

NEBRASKA

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DEPT. OF HEALTH AND HUMAN SERVICES



Pete Ricketts, Governor

April 24, 2018

Dear Prospective Vendor:

The State of Nebraska Department of Health and Human Services is issuing the following solicitation:

Solicitation Number: Request for Proposal 95575 O3
Service: Distribution of United State Department of Agriculture (USDA) Foods
Opening Date: June 1, 2018
Buyer: Michelle Thompson

Copies of RFP 95575 O3 and all information relevant to this solicitation to include addenda and/or amendments may be obtained from the State Purchasing Bureau web site at:

<http://das.nebraska.gov/materiel/purchasing/95575%20O3/95575%20O3.html>

It is the responsibility of the bidder to check this site for other pertinent information and any mandatory requirements. All information relevant to this solicitation to include addenda and/or amendments that may be issued prior to the opening date will be posted to the web site.

Solicitation responses must be in a sealed envelope that indicates the Solicitation Number and Opening Date. Sealed responses must be received in the State Purchasing Bureau on or before the date and time indicated in the Schedule of Events, at which time responses will be publicly opened.

Any problems accessing the website regarding the above solicitation should be e-mailed to dhhs.procurement@nebraska.gov.

Sincerely,

Michelle Thompson | Buyer III

OPERATIONS - CENTRAL PROCUREMENT SERVICES

Nebraska Department of Health and Human Services

OFFICE: 402-471-6082 | FAX: 402-742-8316



US Foods, Inc. ("US Foods") Addendum to Nebraska Department of Health and Human Services ("Customer") Request for Proposal (the "Bid")

Bid Due Date: June 1, 2018

Bid Number: 95575 O3

Bidder: US Foods, Inc.

Bid Period: 5 year term with dates of term TBD

Bid: Distribution of United State Department of Agriculture (USDA) Foods

US Foods is pleased to submit a proposal in response to the above listed Bid. We are confident that if awarded your business, our relationship will be mutually beneficial to us both. Our proposal represents what we do best, and it coincides with the desired products, prices, and services you have outlined in your solicitation. The terms "we," "us," and "our" refer to US Foods and the terms "you" and "your" refer to Customer.

1. US Foods follows industry standard pricing practices when determining a sales price. For complete transparency and in accordance with the instructions of the solicitation, set forth below are additional information, comments and exceptions to the solicitation that describe the method by which we determine your sales price.

With regard to any and all pricing and cost sections of the Bid and Official Bid Pricing Spreadsheet, the following definitions and terms as clarification shall apply:

- a. **Sell Price.** Sell Price is the price at which we will sell products to you. The markup or fee per unit of sale we will use to calculate Sell Price will be as stated in the Bid. The Sell Price is calculated as follows:

Sell Price = Delivered Price + mark up

- b. **Delivered Price.** The Delivered Price refers to our Supplier's invoice or quote, which may include a transportation fee for inbound shipment to our distribution center. For purposes hereof, "Supplier" means manufacturers, vendors, suppliers, packers, brokers, redistributors, consolidators, transaction service providers and US Foods business units and affiliates. When our Supplier's invoice or quote does not include a fee for transporting products, Delivered Price will include compensation to us for inbound shipment to our distribution centers and, in such situations, the transportation fee will not exceed the average market freight price, for comparable products, shipping methods and quantities. We may use our logistics expertise to manage freight and consolidate orders and may earn income and profit from those freight management activities; provided that Delivered Price will not exceed the f.o.b. origin unit price plus the transportation fee for inbound shipments to our distribution center that would have been payable at the quantities ordered had we not managed freight. For products sold under trademarks owned and licensed by us ("Exclusive Brand Products"), Delivered Price may be calculated based on our published price list plus any applicable service charge. If there is a national agreement between us and a Supplier that specifies the price we must charge our customers for certain products, the Sell Price, which is

the price at which we will sell products to you, will be governed by such national agreements. Delivered Price will include any duties, taxes or fees we are charged by a Supplier. All manufacturer's discounts on the face of the invoice or that are otherwise designated by a Supplier to be passed on to you will be applied when determining the Sell Price. Delivered Price is a price, not an actual product cost, and may include Earned Income.

c. **Earned Income.** "Earned Income" is the income and profit we make from value-added services we provide, such as regional and national marketing, freight management, procurement leverage, consolidated warehousing, quality assurance, and performance-based product marketing. We also receive income and make a profit from the sale of our Exclusive Brand Products, from our Suppliers through promotional allowances, cash discounts, prompt pay discounts, growth programs, and from other transactional payments and our management of competitive conditions. All of this income and profit is referred to as "Earned Income." We may negotiate or set the invoice price and amount of earned income we receive from our Suppliers. The Sell Price is not adjusted for Earned Income.

d. **Selection of Invoice to Set Delivered Price.** We may select the invoice price to be used for determining Delivered Price from our Supplier's purchase orders for product currently available for sale or from confirmed purchase orders for product due to be received no later than Wednesday of the following week for weekly priced items and for product due to be received no later than the seventh business day of the following calendar month for monthly priced items.

e. **Price Adjustments.** The product prices in our submission reflect all applicable discounts and rebates provided by manufacturers that are intended to be passed along to the Customer.

2. With regard to any and all sections of the Bid pertaining to document ownership, the following will apply:

US Foods shall maintain ownership of all documents, data, and reports prepared by the company under the Agreement. Upon reasonable notice, Customer may examine documents appropriate to verify price and mark-up under the terms of this agreement at the local foodservice distribution center serving the Customer.

3. With regard to any and all sections of the Bid relating to indemnification, the following will apply:

US Foods shall indemnify, defend and hold harmless you and/or its officers, agents, employees, representatives, subcontractors, assignees and/or designees from and against any and all allegations, claims, lawsuits, judgments, losses, civil penalties, liabilities, damages, costs, and expenses, including reasonable attorney's fees and court costs (each a "Claim"), arising out of or related to (A) any damage or defect to any good caused by US Foods while such goods were in the care, custody or control of US Foods; (B) any negligent or grossly negligent action, inaction, omission or intentional misconduct of US Foods in its performance of this Agreement; or (C) US Foods' breach of any representation, warranty, term, covenant, or other obligation under this Agreement, including compliance with all laws.

Manufacturer Indemnification provision:

US Foods requires manufacturers from whom it purchases goods to enter into supply agreements that include an indemnification provision substantially in the same form as the following:

[Manufacturer] shall indemnify, defend, save and hold harmless US Foods and its officers, directors, employees, agents and/or any direct or indirect customers from and against any and all claims, demands, suits, liabilities, damages, injuries, penalties, losses, settlements, judgments, costs

and expenses (including reasonable attorneys' fees, costs and expenses) incurred or otherwise arising out of or allegedly resulting from: (i) a claim that the [Manufacturer] product specifications or [Manufacturer] intellectual property infringes upon or misappropriates any intellectual property rights in connection with the products; (ii) death of or injury to any person, damage to any property, or any other damage or loss, by whomsoever suffered, resulting or claimed to result in whole or in part from any actual or alleged quality or other defect in the products, whether latent or patent, or actual or alleged failure of the products to comply with any express or implied warranties or any claim of negligence or strict liability in tort relating to the products; (iii) violation by the products in their manufacture, possession, storage, use or sale, of any applicable federal, state or local laws, regulations, ordinances or administrative orders or rules; (iv) defect in the packaging, labeling, packing, shipping and/or invoicing of products; or (v) breach of [the supply agreement with US Foods] or any continuing obligation or representation or warranty (a "Claim" or "Claims"), except to the extent any such Claims are the direct result of negligent acts or the willful misconduct of US Foods.

4. With regard to any and all sections of the Bid relating to insurance, the following will apply:

US Foods shall provide certificates evidencing that the coverage and limits as outlined herein are in force and will remain in force, and should any of the described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

5. With regard to any and all sections of the Bid relating to assignment, the following will apply:

US Foods' interest in the resulting contract may be assigned or transferred in whole or in part to any corporation or entity which controls, is controlled by or is under common control with US Foods, or to any corporation or entity resulting from the merger, re-organization or consolidation with US Foods, or to any corporation or entity which becomes the successor to substantially all of US Foods' assets or substantially all of US Foods' assets in the applicable market area.

6. With regard to any and all sections of the Bid relating to antitrust, the following will apply:

US Foods will use commercially reasonable efforts to make you whole in the event it is provided with the option of being a class participant in any anti-trust litigation in which the underlying products in question were sold by US Foods to you. You acknowledge and understands assignment of any claim by US Foods is impracticable based upon the breadth of products sold by US Foods across its customer base.

7. With regard to any and all sections of the Bid relating to inspection of USF property and facilities, the following will apply:

US Foods will authorize a tour of the physical property upon request only.

8. With regard to any and all sections of the Bid relating to audits, the following will apply:

All audits by the Customer are subject to the following:

a. Upon reasonable notice, but no more frequently than once every six (6) months, or during our year-end accounting procedures, the customer may examine documents appropriate to verify price and mark-up under the terms of this agreement at the local foodservice distribution center serving the customer.

- b. A list detailing the product(s), with the location to be audited, and the time periods must be submitted to US Foods at least ten (10) business days prior to any such audit. Each request should include the USF invoice number the item was sold on, the USF customer number tied to that item and the USF item code being requested for Audit.
- c. The Customer may audit any monthly period within 12 months of the audit period. Customer must provide four (4) weeks advance written notice of each Audit.
- d. The audit shall be limited to no more than twenty-five (25) items for all USF distribution centers combined, and to invoices not more than thirteen (13) weeks old.
- e. The audits shall be conducted during regular business hours in such a manner as not to unduly interfere with US Foods' operations.
- f. The Customer guarantees the confidentiality of information provided by US Foods.
- g. In the event that the services of an outside consultant are used to aid the customer in such audit, said consultant shall be required to execute a confidentiality agreement in favor of US Foods containing terms acceptable to US Foods as a condition to the consultant's participation in the price verification. US Foods reserves the right of final approval for the use of any outside consultant, such approval not to be unreasonably withheld.

By awarding the Bid to US Foods, Customer acknowledges that the terms of the resulting contract are governed by and construed by the terms and clarifications of this Addendum, which shall become part of the resulting contract.

**State of Nebraska Department of Health and Human Services
REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES**

RETURN TO:
State Purchasing Bureau
1526 K Street, Suite 130
Lincoln, NE 68508
Phone: (402) 471-6500

SOLICITATION NUMBER	RELEASE DATE
RFP 95575 O3	April 24, 2018
OPENING DATE AND TIME	PROCUREMENT CONTACT
June 1, 2018 2:00 p.m. Central Time	Michelle Thompson

**PLEASE READ CAREFULLY!
SCOPE OF SERVICE**

The State of Nebraska (State), Department of Health and Human Services (DHHS), is issuing this Request for Proposal (RFP) Number 95575 O3 for the purpose of selecting a qualified Bidder to provide Distribution of United States Department of Agriculture (USDA) Foods. A more detailed description can be found in Section V. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar services from other sources now or in the future.

The term of the contract will be five (5) years commencing upon execution of the contract. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

ALL INFORMATION PERTINENT TO THIS REQUEST FOR PROPOSAL CAN BE FOUND ON THE INTERNET AT:
<http://das.nebraska.gov/materiel/purchasing.html>.

IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.04, State contracts in effect as of January 1, 2014, and contracts entered into thereafter, must be posted to a public website. The resulting contract, the RFP, and the successful bidder's proposal or response will be posted to a public website managed by DAS, which can be found at <http://statecontracts.nebraska.gov>.

In addition and in furtherance of the State's public records Statute (Neb. Rev. Stat. § 84-712 et seq.), all proposals or responses received regarding this RFP will be posted to the State Purchasing Bureau public website.

These postings will include the entire proposal or response. Bidders must request that proprietary information be excluded from the posting. The bidder must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate container or envelope marked conspicuously in black ink with the words "PROPRIETARY INFORMATION". The bidder must submit a detailed written document showing that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992) **THE BIDDER MAY NOT ASSERT THAT THE ENTIRE PROPOSAL IS PROPRIETARY. COST PROPOSALS WILL NOT BE CONSIDERED PROPRIETARY AND ARE A PUBLIC RECORD IN THE STATE OF NEBRASKA.** The State will then determine, in its discretion, if the interests served by nondisclosure outweighs any public purpose served by disclosure. (See Neb. Rev. Stat. § 84-712.05(3)) The bidder will be notified of the agency's decision. Absent a State determination that information is proprietary, the State will consider all information a public record subject to release regardless of any assertion that the information is proprietary.

If the agency determines it is required to release proprietary information, the bidder will be informed. It will be the bidder's responsibility to defend the bidder's asserted interest in non-disclosure.

To facilitate such public postings, with the exception of proprietary information, the State of Nebraska reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any contract, proposal, or response to this RFP for any purpose, and to authorize others to use the documents. Any individual or entity awarded a contract, or who submits a proposal or response to this RFP, specifically waives any copyright or other protection the contract, proposal, or response to the RFP may have; and, acknowledges that they have the ability and authority to enter into such waiver. This reservation and waiver is a prerequisite for submitting a proposal or response to this RFP, and award of a contract. Failure to agree to the reservation and waiver will result in the proposal or response to the RFP being found non-responsive and rejected.

Any entity awarded a contract or submitting a proposal or response to the RFP agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses, sustained or asserted against the State, arising out of, resulting from, or attributable to the posting of the contract or the proposals and responses to the RFP, awards, and other documents.

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GLOSSARY OF TERMS

Acceptance Test Procedure: Benchmarks and other performance criteria, developed by the State of Nebraska or other sources of testing standards, for measuring the effectiveness of products or services and the means used for testing such performance.

Addendum: Something to be added or deleted to an existing document; a supplement.

Administering agency: The Nebraska Department of Education.

After Receipt of Order (ARO): After Receipt of Order

Agency: Any state agency, board, or commission other than the University of Nebraska, the Nebraska State colleges, the courts, the Legislature, or any other office or agency established by the Constitution of Nebraska.

Agent/Representative: A person authorized to act on behalf of another.

Amend: To alter or change by adding, subtracting, or substituting.

Amendment: A written correction or alteration to a document.

Appropriation: Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use.

Approved processor: A processor who has entered into a State Participation Agreement with DHHS.

Award: All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the RFP. The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple bidders in whole or in part. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal, and do not improve the bidder's competitive position. All awards will be made in a manner deemed in the best interest of the State.

Awarded distributor: A distributor (Contractor) who has entered into a contract with DHHS for the distribution of end products and other donated foods.

Awarded processor: A processor who has entered into a State Participation Agreement with DHHS and has been awarded a separate contract by DHHS for the purchase of end products on a fee for service basis.

Best and Final Offer (BAFO): In a competitive bid, the final offer submitted which contains the bidder's (vendor's) most favorable terms for price.

Bid/Proposal: The offer submitted by a vendor in a response to a written solicitation.

Bid Bond: An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the vendor will not withdraw the bid.

Bidder: A vendor who submits an offer bid in response to a written solicitation.

Business: Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other private legal entity.

Business Day: Any weekday, except State-recognized holidays.

Calendar Day: Every day shown on the calendar including Saturdays, Sundays, and State/Federal holidays.

Cancellation: To call off or revoke a purchase order without expectation of conducting or performing it at a later time.

Central Processing Unit (CPU): Any computer or computer system that is used by the State to store, process, or retrieve data or perform other functions using Operating Systems and applications software.

Change Order: Document that provides amendments to an executed purchase order or contract.

Collusion: An agreement or cooperation between two or more persons or entities to accomplish a fraudulent, deceitful, or unlawful purpose.

Commercial case price: The price charged by a distributor or processor for a unit of end product exclusive of a discount for the donated food that may be contained in the end product.

Commercial sale: The sale of an item that does not contain donated foods or the sale of an item without a donated food discount.

Commodities: Any equipment, material, supply or goods; anything movable or tangible that is provided or sold.

Commodities Description: Detailed descriptions of the items to be purchased; may include information necessary to obtain the desired quality, type, color, size, shape, or special characteristics necessary to perform the work intended to produce the desired results.

Competition: The effort or action of two or more commercial interests to obtain the same business from third parties.

Confidential Information: Unless otherwise defined below, "Confidential Information" shall also mean proprietary trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Nebraska Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive.

Contract: An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law; the writing that sets forth such an agreement.

Contract Administration: The management of the contract which includes and is not limited to; contract signing, contract amendments and any necessary legal actions.

Contract Award: Occurs upon execution of the State document titled "Service Contract Award" by the proper authority.

Contract Management: The management of day to day activities at the agency which includes and is not limited to ensuring deliverables are received, specifications are met, handling meetings and making payments to the Contractor.

Contract Period: The duration of the contract.

Contractor: Any individual or entity having a contract to furnish commodities or services.

Cooperative Purchasing: The combining of requirements of two or more political entities to obtain advantages of volume purchases, reduction in administrative expenses or other public benefits.

Copyright: A property right in an original work of authorship fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt and distribute the work.

Critical Program Error: Any Program Error, whether or not known to the State, which prohibits or significantly impairs use of the Licensed Software as set forth in the documentation and intended in the contract.

Customer Service: The process of ensuring customer satisfaction by providing assistance and advice on those products or services provided by the Contractor.

Default: The omission or failure to perform a contractual duty.

Deviation: Any proposed change(s) or alteration(s) to either the terms and conditions or deliverables within the scope of the written solicitation or contract.

Direct delivery donated food: Food purchased by the USDA and delivered by USDA vendors to State distributing agencies, Recipient Agencies, their storage facilities, or contracted storage facilities.

Distributing agency: The Nebraska Department of Health and Human Services, which may also be referred to as the State Distributing Agency (SDA).

Distributor: A commercial food purveyor or handler who is independent of a processor and charges and bills for the handling of donated foods, and/or sells and bills for the end products delivered to Recipient Agencies.

Diverted donated food: Food purchased by the USDA and delivered to a processor for processing into end products.

End product: A food product that contains processed donated foods.

Evaluation: The process of examining an offer after opening to determine the vendor's responsibility, responsiveness to requirements, and to ascertain other characteristics of the offer that relate to determination of the successful award.

Evaluation Committee: Committee(s) appointed by the requesting agency that advises and assists the procuring office in the evaluation of bids/proposals (offers made in response to written solicitations).

Extension: Continuance of a contract for a specified duration upon the agreement of the parties beyond the original Contract Period. Not to be confused with "Renewal Period".

FNS: The Food and Nutrition Service agency of the United States Department of Agriculture.

Food Code: The U. S. Food and Drug Administration (FDA) Food Code.

Free on Board (F.O.B.) Destination: The delivery charges are included in the quoted price and prepaid by the vendor. Vendor is responsible for all claims associated with damages during delivery of product.

Free on Board (F.O.B.) Point of Origin: The delivery charges are not included in the quoted price and are the responsibility of the agency. Agency is responsible for all claims associated with damages during delivery of product.

Foreign Corporation: A foreign corporation that was organized and chartered under the laws of another state, government, or country.

Installation Date: The date when the procedures described in "Installation by Contractor", and "Installation by State", as found in the RFP, or contract, are completed.

Interested Party: A person, acting in their personal capacity, or an entity entering into a contract or other agreement creating a legal interest therein.

Late Bid/Proposal: An offer received after the Opening Date and Time.

Licensed Software Documentation: The user manuals and any other materials in any form or medium customarily provided by the Contractor to the users of the Licensed Software which will provide the State with sufficient information to operate, diagnose, and maintain the Licensed Software properly, safely, and efficiently.

Mandatory/Must: Required, compulsory, or obligatory.

May: Discretionary, permitted; used to express possibility.

Module (see System): A collection of routines and data structures that perform a specific function of software.

Multi-State Processor: A processor that has entered into agreements with distributing or Recipient Agencies in more than one State, or that has entered into one or more agreements with distributing or Recipient Agencies that are located in a State other than the State in which the processor's processing facilities or business office is located.

Must: See Mandatory/ Must and Shall/Will/Must.

National Institute for Governmental Purchasing (NIGP): National Institute of Governmental Purchasing – Source used for assignment of universal commodity codes to goods and services.

National Processing Agreement: An agreement between FNS and a Multi-State Processor to process donated foods into end products for sale to distributing or Recipient Agencies.

Non-awarded distributor: A distributor who has not entered into a contract with DHHS for the distribution of end products and other donated foods.

Open Market Purchase: Authorization may be given to an agency to purchase items above direct purchase authority due to the unique nature, price, quantity, location of the using agency, or time limitations by the AS Materiel Division, State Purchasing Bureau.

Opening Date and Time: Specified date and time for the public opening of received, labeled, and sealed formal proposals.

Operating System: The control program in a computer that provides the interface to the computer hardware and peripheral devices, and the usage and allocation of memory resources, processor resources, input/output resources, and security resources.

Out-of-condition donated foods: Donated foods that are no longer fit for human consumption as a result of spoilage, contamination, infestation, adulteration, or damage.

Outsourcing: The contracting out of a business process which an organization may have previously performed internally or has a new need for, to an independent organization from which the process is purchased back.

Payroll & Financial Center (PFC): Electronic procurement system of record.

Performance Bond: An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the Contractor fulfills any and all obligations under the contract.

Platform: A specific hardware and Operating System combination that is different from other hardware and Operating System combinations to the extent that a different version of the Licensed Software product is required to execute properly in the environment established by such hardware and Operating System combination.

Point of Contact (POC): The person designated to receive communications and to communicate.

Pre-Bid/Pre-Proposal Conference: A meeting scheduled for the purpose of clarifying a written solicitation and related expectations.

Processor: A commercial enterprise that processes donated foods at a commercial facility.

Product: Something that is distributed commercially for use or consumption and that is usually (1) tangible personal property, (2) the result of fabrication or processing, and (3) an item that has passed through a chain of commercial distribution before ultimate use or consumption.

Program Error: Code in Licensed Software which produces unintended results or actions, or which produces results or actions other than those described in the specifications. A program error includes, without limitation, any Critical Program Error.

Program Set: The group of programs and products, including the Licensed Software specified in the RFP, plus any additional programs and products licensed by the State under the contract for use by the State.

Project: The total scheme, program, or method worked out for the accomplishment of an objective, including all documentation, commodities, and services to be provided under the contract.

Proposal: See Bid/Proposal.

Proprietary Information: Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serves no public purpose (see Neb. Rev. Stat. § 84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific named competitor(s) advantaged by release of the information and the demonstrated advantage the named competitor(s) would gain by the release of information.

Protest/Grievance: A complaint about a governmental action or decision related to a RFP or resultant contract, brought by a vendor who has timely submitted a bid response in connection with the award in question, to AS Materiel Division or another designated agency with the intention of achieving a remedial result.

Public Proposal Opening: The process of opening correctly submitted offers at the time and place specified in the written solicitation and in the presence of anyone who wished to attend.

Recipient Agency/Recipient Agencies: School Food Authorities that receive donated foods for use in meals provided to eligible persons, in accordance with agreements with the SDA. Also referred to as RA or RAs.

Recommended Hardware Configuration: The data processing hardware (including all terminals, auxiliary storage, communication, and other peripheral devices) to the extent utilized by the State as recommended by the Contractor.

Release Date: The date of public release of the written solicitation to seek offers.

Renewal Period: Optional contract periods subsequent to the original Contract Period for a specified duration with previously agreed to terms and conditions. Not to be confused with Extension.

Request for Information (RFI): A general invitation to vendors requesting information for a potential future solicitation. The RFI is typically used as a research and information gathering tool for preparation of a solicitation.

Request for Proposal (RFP): A written solicitation utilized for obtaining competitive offers.

Responsible Bidder: A bidder who has the capability in all respects to perform fully and lawfully all requirements with integrity and reliability to assure good faith performance.

Responsive Bidder: A bidder who has submitted a bid which conforms to all requirements of the solicitation document.

School Food Authority: The governing body responsible for the administration of one or more schools, and that has the legal authority to operate the National School Lunch Program or is otherwise approved by The Nebraska Department of Education to operate a child nutrition program.

School Year: July through June (e.g. School Year 2016: July 2015 through June 2016; School Year 2017: July 2016 through June 2017; School Year 2018: July 2017 through June 2018)

Shall/Will/Must: An order/command; mandatory.

Should: Expected; suggested, but not necessarily mandatory.

Software License: Legal instrument with or without printed material that governs the use or redistribution of licensed software.

Sole Source – Commodity: When an item is available from only one source due to the unique nature of the requirement, its supplier, or market conditions.

Sole Source – Services: A service of such a unique nature that the vendor selected is clearly and justifiably the only practical source to provide the service. Determination that the vendor selected is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required.

Specifications: The detailed statement, especially of the measurements, quality, materials, and functional characteristics, or other items to be provided under a contract.

State Participation Agreement: A distributing agency's agreement with a Multi-State Processor to permit the sale of finished end products produced under the processor's National Processing Agreement to eligible Recipient Agencies in the State or to directly purchase such finished end products.

Statutory: These clauses are controlled by state law and are not subject to negotiation.

Storage facility: A publicly-owned or nonprofit facility or a commercial enterprise that stores donated foods or end products, and that may also transport such foods to another location.

Subcontractor: Individual or entity with whom the Contractor enters a contract to perform a portion of the work awarded to the contractor.

System (see Module): Any collection or aggregation of two (2) or more Modules that is designed to function, or is represented by the Contractor as functioning or being capable of functioning, as an entity.

Termination: Occurs when either Party, pursuant to a power created by agreement or law, puts an end to the contract prior to the stated expiration date. All obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

Third Party: Any person or entity, including but not limited to fiduciaries, shareholders, owners, officers, managers, employees, legally disinterested persons, and subcontractors or agents, and their employees. It shall not include any entity or person who is an interested Party to the contract or agreement.

Trade Secret: Information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that (a) derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (see Neb. Rev. Stat. §87-502(4)).

Trademark: A word, phrase, logo, or other graphic symbol used by a manufacturer or vendor to distinguish its product from those of others, registered with the U.S. Patent and Trademark Office.

Upgrade: Any change that improves or alters the basic function of a product or service.

Value Pass Through System: A system of passing through Federal financial assistance in the form of USDA donated foods to Recipient Agencies pursuant to Federal regulations.

Vendor: An individual or entity lawfully conducting business in the State of Nebraska, or licensed to do so, who seeks to provide goods or services under the terms of a written solicitation.

Vendor Performance Report: A report issued to the Contractor by State Purchasing Bureau when products or services delivered or performed fail to meet the terms of the purchase order, contract, and/or specifications, as reported to State Purchasing Bureau by the agency. The State Purchasing Bureau shall contact the Contractor regarding any such report. The vendor performance report will become a part of the permanent record for the Contractor. The State may require vendor to cure. Two such reports may be cause for immediate termination.

Will: See Shall/Will/Must.

Work Day: See Business Day.

ACRONYM LIST

CFR:	Code of Federal Regulations
DHHS:	Department of Health and Human Services
FDA:	United States Food and Drug Administration
FNS:	Food and Nutrition Service
NOI:	Net Off Invoice
RA:	Recipient Agency
SFSP:	Summer Food Service Program
SDA:	State Distributing Agency
USDA:	United States Department of Agriculture
WBSCM:	Web Based Supply Chain Management

I. PROCUREMENT PROCEDURE

A. GENERAL INFORMATION

The RFP is designed to solicit proposals from qualified bidders who will be responsible for providing Distribution of United States Department Agriculture Foods at a competitive and reasonable cost.

Proposals shall conform to all instructions, conditions, and requirements included in the RFP. Prospective bidders are expected to carefully examine all documents, schedules, and requirements in this RFP, and respond to each requirement in the format prescribed. Proposals may be found non-responsive if they do not conform to the RFP.

B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS

Procurement responsibilities related to this RFP reside with the Department of Health and Human Services (DHHS). The point of contact (POC) for the procurement is as follows:

Name: Michelle Thompson
Agency: Department of Health and Human Services
Address: 301 Centennial Mall South, 5th Floor
Lincoln, NE 68508
Telephone: 402-471-6082

E-Mail: dhhs.procurement@nebraska.gov

From the date the RFP is issued until the Intent to Award is issued, communication from the bidder is limited to the POC listed above. After the Intent to Award is issued, the bidder may communicate with individuals the State has designated as responsible for negotiating the contract on behalf of the State. No member of the State Government, employee of the State, or member of the Evaluation Committee is empowered to make binding statements regarding this RFP. The POC will issue any clarifications or opinions regarding this RFP in writing. Only the buyer can modify the RFP, answer questions, render opinions, and only the SPB or awarding agency can award a contract. Bidders shall not have any communication with, or attempt to communicate or influence any evaluator involved in this RFP.

The following exceptions to these restrictions are permitted:

1. Contact made pursuant to pre-existing contracts or obligations;
2. Contact required by the schedule of events or an event scheduled later by the RFP POC; and
3. Contact required for negotiation and execution of the final contract.

The State reserves the right to reject a bidder's proposal, withdraw an Intent to Award, or terminate a contract if the State determines there has been a violation of these procurement procedures.

C. SCHEDULE OF EVENTS

The State expects to adhere to the procurement schedule shown below, but all dates are approximate and subject to change.

	ACTIVITY	DATE/TIME
1.	Release RFP	April 24, 2018
2.	Last day to submit written questions	May 8, 2018
3.	State responds to written questions through RFP "Addendum" and/or "Amendment" to be posted to the Internet at: http://das.nebraska.gov/materiel/purchasing.html	May 18, 2018
4.	Proposal opening Location: State Purchasing Bureau 1526 K Street, Suite 130 Lincoln, NE 68508	June 1, 2018 2:00 PM Central Time
5.	Review for conformance to RFP requirements	June 1, 2018
6.	Evaluation period	June 4 – 8, 2018
7.	Post "Intent to Award" to Internet at: http://das.nebraska.gov/materiel/purchasing.html	June 12, 2018
8.	Contract finalization period	June 13 – 29, 2018
9.	Contract award	July 1, 2018
10.	Contractor start date	July 1, 2019

D. WRITTEN QUESTIONS AND ANSWERS

Questions regarding the meaning or interpretation of any RFP provision must be submitted in writing to the Department of Health and Human Services and clearly marked "RFP Number 95575 O3; Distribution of United States Department Agriculture Foods Questions". The POC is not obligated to respond to questions that are received late per the Schedule of Events.

Bidders should present, as questions, any assumptions upon which the bidder's proposal is or might be developed. Proposals will be evaluated without consideration of any known or unknown assumptions of a bidder. The contract will not incorporate any known or unknown assumptions of a bidder.

It is preferred that questions be sent via e-mail to dhhs.procurement@nebraska.gov, but may be delivered by hand or by U.S. Mail. It is recommended that bidders submit questions using the following format.

RFP Reference	Section	RFP Number	Page	Question

Written answers will be posted at <http://das.nebraska.gov/materiel/purchasing.html> per the Schedule of Events.

E. RECYCLING (§81-15,159(d)(2))

Preference will be given to items which are manufactured or produced from recycled material or which can be readily reused or recycled after their normal use. Preference will also be given to purchases of corn-based biodegradable plastics and road deicers if available and suitable. No preference shall be given if such preference would result in the purchase of products, materials, or supplies that are of inadequate quality or of substantially higher cost.

F. PRICES

All prices, costs, and terms and conditions submitted in the proposal shall remain fixed and valid commencing on the opening date of the proposal until the contract terminates or expires.

G. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory)

All bidders must be authorized to transact business in the State of Nebraska and comply with all Nebraska Secretary of State Registration requirements. The bidder who is the recipient of an Intent to Award will be required to certify that it has complied and produce a true and exact copy of its current (within ninety (90) calendar days of the intent to award) Certificate or Letter of Good Standing, or in the case of a sole proprietorship, provide written documentation of sole proprietorship and complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>. This must be accomplished prior to execution of the contract.

H. ETHICS IN PUBLIC CONTRACTING

The State reserves the right to reject bids, withdraw an intent to award or award, or terminate a contract if a bidder commits or has committed ethical violations, which include, but are not limited to:

1. Offering or giving, directly or indirectly, a bribe, fee, commission, compensation, gift, gratuity, or anything of value to any person or entity in an attempt to influence the bidding process;
2. Utilize the services of lobbyists, attorneys, political activists, or consultants to influence or subvert the bidding process;
3. Being considered for, presently being, or becoming debarred, suspended, ineligible, or excluded from contracting with any state or federal entity;
4. Submitting a proposal on behalf of another Party or entity; and
5. Collude with any person or entity to influence the bidding process, submit sham proposals, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the bid, or prejudice the State.

The bidder shall include this clause in any subcontract entered into for the exclusive purpose of performing this contract.

Bidder shall have an affirmative duty to report any violations of this clause by the bidder throughout the bidding process, and throughout the term of this contract for the successful bidder and their subcontractors.

I. DEVIATIONS FROM THE REQUEST FOR PROPOSAL

The requirements contained in the RFP become a part of the terms and conditions of the contract resulting from this RFP. Any deviations from the RFP in Sections II through VI must be clearly defined by the bidder in its proposal and, if accepted by the State, will become part of the contract. Any specifically defined deviations must not be in conflict with the basic nature of the RFP, requirements, or applicable state or federal laws or statutes. "Deviation",

for the purposes of this RFP, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this RFP. The State discourages deviations and reserves the right to reject proposed deviations.

J. SUBMISSION OF PROPOSALS

Bidders should submit one proposal marked on the first page: "ORIGINAL". If multiple proposals are submitted, the State will retain one copy marked "ORIGINAL" and destroy the other copies. The bidder is solely responsible for any variance between the copies submitted. Proposal responses should include the completed Form A, "Bidder Contact Sheet". Proposals must reference the RFP number and be sent to the specified address. Please note that the address label should appear as specified in Section I B. on the face of each container or bidder's bid response packet. If a recipient phone number is required for delivery purposes, 402-471-6082 should be used. The RFP number should be included in all correspondence.

Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to requirements, completeness, and clarity of content. If the bidder's proposal is presented in such a fashion that makes evaluation difficult or overly time consuming the State reserves the right to reject the proposal as non-conforming.

By signing the "Request for Proposal for Contractual Services" form, the bidder guarantees compliance with the provisions stated in this RFP.

The State shall not incur any liability for any costs incurred by bidders in replying to this RFP, in the demonstrations and/or oral presentations, or in any other activity related to bidding on this RFP.

K. BID PREPARATION COSTS

The State shall not incur any liability for any costs incurred by bidders in replying to this RFP, including any activity related to bidding on this RFP.

L. FAILURE TO COMPLY WITH REQUEST FOR PROPOSAL

Violation of the terms and conditions contained in this RFP or any resultant contract, at any time before or after the award, shall be grounds for action by the State which may include, but is not limited to, the following:

1. Rejection of a bidder's proposal;
2. Withdrawal of the Intent to Award;
3. Withdrawal of the Award;
4. Termination of the resulting contract;
5. Legal action; and
6. Suspension of the bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

M. BID CORRECTIONS

A bidder may correct a mistake in a bid prior to the time of opening by giving written notice to the State of intent to withdraw the bid for modification or to withdraw the bid completely. Changes in a bid after opening are acceptable only if the change is made to correct a minor error that does not affect price, quantity, quality, delivery, or contractual conditions. In case of a mathematical error in extension of price, unit price shall govern.

N. LATE PROPOSALS

Proposals received after the time and date of the proposal opening will be considered late proposals. Late proposals will be returned unopened, if requested by the bidder and at bidder's expense. The State is not responsible for proposals that are late or lost regardless of cause or fault.

O. PROPOSAL OPENING

The opening of proposals will be public and the bidders will be announced. Proposals **WILL NOT** be available for viewing by those present at the proposal opening. Vendors may contact the State to schedule an appointment for viewing proposals after the Intent to Award has been posted to the website. Once proposals are opened, they become the property of the State of Nebraska and will not be returned.

P. REQUEST FOR PROPOSAL/PROPOSAL REQUIREMENTS

The proposals will first be examined to determine if all requirements listed below have been addressed and whether further evaluation is warranted. Proposals not meeting the requirements may be rejected as non-responsive. The requirements are:

1. Original Request for Proposal for Contractual Services form signed using an indelible method;
2. Clarity and responsiveness of the proposal;
3. Completed Sections II through IV; and

4. Completed State Cost Proposal Template (Attachment One).

Q. EVALUATION OF PROPOSALS

All proposals that are responsive to the RFP will be evaluated based on the following:

1. Cost Proposal

Neb. Rev. Stat. §73-107 allows for a preference for a resident disabled veteran or business located in a designated enterprise zone. When a state contract is to be awarded to the lowest responsible bidder, a resident disabled veteran or a business located in a designated enterprise zone under the Enterprise Zone Act shall be allowed a preference over any other resident or nonresident bidder, if all other factors are equal.

Resident disabled veterans means any person (a) who resides in the State of Nebraska, who served in the United States Armed Forces, including any reserve component or the National Guard, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who possesses a disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense and (b)(i) who owns and controls a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection and (ii) the management and daily business operations of the business are controlled by one or more persons described in subdivision(a) of this subsection. Any contract entered into without compliance with this section shall be null and void.

Therefore, if a resident disabled veteran or business located in a designated enterprise zone submits a proposal in accordance with Neb. Rev. Stat. §73-107 and has so indicated on the RFP cover page under "Bidder must complete the following" requesting priority/preference to be considered in the award of this contract, the following will need to be submitted by the vendor within ten (10) business days of request:

1. Documentation from the United States Armed Forces confirming service;
2. Documentation of discharge or otherwise separated characterization of honorable or general (under honorable conditions);
3. Disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense; and
4. Documentation which shows ownership and control of a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection; and the management and daily business operations of the business are controlled by one or more persons described in subdivision (a) of this subsection.

Failure to submit the requested documentation within ten (10) business days of notice will disqualify the bidder from consideration of the preference.

R. BEST AND FINAL OFFER

If best and final offers (BAFO) are requested by the State and submitted by the bidder, they will be evaluated (using the stated BAFO criteria), scored, and ranked by the Evaluation Committee. The State reserves the right to conduct more than one Best and Final Offer. The award will then be granted to the highest scoring bidder. However, a bidder should provide its best offer in its original proposal. Bidders should not expect that the State will request a best and final offer.

S. REFERENCE AND CREDIT CHECKS

The State reserves the right to conduct and consider reference and credit checks. The State reserves the right to use third parties to conduct reference and credit checks. By submitting a proposal in response to this RFP, the bidder grants to the State the right to contact or arrange a visit in person with any or all of the bidder's clients. Reference and credit checks may be grounds to reject a proposal, withdraw an intent to award, or rescind the award of a contract.

T. AWARD

The State reserves the right to evaluate proposals and award contracts in a manner utilizing criteria selected at the State's discretion and in the State's best interest. After evaluation of the proposals, or at any point in the RFP process, the State of Nebraska may take one or more of the following actions:

1. Amend the RFP;
2. Extend the time of or establish a new proposal opening time;
3. Waive deviations or errors in the State's RFP process and in bidder proposals that are not material, do not compromise the RFP process or a bidder's proposal, and do not improve a bidder's competitive position;

4. Accept or reject a portion of or all of a proposal;
5. Accept or reject all proposals;
6. Withdraw the RFP;
7. Elect to rebid the RFP;
8. Award single lines or multiple lines to one or more bidders; or,
9. Award one or more all-inclusive contracts.

The State of Nebraska may consider, but is not limited to considering, one or more of the following award criteria:

1. Price;
2. Location;
3. Quality;
4. Delivery time;
5. Bidder qualifications and capabilities; and
6. State contract management requirements and/or costs.

The RFP does not commit the State to award a contract. Once intent to award decision has been determined, it will be posted to the Internet at:

<http://das.nebraska.gov/materiel/purchasing.html>

Grievance and protest procedure is available on the Internet at:

<http://dhhs.ne.gov/Documents/DHHS%20Grievance%20Protest%20Procedures%20for%20Vendors%2020180320.pdf>

Any protests must be filed by a bidder within ten (10) business days after the intent to award decision is posted to the Internet.

II. TERMS AND CONDITIONS

Bidders should complete Sections II through VI as part of their proposal. Bidder is expected to read the Terms and Conditions and should initial either accept, reject, or reject and provide alternative language for each clause. The bidder should also provide an explanation of why the bidder rejected the clause or rejected the clause and provided alternate language. By signing the RFP, bidder is agreeing to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the proposal. The State reserves the right to negotiate rejected or proposed alternative language. If the State and bidder fail to agree on the final Terms and Conditions, the State reserves the right to reject the proposal. The State of Nebraska is soliciting proposals in response to this RFP. The State of Nebraska reserves the right to reject proposals that attempt to substitute the bidder's commercial contracts and/or documents for this RFP.

The bidders should submit with their proposal any license, user agreement, service level agreement, or similar documents that the bidder wants incorporated in the contract. The State will not consider incorporation of any document not submitted with the bidder's proposal as the document will not have been included in the evaluation process. These documents shall be subject to negotiation and will be incorporated as addendums if agreed to by the Parties.

If a conflict or ambiguity arises after the Addendum to Contract Award have been negotiated and agreed to, the Addendum to Contract Award shall be interpreted as follows:

1. If only one Party has a particular clause then that clause shall control;
2. If both Parties have a similar clause, but the clauses do not conflict, the clauses shall be read together;
3. If both Parties have a similar clause, but the clauses conflict, the State's clause shall control.

A. GENERAL

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
<i>RW</i>			

The contract resulting from this RFP shall incorporate the following documents:

1. Request for Proposal and Addenda;
2. Amendments to the RFP;
3. Questions and Answers;
4. Contractor's proposal (RFP and properly submitted documents);
5. The executed Contract and Addendum One to Contract, if applicable ; and,
6. Amendments/Addendums to the Contract.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to the executed Contract with the most recent dated amendment having the highest priority, 2) executed Contract and any attached Addenda, 3) Amendments to RFP and any Questions and Answers, 4) the original RFP document and any Addenda, and 5) the Contractor's submitted Proposal.

Any ambiguity or conflict in the contract discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

B. NOTIFICATION

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth below, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or three (3) calendar days following deposit in the mail.

C. GOVERNING LAW (Statutory)

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this agreement must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, state and federal laws, ordinances, rules, orders, and regulations.

D. BEGINNING OF WORK

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

The bidder shall not commence any billable work until a valid contract has been fully executed by the State and the successful Contractor. The Contractor will be notified in writing when work may begin.

E. CHANGE ORDERS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

The State and the Contractor, upon the written agreement, may make changes to the contract within the general scope of the RFP. Changes may involve specifications, the quantity of work, or such other items as the State may find necessary or desirable. Corrections of any deliverable, service, or work required pursuant to the contract shall not be deemed a change. The Contractor may not claim forfeiture of the contract by reasons of such changes.

The Contractor shall prepare a written description of the work required due to the change and an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The State shall not incur a price increase for changes that should have been included in the Contractor's proposal, were foreseeable, or result from difficulties with or failure of the Contractor's proposal or performance.

No change shall be implemented by the Contractor until approved by the State, and the contract is amended to reflect the change and associated costs, if any. If there is a dispute regarding the cost, but both parties agree that immediate implementation is necessary, the change may be implemented, and cost negotiations may continue with both Parties retaining all remedies under the contract and law.

F. NOTICE OF POTENTIAL CONTRACTOR BREACH

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

If Contractor breaches the contract or anticipates breaching the contract, the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

G. BREACH

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

The State's failure to make payment shall not be a breach, and the Contractor shall retain all available statutory remedies and protections.

H. NON-WAIVER OF BREACH

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

The acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

I. SEVERABILITY

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the provision held to be invalid or illegal.

J. INDEMNIFICATION

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

1. GENERAL

The Contractor agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all third party claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

2. INTELLECTUAL PROPERTY

The Contractor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Contractor or its employees, subcontractors, consultants, representatives, and agents; provided, however, the State gives the Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Contractor has indemnified the State, the Contractor shall, at the Contractor's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the Contractor, and the State may receive the remedies provided under this RFP.

3. PERSONNEL

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel, including subcontractor's and their employees, provided by the Contractor.

4. SELF-INSURANCE

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

5. The Parties acknowledge that Attorney General for the State of Nebraska is required by statute to represent the legal interests of the State, and that any provision of this indemnity clause is subject to the statutory authority of the Attorney General.

K. ATTORNEY'S FEES

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Parties agree to pay all expenses of such action, as permitted by law and if order by the court, including attorney's fees and costs, if the other Party prevails.

L. ASSIGNMENT, SALE, OR MERGER

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

Either Party may assign the contract upon mutual written agreement of the other Party. Such agreement shall not be unreasonably withheld.

The Contractor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Contractor's business. Contractor agrees to cooperate with the State in executing amendments to the contract to allow for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this contract and perform all obligations of the contract.

M. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUB-DIVISIONS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. §81-145, to use this contract. The terms and conditions, including price, of the contract may not be amended. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause. A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

N. FORCE MAJEURE

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

Neither Party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or manmade event outside the control and not the fault of the affected Party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other Party, and shall have the burden of proof to justify the request. The other Party may grant the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted Party's own employees will not be considered a Force Majeure Event.

O. CONFIDENTIALITY

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

All materials and information provided by the Parties or acquired by a Party on behalf of the other Party shall be regarded as confidential information. All materials and information provided or acquired shall be handled in accordance with federal and state law, and ethical standards. Should said confidentiality be breached by a Party, the Party shall notify the other Party immediately of said breach and take immediate corrective action.

It is incumbent upon the Parties to inform their officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable by 5 U.S.C. 552a (m)(1), provides that any officer or employee, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

P. OFFICE OF PUBLIC COUNSEL (Statutory)

If it provides, under the terms of this contract and on behalf of the State of Nebraska, health and human services to individuals; service delivery; service coordination; or case management, Contractor shall submit to the jurisdiction of the Office of Public Counsel, pursuant to Neb. Rev. Stat. §§ 81-8,240 et seq. This section shall survive the termination of this contract.

Q. LONG-TERM CARE OMBUDSMAN (Statutory)

Contractor must comply with the Long-Term Care Ombudsman Act, Neb. Rev. Stat. §§ 81-2237 et seq. This section shall survive the termination of this contract.

R. CLEAN AIR ACT (Statutory)

If the total value of the contract between the contractor and the State exceeds \$150,000, the Contractor shall ensure that it in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act as amended, 33 U.S.C. §§ 1251 et seq.

S. EARLY TERMINATION

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, in its sole discretion, may terminate the contract for any reason upon sixty (60) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the contract immediately for the following reasons:
 - a. if directed to do so by statute;
 - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
 - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
 - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
 - e. an involuntary proceeding has been commenced by any Party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
 - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
 - g. Contractor intentionally discloses confidential information;
 - h. Contractor has or announces it will discontinue support of the deliverable; and,
 - i. In the event funding is no longer available.
4. The Contractor may terminate the contract for other cause upon three hundred sixty-five (365) calendar day's written notice to the State.

T. CONTRACT CLOSEOUT

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative with RFP Response (Initial)	NOTES/COMMENTS:
RW			

Upon contract closeout for any reason the Contractor shall within 30 days, unless stated otherwise herein:

1. Transfer all completed or partially completed deliverables to the State;
2. Transfer ownership and title to all completed or partially completed deliverables to the State;
3. Return to the State all information and data, unless the Contractor is permitted to keep the information or data by contract or rule of law. Contractor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures;
4. Cooperate with any successor Contractor, person or entity in the assumption of any or all of the obligations of this contract;
5. Cooperate with any successor Contractor, person or entity with the transfer of information or data related to this contract;
6. Return or vacate any state owned real or personal property; and,
7. Return all data in a mutually acceptable format and manner.

Nothing in this Section should be construed to require the Contractor to surrender intellectual property, real or personal property, or information or data owned by the Contractor for which the State has no legal claim.

III. CONTRACTOR DUTIES

A. INDEPENDENT CONTRACTOR / OBLIGATIONS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

It is agreed that the Contractor is an independent contractor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, agency, or a partnership.

The Contractor is solely responsible for fulfilling the contract. The Contractor or the Contractor's representative shall be the sole point of contact regarding all contractual matters.

The Contractor shall secure, at its own expense, all personnel required to perform the services under the contract. The personnel the Contractor uses to fulfill the contract shall have no contractual or other legal relationship with the State; they shall not be considered employees of the State and shall not be entitled to any compensation, rights or benefits from the State, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

By-name personnel commitments made in the Contractor's proposal shall not be changed without the prior written approval of the State. Replacement of these personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

All personnel assigned by the Contractor to the contract shall be employees of the Contractor or a subcontractor, and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor or the subcontractor respectively.

With respect to its employees, the Contractor agrees to be solely responsible for the following:

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. Damages incurred by Contractor's employees within the scope of their duties under the contract;
4. Maintaining Workers' Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law; and
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees.
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or subcontractors or subcontractor's employees)

If the Contractor intends to utilize any subcontractor, the subcontractor's level of effort, tasks, and time allocation should be clearly defined in the bidder's proposal. The Contractor shall agree that it will not utilize any subcontractors not specifically included in its proposal in the performance of the contract without the prior written authorization of the State.

The State reserves the right to require the Contractor to reassign or remove from the project any Contractor or subcontractor employee.

Contractor shall insure that the terms and conditions contained in any contract with a subcontractor does not conflict with the terms and conditions of this contract.

The Contractor shall include a similar provision, for the protection of the State, in the contract with any subcontractor engaged to perform work on this contract.

B. EMPLOYEE WORK ELIGIBILITY STATUS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>
The completed United States Attestation Form should be submitted with the RFP response.
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory)

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this RFP.

D. COOPERATION WITH OTHER CONTRACTORS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

Contractor may be required to work with or in close proximity to other contractors or individuals that may be working on same or different projects. The Contractor shall agree to cooperate with such other contractors or individuals, and shall not commit or permit any act which may interfere with the performance of work by any other contractor or individual. Contractor is not required to compromise Contractor's intellectual property or proprietary information unless expressly required to do so by this contract.

E. PERMITS, REGULATIONS, LAWS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

The contract price shall include the cost of all royalties, licenses, permits, and approvals, whether arising from patents, trademarks, copyrights or otherwise, that are in any way involved in the contract. The Contractor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the execution of the contract. The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, software, and other items used to execute this contract.

F. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RJ			

The State shall have the unlimited right to publish, duplicate, use, and disclose all information and data developed or obtained by the Contractor on behalf of the State pursuant to this contract.

The State shall own and hold exclusive title to any deliverable developed as a result of this contract. Contractor shall have no ownership interest or title, and shall not patent, license, or copyright, duplicate, transfer, sell, or exchange, the design, specifications, concept, or deliverable.

G. INSURANCE REQUIREMENTS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RJ			

The Contractor shall throughout the term of the contract maintain insurance as specified herein and provide the State a current Certificate of Insurance/Acord Form (COI) verifying the coverage. The Contractor shall not commence work on the contract until the insurance is in place. If Contractor subcontracts any portion of the Contract the Contractor must, throughout the term of the contract, either:

1. Provide equivalent insurance for each subcontractor and provide a COI verifying the coverage for the subcontractor;
2. Require each subcontractor to have equivalent insurance and provide written notice to the State that the Contractor has verified that each subcontractor has the required coverage; or,
3. Provide the State with copies of each subcontractor's Certificate of Insurance evidencing the required coverage.

The Contractor shall not allow any subcontractor to commence work until the Subcontractor has equivalent insurance. The failure of the State to require a COI, or the failure of the Contractor to provide a COI or require subcontractor insurance shall not limit, relieve, or decrease the liability of the Contractor hereunder.

In the event that any policy written on a claims-made basis terminates or is canceled during the term of the contract or within one (1) year of termination or expiration of the contract, the Contractor shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this contract for the term of the contract and one (1) year following termination or expiration of the contract.

If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

Notwithstanding any other clause in this contract, the State may recover up to the liability limits of the insurance policies required herein.

1. WORKERS' COMPENSATION INSURANCE

The Contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contractors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. **The policy shall include a waiver of subrogation in favor of the State. The COI shall contain the mandatory COI subrogation waiver language found hereinafter.** The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State of Nebraska, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers' Compensation and Employer's Liability Insurance for Nebraska employees.

2. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

The Contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any subcontractor performing work covered by this contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an **occurrence basis**, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury, and Contractual Liability coverage. **The policy shall include the State, and others as required by the contract documents, as Additional Insured(s). This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory. The COI shall contain the mandatory COI liability waiver language found hereinafter.** The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned, and Hired vehicles.

REQUIRED INSURANCE COVERAGE	
COMMERCIAL GENERAL LIABILITY	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$10,000 any one person
Damage to Rented Premises (Fire)	\$300,000 each occurrence
Contractual	Included
Independent Contractors	Included
Abuse & Molestation	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
WORKER'S COMPENSATION	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
Voluntary Compensation	Statutory
COMMERCIAL AUTOMOBILE LIABILITY	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
UMBRELLA/EXCESS LIABILITY	
Over Primary Insurance	\$5,000,000 per occurrence
MANDATORY COI SUBROGATION WAIVER LANGUAGE	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
MANDATORY COI LIABILITY WAIVER LANGUAGE	
"Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."	

If the mandatory COI subrogation waiver language or mandatory COI liability waiver language on the COI states that the waiver is subject to, condition upon, or otherwise limit by the insurance policy, a copy of the relevant sections of the policy must be submitted with the COI so the State can review the limitations imposed by the insurance policy.

3. EVIDENCE OF COVERAGE

The Contractor shall furnish the Contract Manager, with a certificate of insurance coverage complying with the above requirements prior to beginning work at:

Department of Health and Human
 Attn: Contract Manager
 5220 South 16th Street
 Lincoln, NE 68512

These certificates or the cover sheet shall reference the RFP number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

Reasonable notice of cancellation of any required insurance policy must be submitted to the contract manager as listed above when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

4. DEVIATIONS

The insurance requirements are subject to limited negotiation. Negotiation typically includes, but is not necessarily limited to, the correct type of coverage, necessity for Workers' Compensation, and the type of automobile coverage carried by the Contractor.

H. ANTITRUST

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

I. CONFLICT OF INTEREST

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

By submitting a proposal, bidder certifies that there does not now exist a relationship between the bidder and any person or entity which is or gives the appearance of a conflict of interest related to this RFP or project.

The bidder certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or an appearance of conflict of interest.

The bidder certifies that it will not knowingly employ any individual known by bidder to have a conflict of interest.

The Parties shall not knowingly, for a period of two years after execution of the contract, recruit or employ any employee or agent of the other Party who has worked on the RFP or project, or who had any influence on decisions affecting the RFP or project.

J. STATE PROPERTY

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

The Contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Contractor's use during the performance of the contract. The Contractor shall reimburse the State for any loss or damage of such property; normal wear and tear is expected.

K. SITE RULES AND REGULATIONS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

The Contractor shall use its best efforts to ensure that its employees, agents, and subcontractors comply with site rules and regulations while on State premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to in writing between the State and the Contractor.

L. ADVERTISING

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the State. Any publicity releases pertaining to the project shall not be issued without prior written approval from the State.

M. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory)

Contractor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> and ensure that products and/or services provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Contractor's performance, the State may create an amendment to the contract to request the contract comply with the changed standard at a cost mutually acceptable to the parties.

N. DISASTER RECOVERY/BACK UP PLAN

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

The Contractor shall have a disaster recovery and back-up plan, of which a copy should be provided upon request to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue services as specified under the specifications in the contract in the event of a disaster.

O. DRUG POLICY

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

IV. PAYMENT

A. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)

Payments shall not be made until contractual deliverable(s) are received and accepted by the State.

B. TAXES (Statutory)

The State is not required to pay taxes and assumes no such liability as a result of this solicitation. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

C. INVOICES

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

Invoices for monthly payments must be submitted by the Contractor to DHHS Food Distribution Program, PO Box 95026, Lincoln, NE 68509-5025 with sufficient detail to support payment. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

D. INSPECTION AND APPROVAL

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

Final inspection and approval of all work required under the contract shall be performed by the designated State officials.

The State and/or its authorized representatives shall have the right to enter any premises where the Contractor or subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

E. PAYMENT

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

State will render payment to Contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. (Neb. Rev. Stat. Section 73-506(1)) Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408). The State may require the Contractor to accept

payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

F. LATE PAYMENT (Statutory)

The Contractor may charge the responsible agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408).

G. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

The State's obligation to pay amounts due on the Contract for a fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

H. RIGHT TO AUDIT (First Paragraph is Statutory)

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
RW			

The State shall have the right to audit the Contractor's performance of this contract upon a 30 days' written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. The State may audit and the Contractor shall maintain, the Information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. Under no circumstance will the Contractor be required to create or maintain documents not kept in the ordinary course of Contractor's business operations, nor will Contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to Contractor.

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds one-half of one percent (.5%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

On at least an annual basis, DHHS will conduct a physical review of donated food inventories at the distributor's facilities and will reconcile physical and book inventories of donated foods. The distributor must make restitution for any losses or improper distribution of donated foods, as determined by DHHS.

V. PROJECT DESCRIPTION AND SCOPE OF WORK

A. BACKGROUND

The DHHS Food Distribution Program is inviting your participation in the bidding process to select a USDA Foods distributor for school years 2020 through 2024. This RFP marks the beginning of a new way of doing business with Nebraska schools starting in school year 2020 (July 1, 2019).

Beginning in school year 2020, the value pass through system, commonly referred to as Net Off Invoice (NOI), will be implemented by the successful bidder. By combining the distribution of traditional USDA Foods with the distribution of end products of nationally approved USDA Foods processors, DHHS will be providing the most efficient and cost-effective distribution system possible.

Under this new business model, schools will enjoy additional flexibility in the procurement of end products from nationally approved USDA processors, either directly or through the awarded distributor. Furthermore, DHHS will no longer limit the types of end products which may be sold within Nebraska.

The United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) purchases food for donation to States to be used in child nutrition programs administered within the State. Recipients of such foods are provided with a planned assistance level by the distributing agency. Recipient Agencies may choose how to best utilize their planned assistance level by selecting foods in any ratio from three basic categories;

1. direct delivery donated foods,
2. diverted donated foods (or end products), or
3. The Department of Defense, Fresh Fruit and Vegetable Order Receipt System (FFAVORS).

The USDA purchases over 180 types of direct delivery donated foods while over 30 types are expected to be available for further processing. However, DHHS does not make every single type of donated food available to Recipient Agencies or processors. Since States must order in full truck loads, only the most requested foods are made available. This is so donated foods can be distributed while in optimum condition and to help ensure inventory levels do not exceed a six (6) month supply.

Some Recipient Agencies are capable of receiving direct shipments of donated foods, thus bypassing the DHHS distribution system. These shipments may be delivered by USDA vendors or Multi-State Processors directly to Recipient Agency storage facilities, or their contracted storage facilities.

The purpose of this Request for Proposal is to select a business partner to distribute donated foods and to implement an indirect discount Value Pass Through System (hereafter referred to as indirect discount system) for distributing end products of Multi-State Processors. The distributor will be expected to fully embrace the indirect discount system further described in Section F.3 and integrate it into its sales and marketing efforts within Nebraska. In recent years, DHHS conducted all procurement of end products on behalf of Recipient Agencies. Going forward, DHHS will still conduct procurement, but in a limited capacity. The focus of the DHHS end product purchase efforts will be to consolidate the number of end products that DHHS procures. However, DHHS will broaden the availability of end products Recipient Agencies may procure on their own behalf by not limiting the types of end products that can be sold within the State. End products appearing on an awarded or approved Multi-State Processor's DHHS approved Summary End Product Data Schedule may be sold through the awarded distributor or directly to Recipient Agencies.

B. INVENTORY CARRY OVER

DHHS makes every effort to have no inventory remaining at the end of a school year. However, if at the beginning of the term of this contract, DHHS has inventory, the awarded distributor is required to transport remaining inventory to their facility at no cost to the State. Likewise, if at the end of the term of this contract, DHHS has remaining inventory, the incumbent distributor agrees to prepare for shipment all remaining DHHS inventory and provide dock access for any subsequent distributor taking possession of DHHS inventory at no additional cost to the State. DHHS inventory will not include any inventory of end products the distributor may decide to purchase from a processor and place into their inventory. Below is the history of State level inventory carried over from year to year.

School Year	Cases	Value	Location
2013 to 2014	53K	\$1 Million	Millard Refrigeration
2014 to 2015	13K	\$399K	The Thompson Co.
2015 to 2016	1K	\$45K	The Thompson Co.
2016 to 2017	0	\$0.00	The Thompson Co.
2017 to 2018	0	\$0.00	US Foods, Inc.

2018 to 2019 0 (projected) \$0.00 US Foods, Inc.

C. VOLUMES AND SUMS

USDA direct delivery items distributed (cases)

School Year	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May
2016	11274	14172	10263	18810	14696	20701	16847	15389	10406	4106
2017	13617	14898	16701	17801	14530	15620	14666	13298	9028	1726
2018	3071	23209	16203	18460	18453	19349	15527	13988	9759	4737

Fee for service end products distributed (cases)

School Year	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May
2016	12143	14683	14676	16421	17159	14314	18765	16213	16393	14889
2017	11367	12015	13867	16373	18717	19213	19323	21362	15296	14751
2018	15602	15462	15963	18546	16900	16499	14439	15757	15495	14639

Sum of Processing Fees by Month (billed by DHHS)

School Year 2016		School Year 2017		School Year 2018	
August	\$395,220.31	August	\$391,762.47	August	\$476,396.69
September	\$491,519.46	September	\$402,127.02	September	\$528,915.49
October	\$489,290.41	October	\$456,076.95	October	\$543,750.15
November	\$579,767.72	November	\$585,866.26	November	\$620,603.41
December	\$583,674.29	December	\$530,241.43	December	\$566,214.40
January	\$492,907.92	January	\$649,926.34	January	\$557,525.15
February	\$598,953.22	February	\$786,897.11	February	\$442,607.26
March	\$526,640.77	March	\$656,495.95	March	\$549,680.23
April	\$616,854.09	April	\$514,784.28	April	\$497,900.00
May	\$431,095.53	May	\$673,292.10	May	\$492,849.09
Grand Total	\$5,205,923.72	Grand Total	\$5,647,469.91	YTD Total	\$5,279,441.87

Most direct delivery donated inventory is received in the first half of the school year (July through December). The USDA's Web Based Supply Chain Management system (WBSCM) allows states to choose delivery date ranges within the month a state order is to be delivered, either prior to the 15th of the month or prior to the 30th of the month. Inventory is scheduled to be delivered to Recipient Agencies by the distributor during the following month and thereafter.

There are times when deliveries are cancelled or shorted, which causes adjustments to the manifest to be required. The distributor will need to be able to accommodate adjustments as the need arises. DHHS will coordinate the scheduling of delivery date ranges with the awarded distributor to the extent feasible for DHHS. WBSCM sales order data (See Attachment Two) is attached to assist distributors in determining the pattern in which direct delivery donated foods are scheduled by DHHS. Sales orders attributable to the TEFAP program are not applicable to this contract.

In the past, fee-for-service end products were ordered by DHHS on a monthly basis, generally in the quantities required for delivery the following month. However, as DHHS transitions its procurement goals, there will be fewer end products ordered by DHHS as compared to previous years. This may result in more end products being ordered by Recipient Agencies from distributor inventory. The awarded distributor should consult with approved processors and Recipient Agencies during the time preceding the contract start date and during the contract period in determining appropriate inventory levels to maintain to successfully carry out the indirect discount system. This will depend primarily on RA procurement results and the marketability of a processor.

D. DHHS PROCESSOR SELECTION

Following the award of this distribution contract, DHHS will conduct procurement per the DHHS Master Solicitation for Commodity Processing to award Multi-State Processors for school year 2020. The following types of end products will be bid on a fee-for-service basis. However, DHHS will not limit the types of end products which may be sold by awarded processors through the indirect discount system.

- | | |
|---------------------------------|----------------------------------|
| One cheese pizza end product | One meat pizza end product |
| One pasta end product | One breaded beef end product |
| One un-breaded beef end product | One un-breaded chicken product |
| One breaded chicken end product | One oriental chicken end product |
| One breaded pork end product | One un-breaded pork end product |

One breaded turkey end product
One breaded cheese stick end product
One egg end product

One un-breaded turkey end product
One un-breaded cheese stick end product

This list may be revised by DHHS from time to time depending on the distributor's ability to market end products that are responsive to the needs of Recipient Agencies and that fully utilize USDA foods that DHHS has diverted for processing. Furthermore, when a Multi-State Processor, in coordination with the awarded distributor, can demonstrate to DHHS at least a half truck load of USDA donated foods could be utilized by Recipient Agencies within a single school year, the processor would be considered marketable. DHHS may enter into a State Participation Agreement with a Multi-State Processor in order to not limit the types of end products that can be sold.

E. SCOPE OF WORK

The Contractor shall comply with, and remain in compliance with, 7 CFR Part 250, including but not limited to 7 CFR 250 Subpart B, and all other all other applicable law.

1. Receipt and Handling of Donated Foods

The distributor must:

- a. provide and maintain current delivery addresses and other information as required by DHHS or FNS to ensure donated foods are delivered to the correct location.
- b. provide receiving appointments to USDA vendors and processors when requested and comply with USDA Instruction 709-5 Revision 2.
- c. comply with all applicable Federal requirements including procedures for the disposition of any donated foods in a shipment or in storage that are out-of-condition donated foods, or are not in accordance with ordered amounts.
- d. provide notification of the receipt of direct delivery donated food shipments to FNS through electronic means, and must maintain an electronic record of receipt of all donated food shipments.
- e. provide copies of all receiving documents to DHHS within 48 hours of receiving a DHHS donated foods order.
- f. pay any delivery charges that accrue as a result of the distributor's failure to comply with procedures in FNS instructions—e.g., failure to provide for the unloading of a shipment of donated foods within a designated time period.
- g. provide facilities for the storage and climate control of donated foods that properly safeguards them against theft, spoilage, damage, or other loss.
- h. store, manage, and transport donated foods in a manner that properly safeguards them against theft, spoilage, damage, or other loss. Accordingly, such storage facilities and equipment must maintain donated foods in sanitary conditions, at the proper temperature and humidity, and with adequate air circulation.
- i. use a first in, first out stock rotation system, also taking pack dates into account.
- j. comply with all Federal, State, or local requirements relative to food safety, health, procedures for responding to a food recall, and obtain all required health inspections.

2. Inventory and Records Management

The distributor must:

- a. ensure that direct delivery donated foods at all storage facilities used by the distributor are stored in a manner that permits them to be distinguished from other foods, and must ensure that a separate inventory record is maintained. Failure of the distributor to comply with recordkeeping requirements will be considered prima facie evidence of improper distribution or loss of donated foods and may result in a claim against the distributor for the loss or misuse of donated foods.
- b. deliver donated foods to eligible Recipient Agencies in a timely manner, in optimal condition, and in amounts for which such Recipient Agencies are eligible as determined by DHHS.

- c. permit the performance of on-site reviews of its storage facilities by the distributing agency, the Comptroller General, the Department of Agriculture, or any of its duly authorized representatives, in order to determine compliance with requirements in this contract and all applicable USDA and DHHS Regulations, Policies and Instructions. Said review is not subject to the requirements of Section IV. H. Right to Audit, except that the distributor shall pay any costs it incurs of any on-site review.

3. Sales of End Products

When the distributor sells end products to eligible Recipient Agencies, such sales shall be reported to DHHS and processors (or their agent) electronically, simultaneously and in a consistent frequency and format that is approved by DHHS, such as Comma Separated Values (CSV). DHHS will provide an interface to upload sales reports into the DHHS ordering system. This interface will initially be a manual process, but may be developed into an automated process with the coordination of the distributor.

The following table represents the data fields to be transmitted.

Distributor Number (assigned by K12 or ProcessorLink)
RA Name (School Building)
RA Address 1
RA Address 2
RA City
RA State
RA Zip
RA Phone
Distributor Invoice #
Distributor Invoice Date
Processor's End Product Code
Total Cases (N)
Total Discount (N) (extended donated foods discount)
Distributor's Customer Number
RA Number (must include any leading zeroes) (Assigned by DHHS)
Catch Weight Pounds (N) (Variable case weight items)
Misc. (reserved for future use)
Vendor number (Distributor's number for processor)
Distributor's invoice line # for item

The distributor must cease the application of a donated food discount to Recipient Agencies when advised by DHHS. This may occur when a Recipient Agency has met or exceeded their planned assistance level or when a Recipient Agency agreement with DHHS is terminated.

4. Delivery of Donated Foods

The distributor must deliver donated foods to all eligible Recipient Agencies in Nebraska, as determined by DHHS. The frequency of deliveries must be at least monthly, except no deliveries are required in June and July. Deliveries may be more often, at the option of the distributor and as agreed upon with the Recipient Agency. The distributor shall receive a manifest, or other instruction, from DHHS in the month prior to the delivery period. The manifest will identify the number of cases of each donated food to be delivered to each Recipient Agency during the following month. All items must be delivered within the designated month. The manifest will include only direct delivery donated foods and fee-for-service end products

requested or allocated through the DHHS ordering system. The manifest may be provided via an Excel spreadsheet or may be provided in another method and frequency that is agreeable to the distributor and DHHS (such as electronically on a daily or weekly basis). Adjustments to the manifest may occur due to late deliveries from processors or USDA vendors, or due to Recipient Agencies' requests for order adjustments.

Delivery hours depend on when the requesting Recipient Agency is normally open and available to accept deliveries. The distributor is required to place the delivered items inside the door or dock at Recipient Agencies' delivery location. The distributor and Recipient Agency may mutually agree on a different times or locations within the building, such as a cooler or freezer or other storage area.

The distributor may agree to deliver to more than one location within a school district, however the distributor may establish a minimum number of cases to be delivered per location, including commercial sales combined with donated food deliveries, as long as the minimum is reasonable, as determined by DHHS, and applied consistently to all Recipient Agencies. A minimum of 20 cases per delivery location may be applied without prior approval from DHHS. However, deliveries for the Summer Food Service Program (SFSP) will not be subject to any minimum. SFSP deliveries are delivered once per year in May to approximately 80 recipients.

The distributor must obtain a signature when deliveries are made and retain such records consistent with records retention requirements herein, unless the Recipient Agency provides a written waiver of the requirement to obtain a signature to the distributor. Such waiver shall be acceptable as proof of delivery in lieu of an actual signature and must also be retained by the distributor consistent with the records retention requirements herein.

The distributor shall permit a Recipient Agency to pick up their order at the distributor's facility. The Recipient Agency shall make an appointment with the distributor for a self-pickup.

F. STATE PARTICIPATION AGREEMENTS

The following provisions and approved Value Pass Through Systems shall also be incorporated into State Participation Agreements between DHHS and approved processors:

1. Processors and the awarded distributor must provide adequate data sharing, reporting, and crediting of donated foods, as determined by DHHS, and in accordance with 7 CFR Part 250.
2. Direct discount – Approved processors may sell end products directly to the SDA or Recipient Agencies that are capable of receiving direct shipments from the processor, subject to the processor's minimum order policy. Such sales shall be at a net price that provides a discount from the commercial case price for the value of the donated foods contained in the end products. School Food Authorities may procure storage and delivery of end products on their own behalf.
3. Indirect discount – The awarded distributor may sell end products of approved processors to eligible Recipient Agencies, as determined by DHHS, at a net price that provides a discount from the commercial case price for the value of the donated foods contained in the end products. The processor must then compensate the awarded distributor for the value of the donated food in its sale of end products if such compensation has not been made in advance of distributor sales. Processors must reimburse or discount the value of donated foods only to the awarded distributor. Any sales through non-awarded distributors shall be commercial sales at the commercial case price.
4. Fee-for-service – Awarded processors may sell end products to the SDA at a "fee-for-service." The fee-for-service includes all costs to produce and deliver the end products to the awarded distributor, minus the value of the donated food contained in the end product. The awarded distributor must control and manage inventory of such end products in the same manner as direct delivery donated foods.

G. RECIPIENT AGENCIES

Recipient Agencies conduct procurement of end products on their own behalf when the direct or indirect discount system is utilized. The value of donated foods contained in end products should be included when Recipient Agencies compare or evaluate bids or quoted prices. Recipient Agencies may use procurement procedures that conform to applicable State and local laws, as appropriate, but still must ensure compliance with Federal procurement requirements, including but not limited to 2 CFR 200 Subpart D and USDA implementing regulations at 2 CFR Part 400 and Part 416. The administering agency shall remain responsible for oversight of Recipient

Agency procurement activities and for administering corrective action plans in accordance with 7 CFR Part 210.18 in situations of noncompliance.

When Recipient Agencies utilize the direct discount method, they shall advise DHHS of how many pounds of donated foods should be diverted, and to which Multi-State Processor(s) for the following school year. This information must be received no later than March 1st for the following school year, which starts on July 1st. All diversion requests are subject to market conditions and the aggregate number of pounds being requested. DHHS will approve a Multi-State Processor that is the awarded contractor pursuant to a Recipient Agency procurement. The approval or the award of processors does not obligate DHHS to divert donated foods for processing. A request or combined requests for donated food diversions equaling less than full truck loads may not be filled.

When Recipient Agencies utilize the indirect discount system or purchase end products through the DHHS fee-for-service program, DHHS shall establish and maintain a single inventory of diverted donated food for all eligible Recipient Agencies to utilize, subject to sufficient demand for such end products and projected usage of the diverted foods, as determined by DHHS. Projected annual usage equaling less than full truck loads may not be filled or continually maintained.

It is the Recipient Agencies' responsibility to resolve any receiving discrepancies with the awarded distributor and/or processors. When receiving deliveries of donated foods, the Recipient Agency should verify it matches what has been ordered or allocated. The Recipient Agency should initiate a claim against the awarded distributor or a processor when a loss of donated food occurs at the Recipient Agency level. Examples of losses occurring at the Recipient Agency level are when an item that has been ordered by the Recipient Agency is delivered in a damaged or unsafe condition, the quantity delivered is less than what has been invoiced, or when the value of donated foods has not been appropriately deducted on an invoice. Such claims should be for the total value of the loss, including any applicable fees.

Recipient Agencies must accept delivery of items that have been allocated to them or ordered by them. If the Recipient Agency will be closed unexpectedly, the distributor must be notified immediately. If a Recipient Agency refuses delivery of an allocated or ordered item or fails to notify the distributor of a school closing, the awarded distributor may bill for the attempted delivery at the same rate had the delivery been completed. The only exception is when questions concerning food safety arise, for example, when an item is delivered at the incorrect temperature according to the Food Code or when an item is damaged, causing it to be unsafe to consume. Damage only affecting the cosmetic appearance of packaging should be accepted by the Recipient Agency as long as in the judgment of the Recipient Agency the damage does not impact food safety. The recipient should accept the portion of a unit of donated foods when there is only partial damage to the unit. The Recipient Agency should note any damage or discrepancies on the document they sign when accepting deliveries and retain a copy to assist them in pursuing claims with the awarded distributor or processors for donated food losses.

H. WAIVER AUTHORITY

Pursuant to 7 CFR 250.30, if FNS elects to waive, for the purposes of conducting demonstration projects to test program changes designed to improve the State processing of donated foods, any of the requirements of 7 CFR 250, then DHHS may, at its discretion, waive the same requirement for the purposes of this contract.

I. DELIVERABLES

Please see Attachment One – Pricing Sheet.

VI. COST PROPOSAL REQUIREMENTS

This section describes the requirements to be addressed by bidders in preparing the State's Cost Sheet. The bidder must use the State's Cost Sheet. The bidder should submit the State's Cost Sheet in accordance with Section I Submission of Proposal.

THE STATE'S COST SHEET AND ANY OTHER COST DOCUMENT SUBMITTED WITH THE PROPOSAL SHALL NOT BE CONSIDERED CONFIDENTIAL OR PROPRIETARY AND IS CONSIDERED A PUBLIC RECORD IN THE STATE OF NEBRASKA AND WILL BE POSTED TO A PUBLIC WEBSITE.

A. COST SHEET

This summary shall present the total fixed price to perform all of the requirements of the RFP. The bidder must include details in the State's Cost Sheet supporting any and all costs.

The State reserves the right to review all aspects of cost for reasonableness and to request clarification of any proposal where the cost component shows significant and unsupported deviation from industry standards or in areas where detailed pricing is required.

B. PRICES

Prices quoted shall be net, including transportation and delivery charges fully prepaid by the bidder, F.O.B. destination named in the RFP. No additional charges will be allowed for packing, packages, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

Form A
Bidder Contact Sheet
Request for Proposal Number 95575 O3

Form A should be completed and submitted with each response to this RFP. This is intended to provide the State with information on the bidder's name and address, and the specific person(s) who are responsible for preparation of the bidder's response.

Preparation of Response Contact Information	
Bidder Name:	US FOOD, INC (US FOODS)
Bidder Address:	3636 W. STALLEY PK RD. GRAND ISLAND, NE 68803
Contact Person & Title:	RANDY WALLACE GENERAL MANAGER
E-mail Address:	RANDY.WALLACE@USFOODS.COM
Telephone Number (Office):	308.382.6581 EXT. 105
Telephone Number (Cellular):	308.641.0058
Fax Number:	308.382.1813

Each bidder should also designate a specific contact person who will be responsible for responding to the State if any clarifications of the bidder's response should become necessary. This will also be the person who the State contacts to set up a presentation/demonstration, if required.

Communication with the State Contact Information	
Bidder Name:	US FOODS, INC (US FOODS)
Bidder Address:	3636 W. STALLEY PK RD. GRAND ISLAND, NE 68803
Contact Person & Title:	RANDY WALLACE GENERAL MANAGER
E-mail Address:	RANDY.WALLACE@USFOODS.COM
Telephone Number (Office):	308.382.6581. EXT 105
Telephone Number (Cellular):	308.641.0058
Fax Number:	308.382.1813

REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES FORM

BIDDER MUST COMPLETE THE FOLLOWING

By signing this Request for Proposal for Contractual Services form, the bidder guarantees compliance with the procedures stated in this Request for Proposal, and agrees to the terms and conditions unless otherwise indicated in writing and certifies that bidder maintains a drug free work place.

Per Nebraska's Transparency in Government Procurement Act, Neb. Rev Stat § 73-603 DAS is required to collect information regarding the number of contracts awarded to Nebraska Contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

NEBRASKA CONTRACTOR AFFIDAVIT: Bidder hereby attests that bidder is a Nebraska Contractor. "Nebraska Contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee in the state for at least the six (6) months immediately preceding the posting date of this RFP.

_____ I hereby certify that I am a Resident disabled veteran or business located in a designated enterprise zone in accordance with Neb. Rev. Stat. § 73-107 and wish to have preference, if applicable, considered in the award of this contract.

_____ I hereby certify that I am a blind person licensed by the Commission for the Blind & Visually Impaired in accordance with Neb. Rev. Stat. §71-8611 and wish to have preference considered in the award of this contract.

FIRM:	US. FOODS, INC (US FOODS)
COMPLETE ADDRESS:	3636 W. STOLLEY PK ROAD GRAND ISLAND, NE 68903
TELEPHONE NUMBER:	308. 382. 6581 EXT 105
FAX NUMBER:	308. 382. 1813
DATE:	5/30/2018
SIGNATURE:	<i>Randy Wallace</i>
TYPED NAME & TITLE OF SIGNER:	Randy Wallace General Manager

Attachment One Pricing Sheet

Request for Proposal Number 95575 O3

The distributor will bid a flat rate to store and deliver donated foods on a fee per case basis. The same fee per case shall apply to all deliveries regardless of delivery location or number of cases being delivered. This fee applies to cases of direct delivery donated foods as well as end products that are purchased by DHHS from awarded processors. However, the fee does not apply to distributor sales of end products to recipient agencies.

Distribution charge per case as indicated on the monthly Manifest and other delivery instructions provided by DHHS.

All prices, costs, and terms and conditions submitted in the proposal shall remain fixed and valid commencing on the opening date of the proposal until the contract terminates or expires.

	Year 1	Year 2	Year 3	Year 4	Year 5
Cost per case delivered	\$4.35	\$4.40	\$4.50	\$4.60	\$4.70

Optional Pricing

The recipient agency may choose to pick up their order from the distributor's facility. When this occurs, the distributor may apply a percent off the contracted amount. Historically, this has happened less than three times in the previous two years.

56 % off when picked up

F ood & N utrition S ervice	FNS INSTRUCTION	NUMBER
	U.S. DEPARTMENT OF AGRICULTURE 3101 PARK CENTER DRIVE ALEXANDRIA, VA 22302-1500	709-5 Rev 2

SHIPMENT AND RECEIPT OF USDA FOODS

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DATE: 02 JUN 2015	MANUAL MAINTENANCE INSTRUCTIONS: Replace Revision 1 with this Instruction	RESPONSIBLE FOR PREPARATION AND MAINTENANCE: FDD
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F ood & N utrition S ervice	FNS INSTRUCTION	NUMBER
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ACTION BY: Food and Nutrition Service Headquarters
 Food and Nutrition Service Regional Offices
 Farm Service Agency, Kansas City Commodity Office
 Agricultural Marketing Service
 State Distributing Agencies

SHIPMENT AND RECEIPT OF USDA FOODS

I PURPOSE

The purpose of this Instruction is to establish the general standards and procedures that the State distributing agency (SDA), Indian Tribal Organization (ITO) or other consignee must follow in receiving shipments of USDA Foods (i.e., donated foods) in Department of Agriculture (USDA) food assistance programs, including the Commodity Supplemental Food Program (CSFP); the Food Distribution Program on Indian Reservations (FDPIR); The Emergency Food Assistance Program (TEFAP); the National School Lunch Program (NSLP); the Nutrition Services Incentive Program (NSIP), which is administered by the Department of Health and Human Services; and in other outlets; and to convey established responsibilities for other entities such as USDA Foods vendors and carriers. The standards and procedures established in this Instruction are necessary in determining if shipments of USDA Foods are received in optimal condition and in the quantities ordered, and ensuring the proper disposition and replacement of USDA Foods when circumstances warrant.

II REGULATORY AUTHORITY

This Instruction is based on Federal regulations in 7 CFR Part 250.

III FORMS

FSA-21, *Public Voucher – Commodity Programs*

IV SCOPE

A. This Instruction is applicable to shipments of USDA Foods received by an SDA, ITO, a recipient agency, or other consignee from a USDA-approved vendor or from a Federally-contracted storage facility, including a National Multi-Food Warehouse. This includes USDA Foods received at each delivery location in a split shipment, which is a type of direct delivery shipment from a vendor. Requirements specific to shipments from a National Multi-Food Warehouse are provided as applicable. Shipments of USDA Foods from a vendor may be delivered in the vendor's truck or trailer, or in a truck belonging to a contracted

DATE: JUN 2 2015	MANUAL MAINTENANCE INSTRUCTIONS: Replace Revision 1 with this Instruction	RESPONSIBLE FOR PREPARATION AND MAINTENANCE: FDD	Page 1
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commercial trucking or rail company which, in this Instruction, is referred to as a carrier. A truck or trailer may be transported to a specific location on a railcar before delivery of its shipment of USDA Foods to the designated consignee. This method of delivery is sometimes referred to as an “intermodal” or “piggyback” shipment. This Instruction does not address issues related to Best-if-Used-By (BIUB) dates or equivalent. BIUB dates are addressed separately in Policy Memorandum FD-107, “Storage and Inventory Management of USDA Donated Foods.”

- B The Instruction is not applicable to USDA Foods received by a recipient agency or other consignee from an SDA, ITO, or recipient agency storage facility; to end products received from a commercial processor or distributor; or to products ordered through the Department of Defense Fresh Fruit and Vegetable Program (DoD Fresh).

V DEFINITIONS

- A The definitions in 7 CFR 250 are applicable to this Instruction.

- B The following definitions are also applicable to this Instruction:

- 1 Bill of lading (BOL). Documentation of the contents of a shipment and other pertinent information as required in the contract of carriage.
- 2 Carrier. A commercial enterprise that transports USDA Foods from one location to another but does not store such foods.
- 3 Consignee. An entity (e.g., SDA, ITO, recipient agency, commercial storage facility, or processor) that receives a shipment of USDA Foods from a vendor or Federal storage facility.
- 4 Contracting Office. The USDA office (e.g., Farm Service Agency’s Kansas City Commodity Office or Agricultural Marketing Service’s Commodity Procurement Staff) that awards or executes a contract for supplies or services.
- 5 Demurrage. A penalty charge assessed by railroads for cars held beyond the specified free time.
- 6 Detention charge. A penalty charge assessed by carriers for shipments held beyond the specified free time.
- 7 Dunnage. The material used to protect or support freight during transit.
- 8 Free time. The amount of time established by carriers for the unloading of freight before penalty charges apply.
- 9 Household Programs. Programs which provide USDA Foods to participants for home consumption, including CSFP, FDPIR, and TEFAP.

- 10 In-kind replacement. The replacement of a loss of USDA Foods with a quantity of the same foods of U.S. origin that are of equal or better quality than the lost foods and that are of at least equal monetary value to the USDA's cost of replacing the lost foods.
- 11 Lumper fee. A fee assessed by a carrier to the consignee or vice versa for unloading a shipment. Lumper fees are not permitted when receiving USDA Foods.
- 12 Multi-food shipment. A shipment from a National Multi-Food Warehouse that typically includes more than one type of USDA Food.
- 13 National Multi-Food Warehouse. A Federally-contracted storage facility that includes more than one type of USDA Food.
- 14 Out-of-condition USDA Foods. USDA Foods which are no longer fit for human consumption as a result of spoilage, contamination, infestation, adulteration, or other damage.
- 15 Pallet. A platform for the placement of material for storage or transportation.
- 16 Pinwheeling. A process of arranging pallets on a truck with varied positioning, when dealing with items of different sizes. Pinwheeling is not permitted for shipments originating from the National Multi-Food Warehouse.
- 17 Refused Shipment Request. An SDA or ITO request to FNS to refuse all or part of a shipment due to out-of-condition USDA Foods. FNS in turn notifies the appropriate Contracting Office. In cases of issues relating to the integrity of high security seals (see Section VII, Inspecting the Shipment), shipments must be refused by the consignee.
- 18 Rejected Shipment. Official Contracting Office designation, upon consideration of an SDA or ITO refused shipment request with regard to out-of-condition USDA Foods.
- 19 Sales order. An order for a specific USDA Food that includes the material description, quantity, delivery period, and destination, and that is identified by a specific code.
- 20 Similar replacement. The replacement of a loss of USDA Foods with a quantity of similar foods of U.S. origin of the same types as those normally donated by USDA and of at least equal monetary value to USDA's cost of replacing the lost foods.
- 21 Slip sheet. A piece of cardboard used in place of a pallet.
- 22 Split shipment. A shipment of USDA Foods from a vendor that is split between two or more SDAs, ITOs, or recipient agencies, and that usually includes more than one stop-off or delivery location.
- 23 Tailgate. To move freight to the back end of a trailer for unloading.
- 24 Vendor. A commercial food company from which USDA purchases food for donation.

- 25 WBSCM. Web-Based Supply Chain Management, an integrated food purchasing, tracking, and ordering system used by USDA and its customers, vendors, suppliers, and transportation personnel.

VI ARRANGING FOR SHIPMENT AND DELIVERY

- A Delivery appointment. For shipments originating from a vendor (i.e., any shipment not originating from a National Multi-Food Warehouse), the vendor or carrier must arrange for a delivery appointment with the consignee at least 24 hours before the expected delivery. 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). For split shipments (i.e., shipments that are split between two or more consignees) the vendor or carrier must arrange for a delivery appointment with each consignee. The vendor or carrier may make an earlier delivery than scheduled only if a new delivery date is arranged that is acceptable to the consignee and USDA personnel are available, as necessary, to perform any required inspections; otherwise the original delivery date must be honored.

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 and identify the carrier in the comment section of WBSCM when receipting for the delivery.

For shipments originating from a National Multi-Food Warehouse, the National Multi-Food Warehouse must arrange regular delivery dates with each consignee. If an order includes multiple truck loads, every effort must be made to arrange for all deliveries on the same day. The consignee must negotiate any tailgating by the National Multi-Food Warehouse when setting the delivery date(s). The consignee is responsible for accepting shipments on the prearranged delivery date. If the regularly scheduled delivery must be postponed (e.g., as a result of inclement weather or equipment failure), the National Multi-Food Warehouse will immediately contact the consignee to determine a revised delivery date that is agreeable to both parties.

- B Advanced shipment notification. For shipments originating from a vendor (i.e., any shipment not originating from a National Multi-Food Warehouse), the vendor will create the Advance Shipping Notification (ASN) in WBSCM in advance of delivery of the USDA Foods shipment so as to provide the consignee sufficient advance notice of the delivery. The ordering organization and receiving destination designated in WBSCM will receive the ASN by email. It is recommended that the delivery appointment be arranged with the consignee before entering the ASN in WBSCM. The ASN will include the following information:

- 1 Required delivery date.
- 2 Expected delivery date.
- 3 Delivery ship-to business partner.

- 4 Nutrition program acronym (e.g., CSFP, NSLP).
- 5 USDA Food product material number and description (e.g., material code).
- 6 Sales order number (not applicable to shipments to a National Multi-Food Warehouse).
- 7 Sales order item number.
- 8 Quantity (e.g., cases, number of units) in shipment.
- 9 Establishment number, if applicable.
- 10 Purchase order item number.
- 11 Purchase order number.
- 12 Product vendor information.

For shipments originating from a National Multi-Food Warehouse, the consignee will not receive an ASN notification. Specific delivery dates are pre-arranged between the consignee and the National Multi-Food Warehouse and reflected in WBSCM.

- C Destination changes. For shipments originating from a vendor (i.e., any shipment not originating from a National Multi-Food Warehouse), consignees wishing to change the shipment destination after the purchase order has been issued must submit a request to the appropriate SDA or ITO, if applicable (e.g., the consignee is a recipient agency which has an agreement with an SDA or ITO), which must in turn submit the request to the FNS Regional Office (FNSRO) for Household Programs or to FNS Headquarters (FNSHQ) Food Distribution Division (FDD) for Child Nutrition Programs at least 35 days in advance of the start of the delivery period. Select USDA Foods may require additional advance notice, per applicable USDA guidance.

For shipments originating from a National Multi-Food Warehouse, consignees wishing to change shipment destinations must notify the SDA or ITO, as applicable, which must in turn notify the FNSRO. FNS will work with the National Multi-Food Warehouse to address the issue.

- D 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. Any disputes between the consignee and the vendor or carrier regarding liability for such charges that are not resolved at the SDA or ITO level must be referred to the FNSRO, or FNSHQ FDD in the case of Child Nutrition Programs, for resolution by FNS and the Contracting Office, as applicable.

- E Pallet exchange. For shipments originating from a vendor (i.e., any shipment not originating from a National Multi-Food Warehouse), 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.

For shipments originating from a National Multi-Food Warehouse, carriers do not exchange pallets.

VII INSPECTING THE SHIPMENT

- A 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.
- B 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 SDA or ITO, as applicable, which must in turn notify the FNSRO, or FNSHQ FDD in the case of Child Nutrition programs. FNS will notify the appropriate Contracting Office or the National Multi-Food Warehouse, as applicable.

For shipments originating from a vendor (i.e., any shipment not originating from a National Multi-Food Warehouse), a previously refused shipment may only be accepted by the consignee after a Condition of Container Inspection has been performed by a USDA representative, as designated by the Contracting Office, and a Certificate of Quality and Condition has been issued which documents that the Condition of Container meets the applicable U.S. Standards for Condition of Food Containers. Any inspection costs must be paid by the vendor or carrier.

- C 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.
- D 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.
- E 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.

- F Out-of-condition USDA Foods and required notification. For shipments originating from a vendor (i.e., any shipment not originating from the National Multi-Food Warehouse), 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 SDA or ITO, as applicable, which must in turn notify the FNSRO, or FNSHQ FDD in the case of Child Nutrition Programs.

FNS will consult with the Contracting Office, as applicable, to determine if the shipment is to be rejected, or if an inspection by State or local health authorities or authorized USDA agent must first be obtained to determine the condition of the USDA Foods. If an inspection is required, the SDA or ITO, as applicable, must inform the FNSRO or FNSHQ of the consignee's inspection results so that FNS and the appropriate Contracting Office can determine if the shipment should be rejected. The SDA, ITO, or consignee must also ensure that the vendor or carrier is aware of the results of the consignee's inspection, subsequent inspection by health authorities, as applicable, and the FNS/Contracting Office decision to accept or reject the shipment. The vendor or carrier is responsible for the prompt removal of a rejected shipment. The cost of the inspection must be paid by the consignee if it is determined that the USDA Foods are not out-of-condition. Inspection costs must otherwise be paid by the vendor or carrier.

For shipments originating from a National Multi-Food Warehouse, if consignee inspection indicates that all, or a major portion, of the USDA Foods in the shipment are out-of-condition, the consignee must immediately notify the SDA or ITO, as applicable, which must in turn notify the FNSRO. FNS will work with the National Multi-Food Warehouse to address the issue.

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 SDA or ITO, as applicable, which must in turn notify the FNSRO, or FNSHQ FDD in the case of Child Nutrition Programs. FNS will consult with the Contracting Office or the National Multi-Food Warehouse, as applicable, to determine a course of action.

Any fresh fruit and vegetable delivery which fails to meet USDA specifications will be rejected by the USDA representative and Contracting Office. If any lot of fresh fruit or vegetable fails to meet the product or packaging requirements, the vendor may request in writing that USDA accept delivery of the lot. USDA, with agreement from the consignee may, at its option, accept delivery.

VIII ACCEPTING AND RECEIPTING FOR THE SHIPMENT

A Acceptance of shipment. For shipments originating from a vendor (i.e., any shipment not originating from a National Multi-Food Warehouse), if the consignee inspection indicates that some, but not a major portion, of the USDA Foods in the shipment are out-of-condition, or that there is only a minor discrepancy from the quantity of USDA Foods ordered, the consignee may accept the entire shipment and segregate any out-of-condition USDA Foods. The consignee must in turn notify the SDA or ITO of the out-of-condition foods, as applicable, which must in turn notify the FNSRO, or FNSHQ FDD in the case of Child Nutrition Programs, and file a complaint in WBSCM. FNS will consult with the appropriate Contracting Office to determine a course of action.

Alternatively, when the consignee inspection indicates that some, but not a major portion, of the USDA Foods are out-of-condition, the consignee has the option to immediately notify the SDA or ITO, as applicable, of the out-of-condition foods upon receipt, requesting refusal of that part of the shipment. The SDA or ITO must in turn notify the FNSRO, or FNSHQ FDD in the case of Child Nutrition Programs, and file a complaint in WBSCM. FNS will consult with the appropriate Contracting Office to determine a course of action. This course of action may lead to part of the shipment being rejected.

In the above referenced instances, the consignee must note within the WBSCM complaint that the delivery issue is being handled as a contracting matter. The WBSCM complaint will be used for trend analysis only, in order for USDA to track such issues over time and ensure the best possible service to consignees.

For shipments originating from a National Multi-Food Warehouse that include out-of-condition USDA Foods or that do not have the quantity of USDA Foods ordered, the consignee must accept the entire shipment, segregate unusable products, and report the loss or shortage to the SDA or ITO, as applicable, which must in turn inform the FNSRO and request guidance on disposing of any out-of-condition foods in accordance with Section X of this Instruction, and file a complaint in WBSCM for issue tracking purposes.

For latent product defects observed by the consignee after acceptance of the shipment, the consignee must notify the SDA or ITO of the out-of-condition foods, as applicable, which must in turn notify the FNSRO, or FNSHQ FDD in the case of Child Nutrition Programs, and file a complaint in WBSCM.

See Section X of this Instruction for details on the disposition and replacement of out-of-condition USDA Foods.

B 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, with the exception of select bulk products for further processing (e.g. chicken), where grading

certificates are provided by the consignee to the vendor. The signed delivery receipt must match the Goods Receipt quantity entered in WBSCM.

C WBSCM Goods Receipt.

The consignee is responsible for entering the Goods Receipt in WBSCM within two (2) calendar days of receipt of the product. Electronic receipting within two (2) calendar days permits expeditious notification to FNS and other parties of the receipt of the shipment and allows payment to vendors in a timely manner. The Goods Receipt must indicate the quantity received in good condition and, if applicable, the quantity received damaged or rejected.

If the consignee has not entered a Goods Receipt within two (2) calendar days of delivery and the Contracting Office has received an invoice for the shipment, the Contracting Office will enter a Goods Receipt in WBSCM in order to meet prompt payment requirements. The Goods Receipt entry will be based on vendor- or carrier-provided proof of delivery documentation such as a signed BOL.

Note that if the entire shipment is rejected by the Contracting Office, no information is required or should be entered into WBSCM.

IX UNLOADING THE SHIPMENT

- A 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 SDA or ITO, as applicable, to the FNSRO, or FNSHQ FDD in the case of Child Nutrition Programs, 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.

For shipments originating from a National Multi-Food Warehouse, the consignee is responsible for unloading their entire order, including items that may be segregated (e.g., frozen under bulkhead), and ensuring that proper temperature is maintained.

- B 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.

All shipments originating from a National Multi-Food Warehouse will arrive on pallets that must be positioned to facilitate timely unloading of USDA Foods (e.g., no pinwheeling). The National Multi-Food Warehouse Carrier is responsible for tailgating if previously arranged with the consignee.

- C 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.
- D Segregating out-of-condition USDA Foods. As provided in Section VIII, if the consignee inspection indicates that some, but not a major portion, of the USDA Foods in the shipment are out-of-condition, or that there is only a minor discrepancy from the quantity of USDA Foods ordered, the consignee may accept the entire shipment, and segregate any out-of-condition USDA Foods. In such circumstances, the consignee must identify cases or other units of USDA Foods, or those USDA Foods within a case or other unit, that are out-of-condition, and segregate such foods from those that are in good condition, making note on the delivery documentation (e.g., BOL) as applicable. USDA Foods with cosmetic damage (e.g., small dents) should be retained for use as feasible.
- E 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 reflected in WBSCM Goods Receipt. Directions for entering quantities in WBSCM are found in the WBSCM Work Instructions under Help. See Section VIII for further details on receipting.

For shipments originating from a vendor (i.e., any shipment not originating from the National Multi-Food Warehouse), when there is a shortage of the quantity ordered, the SDA or ITO, as applicable, should notify the FNSRO, or FNSHQ FDD in the case of Child Nutrition Programs, to address any need for additional USDA Foods or to credit entitlement for Child Nutrition Programs and TEFAP. As applicable, the FNSRO will work with FNSHQ FDD to address the issue. 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. It is the responsibility of the SDA or ITO to make the necessary corrections in the event of an unloading error for split shipments.

For shipments originating from a National Multi-Food Warehouse that have less than the quantity of foods ordered, the consignee must notify the SDA or ITO, as applicable, which must in turn notify the FNSRO and make arrangements to receive the missing product as appropriate.

- F 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, or shipments originating from a National Multi-Food Warehouse. 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 referred to the SDA or ITO, as applicable, which must in turn refer such issues to the FNSRO, or FNSHQ FDD in the case of Child Nutrition programs.

For questions or issues regarding re-sealing for subsequent deliveries originating from the National Multi-Food Warehouse, the consignee should contact SDA or ITO, which must in turn contact the FNSRO. Refer to Section VII of this Instruction for requirements with regard to seals.

- G Delivery service upgrade requests. When notified of shipments, the consignee may request upgraded delivery services or delivery to an alternate warehouse; for example, delivery within the consignee's premises, direct delivery tailgating, or delivery to a specific room within a building. Note that such delivery terms are beyond USDA contractual requirements. Any negotiations to upgrade services are between the vendor or carrier and consignee and any additional charges for special delivery terms are between consignee and the vendor or carrier. Any charges invoiced to USDA for additional delivery services will be denied.

X DISPOSITION AND REPLACEMENT OF OUT-OF-CONDITION FOODS

- A Disposition of out-of-condition USDA Foods. For shipments originating from a vendor (i.e., any shipment not originating from a National Multi-Food Warehouse) that are found to contain out-of-condition USDA Foods, after taking the necessary steps provided in Sections VII through IX, as applicable, the consignee must provide the vendor or carrier with the opportunity to remove such out-of-condition USDA Foods for salvage. If the vendor or carrier chooses to remove such USDA Foods, the consignee must obtain a signed salvage receipt or equivalent and provide it to FNS, via the SDA or ITO as applicable, upon request.

If the vendor's shipment has already been accepted and the vendor or carrier is unwilling to remove such foods, it is the responsibility of the consignee to destroy or otherwise dispose of the out-of-condition USDA Foods, in accordance with State or local requirements pertaining to food safety and health. Out-of-condition USDA Foods may not be used in any USDA food assistance programs. Any USDA markings must be obliterated if the product is salvaged for other use.

For shipments originating from a National Multi-Food Warehouse, if the shipment has already been accepted, the consignee must contact the SDA or ITO, as applicable, which must in turn contact the FNSRO for guidance in disposing of any out-of-condition foods.

- B Replacement. For shipments originating from a vendor (i.e., any shipment not originating from the National Multi-Food Warehouse), the vendor is responsible for replacing USDA Foods shipments that are rejected by the Contracting Office in full or those USDA Foods that are delivered out-of-condition in an accepted shipment. Such replacement must be in-kind, unless FNS approves similar replacement. In certain limited cases, FNS, working with the appropriate Contracting Office, may pursue a claim against the vendor to the relevant Federal agency for payment of the value of the USDA Foods in lieu of physical replacement of the USDA Foods. The consignee must contact the SDA or ITO, as applicable, which must in turn contact the FNSRO, or FNSHQ FDD in the case of Child Nutrition Programs, to make arrangements to receive replacement product as appropriate.

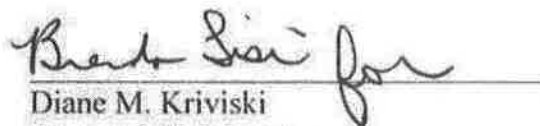
For shipments originating from a National Multi-Food Warehouse that contain out-of-condition foods, the consignee must work with the SDA or ITO, as applicable, which must in

turn work with the FNSRO to make arrangements to receive replacement product as appropriate.

- C Claims against vendor or carrier. As applicable, FNS, in coordination with the appropriate Contracting Office, will pursue claims against vendors or carriers, as necessary, to ensure replacement of USDA Foods delivered out-of-condition, in accordance with FNS Instruction 420-1, "Managing Agency Debts".
- D Reimbursement for expenses. The consignee may request, through the SDA or ITO, as applicable, from the FNSRO or FNSHQ for Child Nutrition programs, reimbursement for expenses incurred in unloading, storing, inspecting, or disposing of USDA Foods that are delivered out-of-condition. In making such request for reimbursement, the consignee must use form FSA-21, "Public Voucher – Commodity Programs", which must be submitted to the FNSRO, or FNSHQ FDD in the case of Child Nutrition Programs.

XI RECORDS

- A Required records. The consignee must maintain documentation of:
 - 1 The serial number of the high security seal(s).
 - 2 The temperature of a freezer or refrigerated truck or trailer upon arrival.
 - 3 The result of any inspections by State or local health authorities or USDA certification agent to determine the condition of USDA Foods.
 - 4 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.
- B 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.



Diane M. Kriviski
Deputy Administrator
Supplemental Nutrition and Safety Programs

ADDENDUM ONE QUESTIONS and ANSWERS

Date: May 10, 2018

To: All Bidders

From: Michelle Thompson, Buyer
Department of Health and Human Services

RE: Addendum for Request for Proposal Number RFP 95575 O3
to be opened June 1, 2018, at 2:00 P.M. Central Time

Questions and Answers

Following are the questions submitted and answers provided for the above mentioned Request for Proposal. The questions and answers are to be considered as part of the Request for Proposal. It is the Bidder's responsibility to check the State Purchasing Bureau website for all addenda or amendments.

Question Number	RFP Section Reference	RFP Page Number	Question	State Response
1.			<p>Does this mean that the only processors that will be eligible to sell Indirect Discount products are the processors that are awarded the Fee for Service end products?</p> <p>A. DHHS PROCESSOR SELECTION</p> <p>Following the award of this distribution contract, DHHS will conduct procurement per the DHHS Master Solicitation for Commodity Processing to award Multi-State Processors for school year 2020. The following types of end products will be bid on a fee-for-service basis. However, DHHS will not limit the types of end products which may be sold by awarded processors through the indirect discount system.</p> <p>One cheese pizza end product One meat pizza end product One pasta end product One breaded beef end product One un-breaded beef end product One un-breaded chicken product One breaded chicken end product One oriental chicken end product One breaded pork end product One un-breaded pork end product One breaded turkey end product One un-breaded turkey end product One breaded cheese stick end product One un-breaded cheese stick end product One egg end product</p>	<p>No. There may be more multi-State processors selected to participate in addition to the fee-for-service awarded processors. Selection criteria for State Participation Agreements were recently amended by the USDA at 7 CFR 250.30(d) to include:</p> <p>(1) The nutritional contribution provided by end products;</p> <p>(2) The marketability or acceptability of end products;</p> <p>(3) The means by which end products will be distributed;</p> <p>(4) Price competitiveness of end products and processing yields of donated foods;</p> <p>(5) Any applicable labeling requirements; and</p> <p>(6) The processor's record of ethics and integrity, and capacity to meet regulatory requirements.</p>

			<p>This list may be revised by DHHS from time to time depending on the distributor's ability to market end products that are responsive to the needs of Recipient Agencies and that fully utilize USDA foods that DHHS has diverted for processing. Furthermore, when a Multi-State Processor, in coordination with the awarded distributor, can demonstrate to DHHS at least a half truck load of USDA donated foods could be utilized by Recipient Agencies within a single school year, the processor would be considered marketable. DHHS may enter into a State Participation Agreement with a Multi-State Processor in order to not limit the types of end products that can be sold.</p>	
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The following section is hereby added to the RFP.

J. FOOD RECALL

The contractor must follow the distributor responsibilities per Attachment 3, Responding to a Food Recall, Procedures for Recalls of USDA Foods.

The contractor must follow consignee responsibilities per Attachment 4, FNS Instruction, 709-5 Rev. 2, Shipment and Receipt of USDA Foods.

Provide the following information with the proposal response. If the following information is not provided with the proposal response, the State will obtain the information before contract execution.

Primary Recall Contact

Name	TREJOR ROOEN BAUGH
Office Telephone Number	308-382-6581 EXT 114
Mobile Telephone Number	308-384-0353
Fax Number	308-382-1813
E-mail Address	TREJOR.ROOENBAUGH@USFOODS.COM

Back-up Recall Contact

Name	Valerie Sims
Office Telephone Number	308-382-6581 X 126
Mobile Telephone Number	402-694-9125
Fax Number	308-382-1813
E-mail Address	Valerie.sims@usfoods.com

This addendum will become part of the proposal and should be acknowledged with the Request for Proposal.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/01/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA INC. 540 W. MADISON CHICAGO, IL 60661 Attn: chicago.certrequest@marsh.com 212-948-0770	CONTACT NAME: PHONE (A/C, No, Ext):		FAX (A/C, No):
	E-MAIL ADDRESS:		
INSURED US Foods, Inc. 9399 W Higgins Road, Suite 600 Rosemont, IL 60018	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Zurich American Insurance Company		16535
	INSURER B : American Zurich Insurance Company		40142
	INSURER C : Steadfast Insurance Company		26387
	INSURER D : ACE Property And Casualty Ins Co		20699
	INSURER E :		
INSURER F :			

COVERAGES **CERTIFICATE NUMBER:** CHI-008997085-01 **REVISION NUMBER:** 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:		GLO 9441393-03	11/01/2017	11/01/2018	EACH OCCURRENCE	\$ 2,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 2,000,000
						MED EXP (Any one person)	\$ 10,000
						PERSONAL & ADV INJURY	\$ 2,000,000
						GENERAL AGGREGATE	\$ 4,000,000
						PRODUCTS - COMP/OP AGG	\$ 4,000,000
							\$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY		BAP 1074826-00	11/01/2017	11/01/2018	COMBINED SINGLE LIMIT (Ea accident)	\$ 5,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
							\$
D	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		G46828744 001	11/01/2017	11/01/2018	EACH OCCURRENCE	\$ 5,000,000
						AGGREGATE	\$ 5,000,000
							\$
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	WC 9441390-03 (AOS) WC 9441391-03 (WI,MA)	11/01/2017 11/01/2017	11/01/2018 11/01/2018	X PER STATUTE	
A		N/A				E.L. EACH ACCIDENT	\$ 1,000,000
						E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
						E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
A	XS WC: Statutory XS \$1M SIR		EWS 9441392-03 (AL,NV)	11/01/2017	11/01/2018	Employer's Liab Limit	1,000,000
C	Texas Only EX EL: \$1M SIR		EWT 9441395-03 (TX)	11/01/2017	11/01/2018	EL: Each Accident	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
State of Nebraska is included as Additional Insured under the General Liability but only as required by written contract. General Liability is primary with respect to the interest of the Additional Insured and any other insurance maintained by Additional Insured is excess and non-contributory with this insurance. Waiver of Subrogation is provided as required by written contract and where allowable by law.

CERTIFICATE HOLDER Nebraska Department of Health and Human Services Attn: Michelle Thompson PO Box 95026 Lincoln, NE 68509-5029	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee <i>Manashi Mukherjee</i>