii) names and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled veterans) of anticipated subcontractors and supply contractors. <p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract,</p>

RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>businesses must be certified by the Governor's Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810 for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent's total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises and who offer a diverse workforce.</p>
	B.16.	<p>Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five (5) year period. If so, provide the following information for all of the current and completed contracts:</p> <p>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</p> <p>(b) the procuring State agency name;</p> <p>(c) a brief description of the contract's scope of services;</p> <p>(d) the contract period; and</p> <p>(e) the contract number.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ Current or prior contracts with the State are <u>not</u> a prerequisite and are <u>not</u> required for the maximum evaluation score, and the existence of such contracts with the State will <u>not</u> automatically result in the addition or deduction of evaluation points. ▪ Each evaluator will generally consider the results of inquiries by the State regarding all contracts noted.
	B.17.	<p>Provide customer references from individuals who are <u>not</u> current or former State employees for projects similar to the goods or services sought under this RFP and which represent:</p> <ul style="list-style-type: none"> ▪ two (2) accounts Respondent currently services that are similar in size to the State; <u>and</u> ▪ three (3) completed projects. <p>References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently serviced account. The standard reference questionnaire, which <u>must</u> be used and completed, is provided at RFP Attachment 6.4. References that are not completed as required may be deemed non-responsive and may not be considered.</p> <p>The Respondent will be <u>solely</u> responsible for obtaining fully completed reference questionnaires and including them in the sealed Technical Response. In order to obtain and submit the completed reference questionnaires follow the process below.</p> <p>(a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.</p> <p>(b) Send a reference questionnaire and new, standard #10 envelope to each reference.</p> <p>(c) Instruct the reference to:</p> <ol style="list-style-type: none"> (i) complete the reference questionnaire; (ii) sign and date the completed reference questionnaire; (iii) seal the completed, signed, and dated reference questionnaire within the envelope provided; (iv) sign his or her name in ink across the sealed portion of the envelope; and (v) return the sealed envelope directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required

RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>references in time to include them within the sealed Technical Response).</p> <p>(d) <u>Do NOT open the sealed references upon receipt.</u></p> <p>(e) Enclose all <u>sealed</u> reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ The State will not accept late references or references submitted by any means other than that which is described above, and each reference questionnaire submitted must be completed as required. ▪ The State will not review more than the number of required references indicated above. ▪ While the State will base its reference check on the contents of the sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires, and may consider clarification responses in the evaluation of references. ▪ The State is under <u>no</u> obligation to clarify any reference information.
	B.18.	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <ul style="list-style-type: none"> (a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency; (b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (c) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and (d) has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.
		<p>SCORE (for <u>all</u> Section B—Qualifications & Experience Items above): (maximum possible score = 30)</p>
<p><i>State Use – Evaluator Identification:</i></p>		

RFP ATTACHMENT 6.2. — SECTION C

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH. The Respondent must address all items (below) and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

0 = little value 1 = poor 2 = fair 3 = satisfactory 4 = good 5 = excellent

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item’s Raw Weighted Score for purposes of calculating the section score as indicated.

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.1.	Provide a narrative that illustrates the Respondent’s understanding of the State’s requirements and project schedule.		1	
	C.2.	Provide a narrative that illustrates how the Respondent will complete the scope of services, accomplish required objectives, and meet the State’s project schedule. The narrative should also include a detailed description of warehouse facilities, delivery vehicles, and computer capability adequate to meet all requirements of the scope of services.		1	
	C.3.	Provide a narrative that illustrates how the Respondent will manage the project, ensure completion of the scope of services, and accomplish required objectives within the State’s project schedule.		1	
<i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>				Total Raw Weighted Score: <i>(sum of Raw Weighted Scores above)</i>	
Total Raw Weighted Score <hr/> Maximum Possible Raw Weighted Score <i>(i.e., 5 x the sum of item weights above)</i>			X 30 <i>(maximum possible score)</i>		= SCORE:
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>					

COST PROPOSAL & SCORING GUIDE

NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED

COST PROPOSAL SCHEDULE— The Cost Proposal, detailed below, shall indicate the proposed price for goods or services defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract and for the entire contract period. The Cost Proposal shall remain valid for at least one hundred twenty (120) days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

NOTICE: The Evaluation Factor associated with each cost item is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Respondent.

Notwithstanding the cost items herein, pursuant to the second paragraph of the *Pro Forma* Contract section C.1. (refer to RFP Attachment 6.6.), "The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract."

This Cost Proposal must be signed, in the space below, by an individual empowered to bind the Respondent to the provisions of this RFP and any contract awarded pursuant to it. If said individual is not the *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to legally bind the Respondent.

RESPONDENT SIGNATURE:			
PRINTED NAME & TITLE:			
DATE:			
RESPONDENT LEGAL ENTITY NAME:			
Cost Item Description	Proposed Cost	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
Deliveries to Recipient Kitchen (Region 1 Firm Price Per Case)	\$ / Per Case	90	
Lump Sum Deliveries/One Stop (Region 1 Firm Price Per Case for Warehouse Deliveries)	\$ / Per Case	10	
EVALUATION COST AMOUNT (sum of evaluation costs above): The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.			
lowest evaluation cost amount from <u>all</u> proposals		x 40	= SCORE:
_____		(maximum section score)	
evaluation cost amount being evaluated			
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>			

REFERENCE QUESTIONNAIRE

The standard reference questionnaire provided on the following pages of this attachment MUST be completed by all individuals offering a reference for the Respondent.

The Respondent will be solely responsible for obtaining completed reference questionnaires as required (refer to RFP Attachment 6.2., Technical Response & Evaluation Guide, Section B, Item B.17.), and for enclosing the sealed reference envelopes within the Respondent's Technical Response.

RFP # 32501-00118 REFERENCE QUESTIONNAIRE

REFERENCE SUBJECT: RESPONDENT NAME (completed by Respondent before reference is requested)

The “reference subject” specified above, intends to submit a response to the State of Tennessee in response to the Request for Proposals (RFP) indicated. As a part of such response, the reference subject must include a number of completed and sealed reference questionnaires (using this form).

Each individual responding to this reference questionnaire is asked to follow these instructions:

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
- sign and date the completed questionnaire;
- seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
- sign in ink across the sealed portion of the envelope; and
- return the sealed envelope containing the completed questionnaire directly to the reference subject.

(1) What is the name of the individual, company, organization, or entity responding to this reference questionnaire?

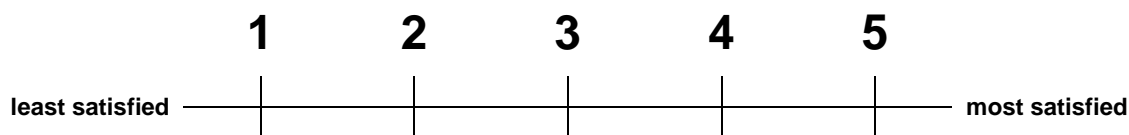
(2) Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.

NAME:	
TITLE:	
TELEPHONE #	
E-MAIL ADDRESS:	

(3) What goods or services does/did the reference subject provide to your company or organization?

(4) What is the level of your overall satisfaction with the reference subject as a vendor of the goods or services described above?

Please respond by circling the appropriate number on the scale below.



RFP # 32501-00118 REFERENCE QUESTIONNAIRE — PAGE 2

If you circled 3 or less above, what could the reference subject have done to improve that rating?

(5) If the goods or services that the reference subject provided to your company or organization are completed, were the goods or services provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.

(6) If the reference subject is still providing goods or services to your company or organization, are these goods or services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.

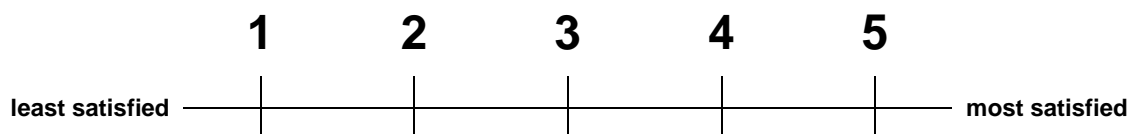
(7) How satisfied are you with the reference subject's ability to perform based on your expectations and according to the contractual arrangements?

(8) In what areas of goods or service delivery does/did the reference subject excel?

(9) In what areas of goods or service delivery does/did the reference subject fall short?

(10) What is the level of your satisfaction with the reference subject's project management structures, processes, and personnel?

Please respond by circling the appropriate number on the scale below.



What, if any, comments do you have regarding the score selected above?

RFP # 32501-00118 REFERENCE QUESTIONNAIRE — PAGE 3

- (11) Considering the staff assigned by the reference subject to deliver the goods or services described in response to question 3 above, how satisfied are you with the technical abilities, professionalism, and interpersonal skills of the individuals assigned?

Please respond by circling the appropriate number on the scale below.

	1	2	3	4	5	
least satisfied						most satisfied

What, if any, comments do you have regarding the score selected above?

- (12) Would you contract again with the reference subject for the same or similar goods or services?

Please respond by circling the appropriate number on the scale below.

	1	2	3	4	5	
least satisfied						most satisfied

What, if any, comments do you have regarding the score selected above?

REFERENCE SIGNATURE:

(by the individual completing this request for reference information)

(must be the same as the signature across the envelope seal)

DATE:

RFP ATTACHMENT 6.5.

SCORE SUMMARY MATRIX

	<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>	
GENERAL QUALIFICATIONS & EXPERIENCE (maximum: 30)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH (maximum: 30)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
COST PROPOSAL (maximum: 40)	SCORE:		SCORE:		SCORE:	
TOTAL RESPONSE EVALUATION SCORE: (maximum: 100)						

Solicitation Coordinator Signature, Printed Name & Date:

RFP # 32501-00118 *PRO FORMA* CONTRACT

The *Pro Forma* Contract detailed in following pages of this exhibit contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFP.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF AGRICULTURE
AND
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Department of Agriculture, hereinafter referred to as the "State" and Contractor Legal Entity Name, hereinafter referred to as the "Contractor," is for the provision of establishing a firm unit price for the receipt, storage, and distribution of USDA commodity foods to Tennessee schools and agencies participating in the National School Lunch Program and located in the Region 1 distribution area, as further defined in the "SCOPE OF SERVICES."

The Contractor is a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.
Contractor Place of Incorporation or Organization: Location

A. SCOPE OF SERVICES:

A.1. The contractor shall be responsible for receiving, storing, and distributing USDA commodity foods to Tennessee schools and agencies participating in the National School Lunch Program and located in the Region 1 distribution area. Region 1 includes the following counties: Anderson, Blount, Campbell, Carter, Claiborne, Cocke, Grainger, Greene, Hamblen, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Monroe, Sevier, Sullivan, Unicoi, Union, and Washington. (Attachment A is a map of Region 1.)

A.2. Quantities. See listing (Attachment B). It shall be understood by all parties concerned that this contract will not obligate the State to a specific quantity. The quantities shown are annual estimates and will vary from year to year. A list of recipient agencies, hereinafter referred to as RAs, is determined by the State as being eligible to receive USDA commodity foods and will be supplied to the Contractor. The Contractor agrees to service any new RAs within the contract area which may be approved to receive USDA commodity foods.

A.3. The Contractor shall charge the RAs on a one price per case basis as provided by Section C.2. Stated fee per case shall apply to dry, chilled, and frozen foods in the aggregate. Unit prices shall include charges for receipt, handling, distribution, and two (2) months storage of food. Fees stated are all inclusive and no other charges shall be assessed except as noted below.

The Contractor's price for deliveries to RA kitchens shall be firm as covered under Section C.2. Issues to individual kitchen sites will be subject to a twenty (20) case minimum charge.

The Contractor's price for Lump Sum Deliveries/One Stop (Warehouse Deliveries) reflects the charge to be assessed RAs that desire deliveries of USDA commodity foods (100 case minimum) to a warehouse within ten (10) days after arrival. A separate fee per case should be specified for this service, usually less than the per-case charge for delivery to recipient kitchens.

A.4. Warehouse Space, Equipment, and Staff.

A.4.a. General. Except as otherwise stated, the equipment to be used and the procedures to be followed are to include, but are not necessarily limited to, those stipulated herein.

A.4.b. Warehouse Facilities. Contractor must have adequate warehouse facilities for the following:

Dry Foods	Ventilated Space (grain products and dried fruits require refrigeration storage if dry warehouse temperatures continuously exceed 70° F)
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Frozen Foods	Maintained at 0° F or below
Chilled Foods	Normally 36° F. (36° F to 40° F depending on the food)

The Contractor should maintain logs and record temperatures daily in each storage area for USDA commodity foods. An accurate continuous recording temperature chart is a reasonable substitute providing each storage area is so monitored. This action can help serve as verification that precautions were taken to prevent food loss.

Foods must be stored off the floor and away from walls to allow for adequate ventilation.

RAs are potentially eligible to receive at least thirty-nine (39) different items of packaged USDA commodity foods (Attachment C). The 39 items may be categorized according to warehouse requirements as follows:

Dry Foods	15
Frozen Foods	20
Chilled Foods	4

In addition to the items listed, State approved processors convert USDA commodity foods into further processed products. Such products are primarily frozen and shall be received, stored, and distributed under the same terms as all other USDA commodity foods.

It is herein set forth that any and all quantities mentioned are purely estimates, and are not to be implied or inferred as being guarantees. The State is obligated to order only the quantity needed by its RAs during the term of the contract. The items and quantities will vary from year to year. The total amount of warehouse space required will vary from month to month. The heaviest USDA shipping periods are August-October and January-February.

- A.4.c. Sanitation Requirement. The Contractor's warehouse shall be free from rodent, bird, insect, and other animal infestations and USDA commodity foods must be safeguarded against theft, spoilage, damage, and other losses. USDA commodity foods must be maintained in sanitary conditions, at the proper storage temperature and humidity, with adequate air circulation.

The Contractor's warehouse may be routinely inspected by State officials. Warehouse facilities and warehousing practices must be continuously in compliance with the Federal, State, and local requirements relative to food safety and health and procedures for responding to a food recall, as applicable, and the Contractor must obtain all required health inspections. Reports of inspections must be kept on file.

- A.4.d. Delivery Vehicle Requirements. The Contractor shall have adequate delivery vehicles as follows:

1. Van trucks for dry foods and refrigerated trucks for refrigerated foods; or
2. Dual compartment trucks for combined handling of dry and refrigerated foods; or
3. Single compartment refrigerated trucks (0° F) for separate or integrated loads of dry foods and refrigerated foods.
4. The Contractor must have vehicles in a number and size sufficient to meet the delivery schedule and quantity requirements.

- A.4.e. Staff Requirements. The Contractor is required to have sufficient staff to meet all requirements of this contract. One individual shall be identified as a primary contact person available to assist RAs with questions regarding allocations, orders, deliveries, and inventory. The Contractor shall

provide the name of one backup individual who can assume the responsibilities of the primary contact person in his/her absence.

A.4.f. Electronic Requirements. The Contractor shall have computer capability to provide necessary tracking and reporting of receipts and issues as well as prevent overdrawing of allocations. Such tracking and reporting shall include the USDA Sales Order number (10 numeric digits) and the USDA material number (6 numeric digits). For a further processed end product, the processor's product code will be used instead of a USDA material number. The Contractor must establish a method for sharing tracking /reporting information with the State and RAs on a regular basis and as requested. Acceptable methods are mailing, emailing, or offering online access. The Contractor shall have Internet access and shall maintain email capability to receive and transmit information and data.

A.5. Warehousing Procedures. The Contractor shall adhere to the following procedures:

A.5.a. Line of Communication. Warehouse staff shall discuss all matters of policy and complaints with the State. Only RA supervisors or designated representatives shall place orders with, otherwise instruct, or make requests of the Contractor. Individual schools shall communicate only with system supervisors. In as far as practical, all communications between RAs and the Contractor shall be in writing as outlined herein.

RA supervisors shall discuss all matters of policy and complaints with State Authorities. In as far as practical, communications between RAs and the Contractor shall be between designated representatives.

A.5.b. Warehouse Notification of Commodities to be Received: The Contractor shall be notified by the State of all in-bound shipments of USDA commodity foods to be received. The method and form for such notification will be mutually agreed upon by the State and the Contractor and will occur at least one (1) month prior to the receiving date for most foods. Notice of in-bound shipments of processed products from State approved processors will be provided to the Contractor as such information is received from the processors.

A.5.c. Notice of Arrival: USDA requests that the Shipper contact the Contractor at least forty-eight (48) hours prior to the actual delivery to schedule an unloading appointment. FNS Instruction 709-5, Revision 2 describes shipment and receipt procedures with which the Contractor must comply. (See Attachment D for highlights and <https://www.fns.usda.gov/fns-instruction-709-5-revision-2> for the full instruction.) The Contractor shall ensure that warehouse staff understand and agree to follow the procedures described.

The Contractor will notify the State via email within one business day of shipment arrival and promptly forward all bills of lading and other appropriate documentation to the State (scanned copies may be emailed).

At that time, the State will provide the Contractor a listing of the number of cases allocated to each RA. The State will notify applicable RAs if the Contractor doesn't have an online ordering system available for RAs.

A.5.d. Inbound Freight: All USDA commodity foods shipped to a Contractor's warehouse will be totally prepaid, i.e., product and freight. USDA does not allow charging of lumper fees.

The Contractor must stock and space foods in a manner so that USDA commodity foods are readily identified. For USDA commodity foods not bearing the USDA label and legend "Not to be sold or exchanged," the Contractor must use a method of notification, such as placard, stamp, bar code, etc. as well as slotting records, that will sufficiently identify those cases as USDA product.

Such a method must facilitate tracking in the event that foods are put on "hold" or are recalled. Evidence of stock rotation must be provided upon request.

The Contractor shall receive inbound freight in accordance with acceptable industry practices and will be responsible for the following:

1. Acting as consignee for the State. As consignee, the Contractor shall be held accountable and shall assume legal liabilities for all USDA commodity foods received and stored at its warehouse.
2. Positively identifying incoming shipments using the Bill of Lading matched against the State's notice and only unloading loads or portion of loads so identified. The Contractor must call the State before unloading if positive identification is not possible.
3. Ensuring that the high security seal(s) on the door or other point of entry of the truck or trailer is intact, removing the high security seal(s) and, for frozen or refrigerated foods, ensuring the temperature is at an acceptable level and that the unit is switched on and running.
4. Inspecting load for condition on arrival, verifying accuracy of count, and executing any reporting as may be required.
5. Indicating on the Bill of Lading the quantity of USDA foods received, noting any over/short/damages, before signing and dating the Bill of Lading and returning it to the vendor or carrier. (A copy must be retained as part of the Contractor's required records.) Indicate whether damaged merchandise is retained by the shipper or the warehouse. If the shipper is willing to retain damaged merchandise, the Contractor should not accept cases found to be damaged or out-of-condition.
6. Notifying the State via email within one business day of shipment arrival and promptly forwarding all bills of lading and any other shipping documents to the State. (Scanned copies may be emailed.)
7. Carrying all damaged merchandise in the inventory report until the State inspects or provides guidance for disposal. All damaged or out-of-condition foods shall not be disposed of without a witness and prior approval of the State. An area shall be identified to store damaged food until proper disposal.
8. With guidance from the State, recouping damaged merchandise so that all foods suitable for human consumption are salvaged for program use.
9. Assuming all freight demurrage and detention charges which occur, unless specifically exempted.
10. Arranging for sufficient warehouse space to absorb all inbound freight at abnormal peak loads at no additional cost to any RA.
11. Taking immediate steps to ensure product placed on hold is not delivered to RAs.

The Contractor is liable for claims levied by the USDA and/or the State against the Contractor as a result of the Contractor's failure to properly secure, handle, or account for shipment.

A.5.e. Outbound Deliveries

1. Frequency of Deliveries. Deliveries shall be made weekly to RAs that receive weekly delivery of commercially purchased foods from the Contractor; otherwise, deliveries can be made on a

biweekly basis. Deliveries to other RAs may be made once each two weeks if the average USDA commodity food case load is twenty (20) cases or more; otherwise deliveries may be scheduled monthly.

2. Delivery Schedule. Prior to delivery of any USDA commodity foods, the Contractor shall notify each RA of their system account number and delivery day. The RA will notify the Contractor of the amounts and date of delivery of USDA commodity foods via fax, online ordering system, or other means suitable to the Contractor and/or the State.

The Contractor agrees to notify the RA by phone in the event that a scheduled delivery cannot be made as planned, such notification to be made immediately once inability to deliver is identified. Delivery schedules, once established, may not arbitrarily be changed unless a qualified emergency exists and recipient agencies are notified.

3. Delivery Hours. Deliveries shall be made between the hours of 7:00 AM and 2:30 PM (local time) unless special arrangements are made in advance. Deliveries shall be made Monday through Friday, except school or institutional holidays or emergency closing days. Deliveries missed due to holidays, inclement weather, breakdowns, etc. must be re-scheduled before the next scheduled delivery. RAs will be requested to arrange a flexible work schedule so that a receiver will be on duty the days when USDA commodity foods are scheduled for delivery after cafeteria hours (but prior to 2:30 PM). Deliveries past 2:30 PM must be scheduled in advance by Contractor with the RA only in emergency situations.

4. Delivery Drop Areas. Contractor drivers and helpers shall deliver merchandise in designated staging areas at each delivery location. Recognized designated staging areas are inside of the door or a walk-in dry grocery area, freezer or cooler. Drivers or helpers shall not be required to store merchandise on shelves or stack in reach-in coolers, freezers or other cabinets.

Contractor drivers and helpers shall request an authorized receiver or the designated representative to verify accuracy of items, quantities of each item, total quantities, and condition of merchandise. Each delivery ticket must be receipted (signed) by a designated receiver. Variations from the norm, i.e., shortages, damages, etc., shall be noted on each ticket by the designated receiver, and initialed by both the truck driver and receiver.

5. Special Deliveries. Special or intermediate deliveries will be required only if a Contractor fails to deliver a product in stock in which case the Contractor shall make delivery within 24 hours if so requested by the RA. No extra charges will be assessed.

6. Straight or Mixed Loads: The Contractor may load USDA commodity foods in vans containing only USDA commodity foods or in vans with food commercially purchased as long as other terms of the contract are satisfied. Foods may not be stored or loaded with agricultural or other chemicals which may be harmful to the quality or safety of the food.

A.5.f. Inventory Management Reports and Controls

1. Stock Rotation. Contractor must rotate stock on a first in, first out basis in accordance with acceptable warehousing practices and provide evidence of stock rotation upon request.

2. Inventory Control. The Contractor shall provide monthly inventory reports electronically to the State. This may be in the form of scanned reports, spreadsheets, or allowing the State access to the Contractor's online ordering system or website. Reports shall be available by the 10th day of the following month and shall show the amounts on hand by item (material number) and RA at the beginning of the month, the amount received, the amount delivered, and the balance on hand at the end of the month. Allocations to RAs should be tracked by the ten (10) digit USDA Sales Order number.

USDA commodity foods received pursuant to this contract, including processed foods, must be stored separately in an easily identifiable manner. If Contractor stores USDA commodity foods pursuant to a contract with another entity, for instance an RA or another state, those USDA foods must be stored separately from the USDA foods covered by this contract and their owner clearly identified.

If a USDA commodity food is placed on hold, immediate steps must be taken to ensure product is not delivered to RAs.

3. Shortages and Damages. The Contractor shall be financially responsible for shortages and damages to products or packages after receipt by Contractor which make them unacceptable to the State. All shortages and damages of foods must be reported to the State at least monthly. Damages shall include infestation of products due to improper storage conditions, as well as physical damage to containers including serious rust. Shortages and damages shall be accounted as such within the Contractor's monthly inventory reports.

The Contractor's settlement may be required in the form of cash payment or by replacement with an equal quantity of an equal or better quality product, at the option of the State or the RA. A cash payment to an RA for loss of processed commodity foods must include the value of USDA food used to process the case and the vendor's processing fee per case.

If a shortage of USDA commodity foods is identified by the RA or Inspector representing State, or the Contractor, a review of the inventory and signed invoices of the foods in question will be conducted at the discretion of the State. Determination of responsibility of shortages will be made by the State.

Should overage and shortage discrepancies between physical inventory and perpetual book inventory exist, such discrepancies shall be reconciled annually. Irreconcilable overages and/or shortages will be settled by computing the value of such shortages and overages based on the USDA cost established annually by the State. If the value of shortages exceeds the value of overages, a monetary settlement for the difference in value will be required. If the value of overages exceeds the value of shortages, no monetary settlement is required. Book inventory will be adjusted after settlement to correspond with physical inventory.

UNDER NO CIRCUMSTANCES SHALL A CONTRACTOR BE PERMITTED TO RETAIN AS THE CONTRACTOR'S OWN PROPERTY ANY USDA COMMODITY FOODS WHICH DEVELOP AS OVERAGES IN INVENTORY.

- A.6. The Contractor agrees to operate the program in accordance with the requirements of 7 CFR 250 (as applicable), and all pertinent policies, rules, regulations, and procedures established by USDA and/or the State.

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

B. TERM OF CONTRACT:

- B.1. This Contract shall be effective on July 1, 2017 ("Effective Date"), and extend for a period of twelve (12) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to four (4) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

C.1. There shall be no cost to the State for the performance of services under this contract.

C.2. The Contractor shall charge the RAs served under this contract the following firm price per case for the contract period:

Deliveries to Recipient Kitchen **\$ PRICE PER CASE**

Lump Sum Deliveries/One stop (Warehouse Deliveries) **\$ PRICE PER CASE**

C.3. Each one-year extension of the contract shall be subject to increases and decreases based upon the United States Department of Labor Wholesale Price Index. Changes will be calculated by applying the standard formula to the base index. In the event of one-year extensions of the contract, they shall be subject to annual increases or decreases based upon a composite index consisting of the Employment Cost Index (ECI) and the Producer Price Index (PPI) for #2 diesel fuel Commodity Code 05-73-03. The ECI will be based on December data and will carry a weight of sixty (60) percent. The PPI on #2 diesel fuel will also be based on December data and will carry a weight of forty (40) percent. No price increase or decrease will be effective unless requested by the Contractor in the case of an increase, or the State in the case of a decrease. Any such request shall be made in writing by February 1 each year to become effective July 1. Upon receipt by the State of a request for renewal with a price increase by the Contractor, the State may, at its sole discretion, either accept the increase or notify the Contractor of its intent to reject the proposed price increase and proceed to re-bid the contract.

EXAMPLE OF CALCULATION PROCEDURE

<u>COMPOSITE</u>	<u>LABOR</u>	<u>DIESEL</u>
Base Price \$2.00		
Current period series value (December of current fiscal year)	128.0	157.3
Divide by base period series value (December - previous fiscal year).....;	125.2	129.7
equals	1.022	1.213
Multiply by 100 to yield the converted series value weight	102.236	121.28
Multiply by assigned weight (Labor 60%, Diesel Fuel 40%)	61.342	48.512
Add the figures to get the current value for the special index	109.854	
Multiply by the base price per case (\$2.00)	219.708	
Divide by 100 to yield the adjusted allowable price	\$2.20	

C.4 The Contractor may assess a charge per month to RAs for each unit (case) of food remaining in storage beyond two (2) months for the convenience of RAs or State officials. This charge shall not exceed twenty-five (25) percent of the stated charge per case for delivery to RAs. Such charges may be assessed for a full month on the first day following the anniversary arrival dates. The twenty-five percent charge per month may be assessed on the base price only and not a compounded basis.

Because of the need for “filling the pipeline” at school start-up and after the Winter holidays, the Contractor will allow one (1) month of additional grace period beyond the two (2) months covered by the price per case for shipments arriving in August and December.

C.5 Invoicing. On no less than a monthly basis, the Contractor shall submit invoices for work performed to each RA that received services. Each invoice shall include a summary of delivery tickets for the period. Each referenced ticket shall be listed in numerical sequence and show the total number of cases, bags, etc. delivered. The payment of an invoice shall not prejudice the State's right to object to or question any invoice or matter related thereto. Such payment shall not be construed as acceptance of any part of the service provided or as approval of any of the costs invoiced therein. Contractor's invoice shall be subject to reduction for amounts included in the invoice or payment theretofore made which are determined by the State, on basis of audits conducted in accordance with the terms of the Contract, not to constitute allowable costs.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The

Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment E, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation of services rendered under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed under this Contract, shall be maintained for a period of three (3) full years from the final date of this Contract and shall be subject to audit, at any reasonable time and upon reasonable notice, by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D. 20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH) Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules").

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver such information without entering into a business associate agreement or signing another such document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Terry Minton, Administrator
Tennessee Department of Agriculture
P.O. Box 40627, Nashville, TN 37204 (For private carrier: 420 Hogan Rd, Nashville, TN 37220)
Terry.Minton@tn.gov
Telephone # 615-837-5530
FAX # 615-837-5014

The Contractor:

Contractor Contact Name & Title
Contractor Name
Address
Email Address
Telephone # Number
FAX # Number

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3 Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.
- E.4. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- E.5. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- a. The Contract document and its attachments
 - b. All Clarifications and addenda made to the Contractor's Proposal
 - c. The Request for Proposal and its associated amendments
 - d. Technical Specifications provided to the Contractor
 - e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

- E.6. Insurance Requirements. Prior to commencement of services under this contract, the Contractor shall secure and maintain, at its sole expense, and for the duration of the contract term, sufficient insurance coverage. Proof of insurance must be provided to the State prior to contract execution. Insurance coverages required are:

"All Risk" escalating contents insurance at the warehouse with coverage equal to the value of the USDA commodities in warehouse at any one time.

“All Risk” transit insurance during transportation of the USDA commodities with coverage equal to the value of USDA commodities on delivery vehicles at any one time.

- E.7. Transfers. Costs resulting from a transfer of USDA commodity foods due to the cancellation or termination for cause of the Contract will be the responsibility of the Contractor. Costs resulting from the transfer of USDA commodity foods due the Contract’s termination for convenience by the State will be the responsibility of the State; however, the Contractor cannot assess a handling fee in excess of the lump-sum price.

Upon completion of the Contract, Contractor will transfer USDA commodity foods to the new successful bidder if Contractor is not the successful bidder for the next contract, at the new contractor’s expense. USDA commodity foods will be transferred at the lump-sum price specified in this Contract.

The new Contractor and the expired/terminated Contractor are mutually responsible for inspecting USDA commodity foods being transferred and for documenting damaged or out-of-condition product. The expired/terminated Contractor will be responsible for damaged or out-of-condition products.

In the case of an emergency/disaster, the State reserves the right to transfer USDA commodity foods by any carrier of the State’s choice and pay only the price quoted for lump-sum delivery.

- E.8. Federal Support. In the event that Federal funds or USDA commodity foods for the contract become unavailable, the State shall terminate the contract without penalty. Availability of funds will be determined by the State. The contractor shall be entitled to receive equitable compensation for satisfactorily authorized services completed as of the termination date.
- E.9. Monitoring and Review: State and Federal officials or any of their duly appointed representatives may inspect and inventory USDA commodity foods, may inspect and audit all records, and may review or audit the procedures and methods used in carrying out the requirements of this contract at any reasonable time and upon reasonable notice. On an annual basis, the State will conduct a physical review of USDA commodity food inventories and will reconcile physical and book inventories.
- E.10. Contract Termination. Any contract termination notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE **DATE**

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF AGRICULTURE:

JAI TEMPLETON, COMMISSIONER

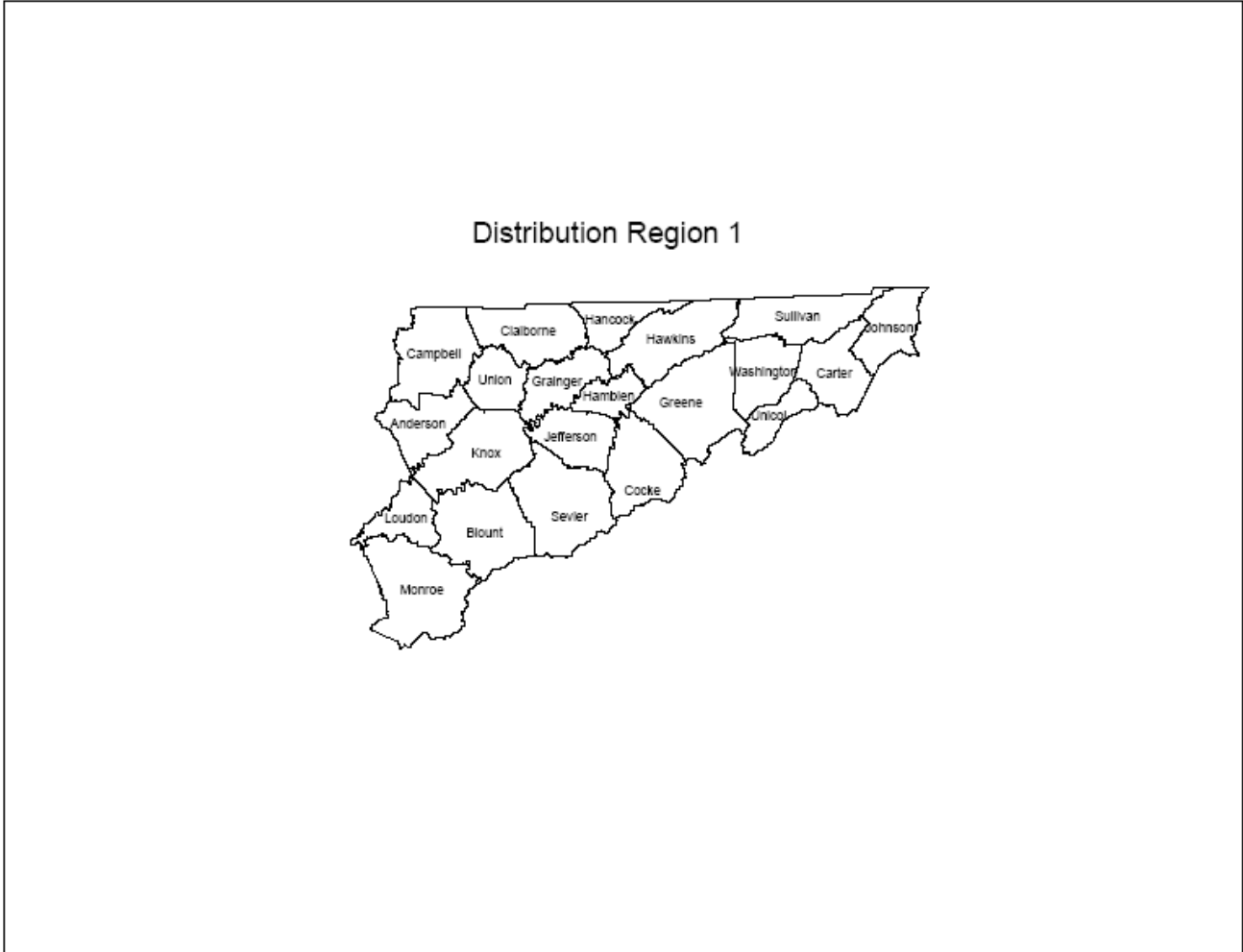
DATE

ATTACHMENTS TO

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF AGRICULTURE
AND
[CONTRACTOR NAME]**

- ATTACHMENT A DISTRIBUTION REGION**
- ATTACHMENT B REGION LISTING WITH APPROXIMATE NUMBER OF CASES AND STOPS**
- ATTACHMENT C COMMODITIES AVAILABLE TO RECIPIENT AGENCIES**
- ATTACHMENT D FOOD AND NUTRITION SERVICE (FNS) INSTRUCTION 709-5
(USDA GUIDANCE FOR SHIPMENT AND RECEIPT OF FOODS)**
- ATTACHMENT E ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

ATTACHMENT A
DISTRIBUTION REGION



ATTACHMENT B**REGION LISTING WITH APPROXIMATE NUMBER OF CASES AND STOPS**

REGION	Estimated Number of Cases	Estimated Number of Stops
1	61,986	283

The estimate for the annual number of cases is based on the actual number of non-processed cases ordered for School Year 2016-2017. These quantities are provided as estimates of future activity and are not implied or inferred as being guarantees. The State is obligated to order only the quantity needed by its recipient agencies during the term of the contract. The items and quantities will vary from year to year.

The estimated number of stops is based in part on Tennessee Department of Education's SDE directory which can be found online at <https://k-12.education.tn.gov/SDE/default.asp>. The estimated number of stops does not include the NETCO school cooperative, whose members have procured their own service provider. (NETCO membership is indicated on the following list of current Region 1 recipient agencies.) It should be noted that Loudon County Schools typically doesn't receive any cases because of its "bonus only" status. The State reserves the right to add or delete recipient agencies within the Region 1 counties. The Contractor agrees to provide service at the contracted price to any new recipient agencies.

Alcoa City Schools
Anderson County Schools
Blount County Schools
Bristol City Schools – NETCO
Campbell County Board of Education
Carter County Schools – NETCO
Claiborne County Schools
Clinton City Schools
Cocke County Board of Education – NETCO
Elizabethton City Schools
Free Will Baptist Ministries
Grainger County Schools - NETCO
Greene County Schools
Greeneville City Schools – NETCO
Hamblen County Schools – NETCO
Hancock County Schools
Hawkins County Schools - NETCO
Jefferson County Schools- NETCO
Johnson City Schools – NETCO
Johnson County Schools – NETCO
Kingsport City Schools
Knox County Schools
Lenoir City Schools
Loudon County Schools- Bonus Only
Maryville City Schools
Monroe County Schools
Newport City Schools – NETCO
Oak Ridge City Schools
Rogersville City Schools – NETCO
Sevier County Schools
Sullivan County Schools – NETCO
Sweetwater City Schools
Tennessee School for the Deaf
Unicoi County Schools - NETCO
Union County Schools
Washington County Schools

ATTACHMENT C

COMMODITIES AVAILABLE TO RECIPIENT AGENCIES

These items are currently available for recipient agencies to order. The list is not a guarantee that all items will be received. New items may also be added. In addition to the items listed, State approved processors convert USDA commodity foods into further processed end products. (For example, chicken nuggets are manufactured from bulk whole chickens.) Such processed end products are primarily frozen and shall be received, stored, and distributed under the same terms as all other USDA commodity foods.

COMMODITY	MATERIAL CODE	PACK SIZE	STORAGE
Apple Slices	100206	6/#10 can	Cool/Dry
Apples Fresh	100514	40 lb carton	Refrigerated
Applesauce	100208	6/#10 can	Cool/Dry
Applesauce Cups	110361	96/4.5 oz cups	Cool/Dry
Beans Green	100307	6/#10 can	Cool/Dry
Beans Pinto	100365	6/#10 can	Cool/Dry
Beans Vegetarian	100364	6/#10 can	Cool/Dry
Beef Cooked Homestyle Patty SPP	110322	40 lb ctn	Frozen
Beef Ground	100158	40 lb ctn	Frozen
Beef Patties SPP	110348	40 lb ctn	Frozen
Broccoli Frozen	110473	30# ctn	Frozen
Cheese Blend American Skim Slices	100036	6/5 lb slice loaves	Refrigerated
Cheese Process Sliced	100018	6/5 lb slice loaves	Refrigerated
Chicken Cut Up	100098	40 lb ctn	Frozen
Chicken Diced	100101	40 lb ctn	Frozen
Chicken Fajita	100117	30 lb ctn	Frozen
Chicken Strips	110462	30 lb ctn	Frozen
Corn Frozen	100348	30 lb ctn	Frozen
Corn Lqd 10	100313	6/#10 can	Cool/Dry
Fruit Mix	100212	6/#10 can	Cool/Dry
Ham Frz Cooked Sliced	100187	8/5 lb pkg/ctn	Frozen
Orange Juice Singles	100277	70/4 oz ctn	Frozen
Peaches Cling Sliced	100219	6/#10 can	Cool/Dry
Peaches Cup Frz 4.4 oz	100241	96/4.4 oz cups	Frozen
Pears Slices	100224	6/#10 can	Cool/Dry
Pork Roast	100173	32-40 lb ctn	Frozen
Potatoes Oven Fry	100357	6/5 lb pkg	Frozen
Potatoes Wedges	100355	6/5 lb pkg	Frozen
Strawberry Cup Frz 4.5 oz	100256	96/4.5 oz cups	Frozen
Sweet Potatoes	100317	6/#10 can	Cool/Dry
Tomato Salsa	100330	6/#10 can	Cool/Dry
Tomato Sauce Pouches	110187	6/106 oz pouches	Cool/Dry
Tomatoes Diced	100329	6/#10 can	Cool/Dry
Turkey Breast Deli	100121	40 lb container	Frozen
Turkey Hams	100126	40 lb ctn	Frozen
Turkey Roasts	100125	32-48 lb ctn	Frozen
Turkey Taco Filling	100119	30 lb container	Frozen
Veg Oil	100439	6/1 gal bottle	Cool/Dry
Yogurt Hi Protein Strawberry Cup 4 oz	110401	24/4 oz cups	Refrigerated

USDA Food and Nutrition Service (FNS) Instruction 709-5 Rev 2 Shipment and Receipt of USDA Foods

Contractors shall receive inbound freight in accordance with FNS Instruction 709-5 Rev 2. The full instruction can be found at <https://www.fns.usda.gov/fns-instruction-709-5-revision-2>

This attachment is intended to paraphrase and highlight key provisions of the instruction. [Throughout this instruction, the Contractor is the “consignee” and the company from whom USDA purchased the food is the “vendor.”]

ARRANGING FOR SHIPMENT AND DELIVERY

Delivery appointment. The vendor or carrier must arrange for a delivery appointment with the consignee at least 48 hours before the expected delivery. [Note: FNS 709-5 still states 24 hours, but USDA’s contracting documents with vendors now require at least 48 hours.] All parties are highly encouraged to address any non-federal shipment or delivery requirements in advance of the delivery (e.g., additional paperwork required by the warehouse).

If the vendor or carrier arrives without a delivery appointment or is late for an appointment, the consignee should accept the shipment, if able, or work with the vendor or carrier to schedule delivery at a later time. When a carrier does not make a delivery appointment in advance, it is recommended that the consignee report the issue to the State.

Vendor or carrier unable to deliver USDA Foods. If a vendor or carrier arrives at the delivery location at the appointed time and is unable to unload USDA Foods as a result of action or inaction by the consignee, the vendor or carrier may place the USDA Foods in storage or move them to another location which may subject the consignee to additional charges.

Pallet exchange. Pallet exchange (i.e., trading pallets of equal quantity and quality for those delivered with shipment) is not required but may occur at the discretion of the consignee and should be arranged in advance of delivery.

INSPECTING THE SHIPMENT

General requirements. The consignee must inspect each shipment and commercial delivery receipt (e.g., BOL) carefully prior to unloading to ensure that the high security seal(s) is intact, to determine the overall condition of the USDA Foods and the number of units in the shipment, and to ensure the accuracy of the receipt.

Seal. The consignee must ensure that the high security seal(s) on the door or other point of entry of the truck or trailer is intact and must make a record of the serial number of the seal. If the high security seal is broken or lacking, or the serial number on the seal does not match the number on supporting documentation (e.g., BOL), the consignee must refuse the shipment and immediately notify the State, which will notify USDA and ensure the required inspection has been completed.

Removal of seal and temperature check. The consignee is responsible for the removal of the high security seal(s), which must be done with bolt cutters or a similar tool. For frozen or refrigerated foods, at a minimum, the consignee must check the thermometer, which is usually located outside of the truck, to ensure that the temperature in the freezer or refrigeration unit is at an acceptable level, in accordance with USDA guidance, and must ensure that the unit is switched on and working.

Quantity of USDA Foods. The consignee must determine if there is any obvious discrepancy from the quantity of USDA Foods ordered (e.g., an overage or shortage). A more careful count must be conducted as the shipment is unloaded and prior to the vendor or carrier departing.

ATTACHMENT D (Page 2 of 3)

Observing Condition of USDA Foods. The consignee must inspect the shipment to determine if the USDA Foods have been delivered in good condition and with no evidence of product tampering. The consignee should take note of any odors, infestation (e.g., dead insects or nesting materials), or damage to inner or outer containers. For frozen foods, the consignee should look for signs of defrosting or signs of thawing and re-freezing of the foods that could have occurred prior to the arrival of the shipment. For USDA Foods that are not intended to be frozen (e.g., canned products), it is recommended that the consignee also check to ensure that such foods do not arrive in such manner.

Fresh fruit or vegetable shipments, with the exception of fresh apples, must be inspected by a USDA representative prior to unloading in accordance with contract specifications. The vendor must arrange for the inspection at each delivery destination and pay any costs associated with inspection.

Out-of-condition USDA Foods and required notification. If consignee inspection indicates that all, or a major portion, of the USDA Foods in a shipment are out-of-condition, the consignee must immediately notify the State, which will provide guidance.

If there is a doubt as to the condition of the USDA Foods, or a disagreement with the vendor or carrier regarding their condition, the consignee must immediately notify the State, which will consult with USDA to determine a course of action.

ACCEPTING AND RECEIPTING FOR THE SHIPMENT

Delivery receipt. The consignee must ensure that the delivery receipt (e.g., BOL) indicates the quantity of USDA Foods received, including product that is rejected at the time of receipt for being out-of-condition and the quantity received in good condition, before signing and dating such receipt and returning it to the vendor or carrier. The carrier, and not the consignee, is responsible for providing the vendor with the signed delivery receipt.

UNLOADING THE SHIPMENT

Consignee responsibilities. The consignee is responsible for unloading the shipment of USDA Foods and for removing and disposing of dunnage and other debris. The consignee may request reimbursement for costs associated with restacking items that arrive unpalletized or pallets that arrive poorly stacked if appropriate documentation, including photographs, is provided via the State to USDA before the shipment is accepted. Fees levied on the vendor or carrier (e.g., gate fees or lumper fees) are not permissible. For shipments of frozen or refrigerated foods, the consignee must ensure that the freezer or refrigeration unit remains on during unloading.

Vendor or carrier responsibilities. The vendor or carrier is responsible for shipping product on pallets or equivalent (e.g., slip sheets) that are in acceptable condition, in accordance with applicable contract specifications. If pallet exchange is desired, the vendor or carrier must arrange for pallet exchange with the consignee prior to delivery. Fees levied on the consignee (e.g., lumper fees) are not permissible.

Free time. The consignee must complete the unloading of the shipment, and the removal of dunnage and other debris, within the period of free time. For palletized loads, free time is up to two (2) hours. For non-palletized loads, free time is up to six (6) hours. Failure to complete the unloading within the free time may incur a demurrage or detention charge, which the consignee may be obligated to pay.

Verifying quantity of USDA Foods, overages, and shortages. The consignee must confirm the quantity of USDA Foods received when unloading to determine if the quantity of foods delivered is the quantity ordered or if there is an overage or shortage of the quantity ordered. Any overages or shortages must be noted on the signed delivery receipt [and in the emailed notice to the State].

For split shipments between two or more destinations, it is the responsibility of the consignee to unload the correct quantity at each delivery location in accordance with the Sales Orders.

ATTACHMENT D (Page 3 of 3)

Re-sealing for subsequent delivery. It is the responsibility of the vendor or carrier to re-seal/rebrace the truck for subsequent deliveries, such as in split shipments. In a split shipment, the consignee at the next delivery location must ensure that the high security seal(s) is intact and that the serial number on the seal matches the number on supporting documentation. Issues related to re-sealing, such as broken or lacking seals should be immediately referred to the State.

RECORDS

Required Records. The consignee must maintain documentation of:

- The serial number of high security seal(s).
- The temperature of a freezer or refrigerated truck or trailer upon arrival.
- The result of any inspections by State or local health authorities or USDA certification agent to determine the condition of USDA foods.
- The disposition of USDA foods received out-of-condition, including, as applicable, the destruction of such foods or a signed salvage receipt from the vendor or carrier.

Retention of records. All records must be retained for a period of three years from the close of the fiscal year to which they pertain.

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION NUMBER:	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION