

<b>Advance Child Care, Inc.</b> <b>EIN: 75-2294531</b> <b>CE ID: 01 804</b>	<b>REQUEST FOR PROPOSAL NO. 0003</b>	
	Offers will be opened on: 12/31/2019	
	RFP Publish Date: 12/01/2019	
<b>Refer <u>ALL</u> general inquiries regarding this RFP to:</b>  Max Taylor maxt@advcc.org (903) 872-5231		
	Description: CACFP Forms Processing Services	
	Oversight Agency: Texas Dept. of Agriculture	
<b>See Page 3 for TA inquiries (Point of Contact)</b>	<b>See page 2 for mailing instructions.</b>	

**OFFER AND ACCEPTANCE:** The Contracting Entity (CE), herein referred to as **Agency**, seeks Proposals for the Services described in this solicitation. All proposals and responses received shall be treated as offers to contract. This agency's acceptance of any offer must be demonstrated by execution of the acceptance found below.

This is an RFP for a *Competitive Proposal* procurement. All proposals will be scored based on award criteria found on page 10 of this RFP. After 12/30/2019 all proposals that have been received and defined as responsive, will be evaluated by Agency using said scoring criteria. Offerors submitting proposals scoring within the "award range" set by Agency will be contacted to begin contract negotiations. Negotiation criteria, also found on page 10 of this RFP will be used to determine the most advantageous bidder.

In the event only one proposal is submitted to Advance Child Care through this RFP, the Agency will submit a written request to the Texas Department of Agriculture to use *Non-Competitive Proposal* procurement.

Upon identification of the most advantageous bidder through Competitive Proposal procurement or approval from TDA to contract with a single source vendor through Non-Competitive Proposal procurement, an award letter will be submitted to winning offeror.

**EXECUTION:** In compliance with this Request for Proposal, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all Services, at the price(s) offered herein, within the time specified herein. By executing this offer, I certify that this offer is submitted competitively and without collusion.

**Failure to execute/sign offer prior to submittal shall render offer invalid. Late offers are not acceptable.**

OFFEROR: (Individual or Company Name)		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY, STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO
PRINT NAME & TITLE OF PERSON SIGNING:	FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:

**DELIVERY INSTRUCTIONS:** The Offeror must deliver one (1) **signed original** of the Proposal to Issuing Agency in a sealed package with Company Name and RFP Number (0003) clearly marked on the front. **Offeror must return all pages of this solicitation listed under Item VI. of the RFP in their response.**

Offeror may elect to either email an electronic version of the proposal, mail the signed proposal in a sealed envelope, or drop off the signed proposal in a sealed envelope

<b>Email Delivery:</b> <a href="mailto:maxt@advcc.org">maxt@advcc.org</a> Subject Line:        RFP 0003
<b>Postal Delivery:</b> Agency:    Advance Child Care, Inc. Address:    P.O. Box 1067; Corsicana, Tx 75151-1067 Attn:        RFP 0003
<b>In Person Delivery:</b> 523 West First Ave; Corsicana, Tx 75110 8:00 a.m. to 5:00 p.m. Monday through Friday

Proposals via facsimile (FAX) machine will not be accepted;

**It is the responsibility of the Offeror to have the Proposal in the possession of Advance Child Care by the specified time and date of opening.**

Proposals, subject to the conditions made a part hereof, will be received until 5:00 p.m. on December 30, 2019. Proposals must be submitted with the Execution page signed and dated by an official authorized to bind the Offeror's firm. Failure to return a signed proposal shall result in disqualification. All proposals must comply with Section VI, Proposal Content and Organization.

All inquiries regarding the RFP specifications or requirements are to be addressed to the contact person listed on Page One. Agency will follow procedures addressed in the State of Texas Procurement Manual, found at: <https://comptroller.texas.gov/purchasing/publications/procurement-manual.php>

**NON-RESPONSIVE PROPOSALS:** Offeror's bid will be deemed non-responsive by Agency. and will be rejected without further consideration or evaluation if statements such as the following are included:

- "This proposal does not constitute a binding offer";
- "This proposal will be valid only if this offer is selected as a finalist or in the competitive range";
- "The offeror does not commit or bind itself to any terms and conditions by this submission";
- "This document and all associated documents are non-binding & are used for discussion purposes only";
- "This proposal is not binding on either party until signed by authorized representatives of both parties", or
- A statement of similar intent.

**OFFEROR'S LICENSE OR SUPPORT AGREEMENTS:** The terms and conditions of the Offeror's standard Services, license, maintenance or other agreement(s) applicable to Services, Software and other Products acquired under this RFP may apply to the extent such terms and conditions do not materially change the terms and conditions of this RFP. In the event of any conflict between the terms and conditions of this RFP and the Offeror's standard agreement(s), the terms and conditions of this RFP relating to audit and records, jurisdiction, choice of law, the State of Texas competition proposal procurement requirements found at <https://comptroller.texas.gov/purchasing/publications/procurement-manual.php>, the remedy for intellectual property infringement and the exclusive remedies and limitation of liability herein shall apply in all cases and supersede any provisions contained in the Offeror's relevant standard agreement or any other agreement. Agency shall not be obligated under any standard license and/or maintenance or other Offeror agreement(s) to indemnify or hold harmless the Offeror, its licensors, successors or assigns, nor arbitrate any dispute, nor pay late fees, legal fees or other similar costs.

**DIGITAL IMAGING:** Agency will digitize the Offeror’s response and any awarded contract together with associated contract documents. This electronic copy shall be a “preservation record”, and serve as the official record of this solicitation with the same force and effect as the original written documents comprising such record. Any printout or other output readable by sight shown to reflect such record accurately is an "original."

**QUESTIONS CONCERNING RFP:** Written questions concerning this RFP will be received through December 20, 2019 at 5:00 pm CST. They must be sent via e-mail to the Agency’s Points of Contact (see below): Please insert “Questions for RFP 0003” as the subject for the email submission.

Agency will respond to an answer to all submitted questions directly back to sender and post all questions and answers under RFP 0003 Addendum on their website at [www.advcc.org](http://www.advcc.org). Oral answers will not be provided.

Offeror contact regarding this RFP with anyone other than Max Taylor may be grounds for rejection of said Offeror’s offer.

Critical updated information may also be included in this Addendum. It is important that all Offerors bidding on this RFP periodically check [www.advcc.org](http://www.advcc.org) for any and all Addenda that may be issued prior to the offer opening date.

**BASIS FOR REJECTION:** Agency reserves the right to reject any and all offers, in whole or in part; by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the specifications or intent of this solicitation; lack of competitiveness; error(s) in specifications or indications that revision would be advantageous to Agency; cancellation or other changes in the intended project, or other determination that the proposed specification is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of Advance Child Care, Inc.

**NOTICE TO OFFERORS:** Agency may, but will not be required to, evaluate or consider any additional terms and conditions submitted with an Offeror’s response. This applies to any language appearing in or attached to the document as part of the Offeror’s response. By execution and delivery of this Invitation for Offer and response(s), the Offer agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect unless it is part of pre-award negotiations and specifically accepted by the Agency.

**LATE PROPOSALS:** Regardless of cause, late proposals will not be accepted and will automatically be disqualified from further consideration. It shall be the Offeror’s sole risk to ensure delivery at the designated office by the designated time. Post Mark on mailed proposals will be used to determine timely submission. Proposals electronically submitted by email will be determined timely based on date email was received on the Google Mail Server. Proposals submitted in person must have a date stamp and initials of the receiving officer at our designated location.

**POINT OF CONTACT:** Contact by the Offeror with the persons shown below for contractual and technical matters related to this RFP.

<b>Agency Contractual Point of Contact</b>	<b>Agency Technical Point of Contact</b>
Max Taylor maxt@advcc.org 888-600-9422	Max Taylor maxt@advcc.org 888-600-9422

**See Item VI. for information on what documents are required to be submitted back to qualify as an eligible proposal.**

**FOR AGENCY USE ONLY**

Proposal has met responsive criteria and is eligible for evaluation: Yes\_\_\_\_ No\_\_\_\_ \_\_\_\_\_  
(Authorized representative of AGENCY).

**ACCEPTANCE OF OFFER FOR NEGOTIATION:** If this proposal is scored in an accepted range for negotiation of a contract, an authorized representative of AGENCY shall affix their signature hereto and this document and the documents identified above shall then constitute the written agreement to negotiate between the parties. A copy of this acceptance will be forwarded to the vendor(s) with a negotiation date scheduled.

**FOR AGENCY USE ONLY**

Offer accepted for negotiation on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_  
Schedule Date of Negotiation \_\_\_\_/\_\_\_\_/\_\_\_\_ (Authorized representative of AGENCY).

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## I. Introduction

The purpose of this RFP and any resulting contract award is to solicit offers for turn-key processing services, as identified under item (1) below and based on specific parameters listed in Sections 3 - 5. Agency strongly encourages proposals from all qualified respondents who may be able to provide the requested services. In general terms,

- 1) Turn-key processing services must include:
  - a) A breakdown of store receipts and invoices to determine compliance with Advance Child Care's clients' requirement to provide all CACFP expenses that are directly tied to a client's daily meal services as it relates to food, milk and kitchen supply purchases;
  - b) A breakdown of time distribution reports and supporting documentation (pay stubs payroll reports, TWC employment reports, etc.) to determine compliance with USDA time distribution reporting and amount of CACFP expense accrued by a client's employees' labor;
  - c) Validation of correctness of all CACFP Enrollment forms, Meal Benefit Income Eligibility forms, Infant/Child Declaration forms, and doctor/parent medical statements submitted to Advance Child Care by a site's assigned Account Rep;
  - d) Creation and dissemination of re-certification packets by U.S Mail to Advance Child Care's clients in the month of their re-certification designation.
  - e) Timely notification of client errors, omissions and the falsification of records to Advance Child Care designated staff;
  - f) Manual and Electronic filing and archiving of all processed forms and receipts in Advance Child Care's Google Drive accounts for a 4 year period;
- a) *Indefinite Quantity Contract.* This solicitation will establish a Convenience Contract for an indefinite quantity contract between a Vendor and the Agency. The quantity of sites that defined services are provided may fluctuate from month to month during the prescribed contract period. An estimated quantity based on historical data are used as a guide to set the average contracted volume at 310 sites with a maximum ceiling under the contract being 360 sites. .
- b) The contract effective date for this agreement goes into effect on February 1, 2020. In the event this RFP or resulting award is delayed or Vendor experiences valid reasons that delays the transition of Agency data into Vendor's system, Agency reserves the right to delay the contract effective date a maximum of 60 days. In the event the contract effective date is moved to another month other than February 1, 2020, Agency's CEO and Vendor will amend this contract to reflect a shorter contract period for the initial year.

### References:

The following publications were instrumental in providing Agency with RFP requirements and legal narrative and format for this RFP:

- Texas Department of Agriculture CACFP - Child Care Centers Handbook, Section 7000: Financial Management...[http://squaremeals.org/Portals/8/FND%20Forms/Program%20Handbooks/CCC%20Handbook%20-%20Section%207000%202017\\_02\\_07.pdf](http://squaremeals.org/Portals/8/FND%20Forms/Program%20Handbooks/CCC%20Handbook%20-%20Section%207000%202017_02_07.pdf)
- United States Department of Agriculture Food and Nutrition Service, FNS Instruction: 796.2 Revision 4...<https://www.fns.usda.gov/sites/default/files/796-2%20Rev%204.pdf>
- U.S. Government Publishing Office, e-CFR, Part 226: Child and Adult Care Food Program...<https://www.ecfr.gov/cgi-bin/textidx?SID=4c211a738d6109939c6054a6286ac109&mc=true&node=pt7.4.226&rgn=div5>
- Texas Comptroller, The State of Texas Procurement Manual...<https://comptroller.texas.gov/purchasing/publications/procurement-manual.php>

## II. Bidding Information

### A. Procurement Schedule

The CEO of Advance Child Care, Inc. will make every effort to adhere to the following schedule:

Action	Responsibility	Date
Issue of RFP	Max Taylor	12/01/2019
Deadline To Submit Additional Questions	Potential Offerors	12/20/2019
Final Response to Written Questions/RFP Amendments from Agency	Max Taylor	12/22/2019
Submission of Proposal Deadline	Offeror(s)	12/30/2019
Opening of Bids and Proposal Evaluation	Max Taylor	12/31/2019
Selection of Offeror(s) for Negotiations	Max Taylor	01/02/2020
Negotiations Completed By	Max Taylor	01/07/2020
Contract Award	Max Taylor - CEO	01/08/2020
Protest Deadline	Offerors	10 days after award

### B. Instructions to Offerors

Additional acronyms, definitions and abbreviations may be included in the text of the RFP.

- 1) **EXECUTION**: Failure to sign under EXECUTION section, mark all required responses in Section 5, or submit incomplete information in Sections 3 and 4 will render offer invalid..
- 2) **TIME FOR CONSIDERATION**: Unless otherwise indicated on the first page of this document, the Offeror's offer must be valid for thirty (30) days from the date of offer opening
- 3) **PROMPT PAYMENT DISCOUNTS**: Offerors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the Agreement except as a factor to aid in resolving cases of identical prices.
- 4) **MISCELLANEOUS**: Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
- 5) **ORGANIZATION**: Offerors are directed to carefully review Section VI herein and fully comply with the content and organizational requirements therein.

## C. General Conditions for Proposals

- 1) **DEFINITIONS, ACRONYMS AND ABBREVIATIONS:** The following are additional defined terms:
  - a) **CACFP Enrollment Form:** Child enrollment form provided to Advance Child Care client sites that must be used to enroll client's customers onto the CACFP program;
  - b) **Meal Benefit Income Eligibility Form:** USDA form that client's customers' have the option to complete that allows Advance Child Care to determine the income status of each enrolled child.
  - c) **Infant/Child Declaration Form:** Form provided by Advance Child Care to client sites for customers to declare any alterations to the client site's daily meal services such as what food components the parent will provide in place of the client site's food component.
  - d) **Doctor/Parent Medical Form:** Form declaring a medical, disability or cultural indifference to specific food component provided by client site and a request to substitute said component with another eligible component.
  - c) **Agency:** Advance Child Care, Inc., Contracting Entity with the Texas Department of Agriculture.
  - d) **Claim for Reimbursement:** The total amount of CACFP Reimbursement Funds earned by a client site for a specific claim month, based on the number of meal and snacks served in that month and factored by the percentage of enrolled children in all three income groups.
  - e) **Cost Unit:** The unit of monetary funding that this RFP will accept. It includes an all inclusive cost unit for all Services provided by Vendor to Agency for each client site that reports a *Claim For Reimbursement* for a given claim month (Cost Units should be calculated for a 12 month duration only (in the event this offer is not renewed after the procured 12 month period.  
  
*(i.e. If your total bid for Services is \$ 100,000 for a 12 month period then you would divide your \$ 100,000 total cost by the Agency's Total Unit tally of 310 units to arrive at a unit cost of \$322.58; then divide that annual unit cost by 12 to arrive at your monthly use fee of \$ 26.88)*
  - f) **Deliverables:** Deliverables, as used herein, shall comprise all vendor services provided to Agency as described in this RFP.
  - g) **Offeror:** Company, firm, corporation, partnership, individual, etc., submitting a proposal in response to a solicitation.
  - h) **Reasonable, Necessary or Proper:** as used herein shall be interpreted solely by Agency.
  - i) **RFP:** Request for Proposal
- 2) **READ AND REVIEW:** It shall be the Offeror's responsibility to read this entire document, review all enclosures and attachments, and comply with all specifications, requirements and the Agency's intent as specified herein. If an Offeror discovers an inconsistency, error or omission in this solicitation, the Offeror should request a clarification from the Agency's contact person listed on the front page of the solicitation. Questions and clarifications must be submitted in writing and must be submitted by e-mail within the time period identified hereinabove.
- 3) **SITE TYPE:** Site types only include Child Care Centers (CCC)
- 4) **TOTAL UNITS:** The projected Total Units for this RFP in regards to Services is 310 CCC site types. Offerors should use this tally to determine what their turn key bid per unit will be for this 12 month period.
- 5) **OFFEROR RESPONSIBILITY:** The Offerors will be responsible for investigating and recommending the most effective and efficient technical configuration. Consideration shall be given to the stability of the proposed configuration and the future direction of technology, confirming to the best of their ability that the recommended approach is not short lived. The Offerors must provide a justification for their proposed services, along with costs thereof. Offerors are encouraged to present explanations of benefits and merits of their proposed solutions together with any accompanying Services, maintenance, warranties, value added Services or other criteria identified herein. The

Agency reserves the right to disqualify any bidder if the Agency determines that the bidder has used its position (whether as an incumbent Offeror, or as a subcontractor hired to assist with the RFP development, or as a Offeror offering free assistance) to gain a competitive advantage on the RFP or other solicitation.

- 6) **ELIGIBLE VENDOR:** The Offeror certifies that in accordance of the State of Texas Procurement Manual, Offeror is not an ineligible vendor.
- 7) **ORAL EXPLANATIONS:** The Agency will not be bound by oral explanations or instructions given at any time during the bidding process or after award. Offeror contact regarding this RFP with anyone other than the Agency contact named on Page 2 above may be grounds for rejection of said Offeror's bid. Agency contact regarding this RFP with any Offeror may be grounds for cancellation of this RFP.
- 8) **INSUFFICIENCY OF REFERENCES TO OTHER DATA:** Only information that is received in response to this RFP will be evaluated. Reference to information previously submitted or Internet Website Addresses (URLs) will not suffice as a response to this solicitation.
- 9) **CONFLICT OF INTEREST:** The Offeror shall not knowingly employ, during the period of the Agreement, any personnel who are also employed by Agency or other personnel who are providing services to Agency through another sub-contracting company.
- 10) **CONTRACT TERM:** A contract awarded pursuant to this RFP shall have an effective date as provided in the *Final Notice of Award*. The term shall be **one** (1) year, and will expire upon the 12 month anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier. The Agency retains the option to extend the Agreement for four (4) consecutive one (1) year periods at its sole discretion. In addition, any extended agreement may have an economic cost adjustment tied to Producer Price Index (PPI).
- 11) **EFFECTIVE DATE:** This solicitation, including any Exhibits, or any resulting contract or amendment shall not become effective nor bind the Agency until the Agency's CEO has signed the document(s), contract or amendment; the effective award date has been completed on the document(s) by the Agency CEO, and that date has arrived or passed. The Agency shall not be responsible for reimbursing the Vendor for Services rendered prior to the appropriate signatures and the arrival of the effective date of the Agreement. No contract shall be binding on the Agency until an encumbrance of funds has been made for payment of the sums due under the Agreement.
- 12) **RECYCLING AND SOURCE REDUCTION:** It is the policy of this Agency to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of Goods purchased. However, no sacrifice in quality of packaging will be acceptable. The Vendor remains responsible for providing packaging that will protect the commodity and contain it for its intended use.
- 13) **HISTORICALLY UNDERUTILIZED BUSINESSES:** The AGENCY invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.
- 14) **CLARIFICATIONS/INTERPRETATIONS:** Any and all amendments or revisions to this document shall be made by written addendum from the Agency on their website ([www.advcc.org](http://www.advcc.org)). Offerors may contact the Agency's contact listed on the first page of this document to obtain a written status of contract award. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
- 15) **RIGHTS RESERVED:** While the Agency has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by Advance Child Care, Inc. to award a contract. Upon determining that any of the following would be in its best interests, the Agency may:
  - a) waive any formality;
  - b) amend the solicitation and/or cancel or terminate this RFP;
  - c) reject any or all offers received in response to this RFP;



- d) if the response to this solicitation demonstrate a lack of competition, negotiate directly with one Vendor (with TDA approval);
  - e) not award, or if awarded, terminate any contract if the Agency determines adequate State funds are not available;
- 16) **ALTERNATE OFFERS:** The Agency will not accept alternate offers.
- 17) **CO-VENDORS:** Offerors may not submit an offer as partnerships or other business entities.
- 18) **SUBMITTING A PROPOSAL:** Each Offeror submitting a Proposal warrants and represents that:
- a) The Proposal is based upon an understanding of the specifications and requirements described in this RFP.
  - b) Costs for developing and delivering responses to this RFP and any subsequent presentations of the Proposal as requested by the Agency are entirely the responsibility of the Offeror. The Agency is not liable for any expense incurred by the Offerors in the preparation of their proposals.
- 19) **SUBMITTED MATERIALS:** All materials submitted in response to this RFP become the property of the Agency and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the Agency and the Vendor resulting from this RFP process.
- 20) **MODIFICATIONS TO OFFER:** An offer may not be unilaterally modified by the Offeror for a thirty (30) day period following the delivery of the proposal, or of any best and final offer.

#### **D. Evaluation Process**

- 1) **SOURCE SELECTION:** A trade-off/ranking method of source selection will be utilized in this procurement to allow the Agency to award this RFP to the Vendor providing the Best Value, and recognizing that Best Value may result in award other than the lowest price or highest technically qualified offer. By using this method, the overall ranking may be adjusted up or down when considered with, or traded-off against other non-price factors.
- a) Evaluation Process Explanation. Agency employees will review all proposals. All proposals will be initially classified as being responsive or non-responsive. If a proposal is found non-responsive, it will not be considered further. All responsive proposals will be evaluated initially based on stated evaluation criteria (see item 2 below).
  - b) To be eligible for consideration, an Offeror's Proposal must substantially conform to the intent of all specifications. Compliance with the intent of all specifications will be determined by the Agency.
  - c) Offerors are advised that the Agency is not obligated to ask for or accept after the closing date, a receipt of the proposal, or data that is essential for a complete and thorough evaluation of the proposal.
- 2) **AWARD EVALUATION CRITERIA:** Each of the criteria below shall be evaluated in accordance with the solicitation documents:
- Cost;
  - Ability to manage services based on compliance, reliability and timeliness;
  - Ability to update CACFP data in Agency's system in a reliable and timely manner;
  - Ability to provide technical assistance to Agency employees and sites;
  - Strength of management plan relating to experience of providing similar services.
- 3) **PAST PERFORMANCE:** The offeror may be disqualified from an award if the offeror or any key personnel proposed, have previously failed to perform satisfactorily in any prior Agency contract.

4) **AWARD EVALUATION METHOD:**

Agency has developed a scoring system for the Award Evaluation Criteria, with the following stair stepped values:

- Cost..... 25.0 %
- Ability to manage services based on compliance, reliability and timeliness..... 25.0 %
- Ability to update CACFP data in Agency’s system in a reliable & timely manner... 25.0 %
- Ability to provide technical assistance to Agency employees and sites..... 15.0 %
- Strength of management plan relating to experience of providing similar services. 10.0 %

5) **PROTEST PROCEDURES:** Protests of awards exceeding \$25,000 in value must be submitted to the issuing Agency at the address given on the first page of this document. Protests must be received in this office within ten (10) calendar days from the date of this RFP award and provide specific reasons and any supporting documentation for the protest.

6) **NEGOTIATIONS EVALUATION METHOD:**

Agency has developed a scoring system based on equal merit for the Negotiation Evaluation Method:

- Ability to provide Services by February 1, 2020;
- Communications Infrastructure within company and with Agency
- Staffing breakdown and job descriptions
- Stated “per site” monthly use fee
- Score from Award Evaluation Method

### **III. Technical Proposal Requirements**

- 1) **BRANDING**: All offers that incorporate Agency design and branding, as specified by the Agency, shall adhere to the Agency style guide.
- 2) **EQUIVALENT ITEMS**: Whenever a material, article or piece of equipment is identified in the specification(s) by reference to a manufacturer's or Vendor's name, trade name, catalog number or similar identifier, it is intended to establish a standard for determining substantial conformity during evaluation, unless otherwise specifically stated as a brand specific requirement (no substitute items will be allowed). Any material, article or piece of equipment of other manufacturers or Vendors shall perform to the standard of the item named. Equivalent offers must be accompanied by sufficient descriptive literature and/or specifications to provide for detailed comparison. Samples of items, if required, shall be furnished at no expense to the Agency and if not destroyed in the evaluation process, may be returned to the offeror at the offeror's expense.
- 3) **LITERATURE**: All Proposals shall include specifications and technical literature sufficient to allow the Agency to determine that the proposed solution substantially meets all specifications. If a specification is not addressed in the technical literature it must be supported by additional documentation and included with the offer. Offer responses without sufficient technical documentation may be rejected.
- 4) **DEVIATION FROM SPECIFICATIONS**: Any deviation from specifications indicated herein must be clearly identified as an exception and listed on a separate page labeled "Exceptions to Specification." Any deviations shall be explained in detail. **The offeror shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable. Offers of alternative or non-equivalent Services may be rejected if not found substantially conforming; and if offered, must be supported by independent documentary verification that the offer substantially conforms to the specified Services specification.**
- 5) **TECHNICAL SPECIFICATIONS**: A specification that documents the requirements of a service or system component. It typically includes functional requirements, performance requirements, interface requirements, design requirements, development standards, maintenance standards, or similar terms. Substantial conformity with technical specifications is required.
  - a. Site and System Preparation: Offerors shall provide the Agency complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed or implemented shall operate properly and efficiently within the site and system environment. The offeror shall advise the Agency of any site requirements for any Deliverables required by the Agency's specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the offeror and which would involve additional expenses to the Agency, shall be made at the expense of the offeror.
  - b. Specifications: The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only processes, configuration, material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the Agency, offeror shall supply proof of compliance with the specifications. Offeror must provide written notice of its intent to deliver alternate or substitute Services, Products, or other Deliverables. Alternate or substitute Services, Products, or Deliverables may be accepted or rejected in the sole discretion of the Agency; and any such alternates or substitutes must be accompanied by offeror's certification and evidence satisfactory to the Agency that the function, characteristics, performance and endurance will be equal or superior to the original deliverables specified. See, Acceptance Criteria, below

**SCOPE OF WORK:** Include a narrative of how your services will provide all of the following components and label the Narrative as **Addendum A**.

All work is based around the policies and procedural requirements of the Texas Department of Agriculture, F & N Division. Offerors may find these rules within the CACFP Policy and Handbook link at: <http://www.squaremeals.org/Programs/ChildandAdultCareFoodProgram/CACFPPolicyandHandbook.aspx>  
Reference *CACFP Child Care Centers* & *CACFP Day Care Homes* handbooks

1. Oversight of all processes and procedures;
2. Establishing folders in Google Shared Drive for new sites;
3. Set up and delivery of wifi scanners to new sites and replacement scanners to existing sites;
4. Technical assistance of scanner issues to all agency sites;
5. Data transfer of site expense data to specific google drive accounts;
6. Extrapolation of specific food service line items into site database;
7. Maintenance of Milk Usage and Milk Shortage data;
8. Transfer of site CACFP expense tallies into agency's web based management system;
9. Technical assistance to agency sites as it relates to CACFP Expense data submissions;
10. Fraud maintenance procedures as it relates to erroneous site data submissions;
11. Second level validation of CACFP Enrollment forms and Meal Benefit Income Eligibility forms;
12. Validation of other site forms submitted by agency account reps;
13. Technical assistance to agency staff as it relates to incomplete site paperwork;
14. Maintenance of site enrollment and income notebooks;
15. Archiving of expired site enrollment and income notebooks;
16. Scheduling, printing, and mailing of site recert packets;

**PERSONNEL INFRASTRUCTURE:** Include a narrative of how your services will function as it relates to Vendor personnel, including hierarchy and specific job descriptions, and label the Narrative as **Addendum B**.

#### **IV. Cost Proposal**

1) Pursuant to Texas Department of Agriculture regulations, Agency sets ceiling costs for monthly use fees per site (for this RFP) to be \$ 110.00 (for services).

\* See Item C.1.d. as well as C.3 and C.4 for definitions on *Cost Unit*, *Site Type*, and *Total Units*.

2) The per site monthly use fee must include any and all of the following sub fees:

- i. Labor costs
- ii. Expendable and Durable Supply costs
- iii. Equipment Rental costs (i.e. copiers and postage meters)
- iv. Printing costs
- v. Postage and Freight costs
- vi. 3rd Party Software, if any, required for the operation of services
- vii. Space costs
- viii. Utility costs
- ix. Internet and Communication costs
- x. Training cost including training materials
- xi. Technical and user documentation costs
- xii. Unlimited Technical support/customer service to Agency staff (phone & email)

#### **Offeror Pricing Worksheet: (optional to list)**

SERVICES: \$ \_\_\_\_\_ Total Aggregate Bid Calculation (annual for all Services) for CCC

\$ \_\_\_\_\_ / 310 (CCC Max Total Units) = \$ \_\_\_\_\_ / 12 (months) = \$ \_\_\_\_\_ CCC Unit per Month

#### **FINAL OFFEROR'S BID:**

**SERVICES: For CCC Providers \$ \_\_\_\_\_ \* Monthly Use Fee (for 12 consecutive months)**

\* This will be the fee offeror will charge Agency per child care center (CCC) actively claiming on Agency's CACFP Sponsorship on a per claim month basis from 02/2020 through 01/2021.

## V. Other Requirements and Special Terms

### 1) **VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.:**

- Will any work under the agreement be performed outside the United States? Yes\_\_\_ No\_\_\_
- If so, where will Services be performed? \_\_\_\_\_
  - provide a narrative (**Label as Addendum C**) as to the type work performed outside the U.S.

### 2) **CONTRACTOR ASSURANCES:**

Vendor must agree to adhere to the following policies & certification if a contract is awarded to them:

#### **41 FR 60-1.4(b) Equal Opportunity Clause**

(viewed at <https://www.law.cornell.edu/cfr/text/41/60-1.4>)

#### **U.S.C. 3142-3144 and 3146-3148 Wage Rate Requirement**

(viewed at <https://www.law.cornell.edu/uscode/text/40/subtitle-II/part-A/chapter-31/subchapter-IV>)

#### **40 U.S.C. 3701-3708 Contract Work Hours and Safety Standards**

(viewed at <https://www.law.cornell.edu/uscode/text/40/subtitle-II/part-A/chapter-37>)

#### **H2049 Certification Regarding Federal Lobbying**

([http://www.squaremeals.org/Portals/8/FND%20Forms/Program%20Forms/Certification%20Regarding%20Federal%20Lobbying%20\(H2049\)%202017\\_07\\_13.pdf](http://www.squaremeals.org/Portals/8/FND%20Forms/Program%20Forms/Certification%20Regarding%20Federal%20Lobbying%20(H2049)%202017_07_13.pdf))

#### **Debarment and Suspension Certification**

([http://www.squaremeals.org/Portals/8/FND%20Forms/Program%20Forms/Certification%20Regarding%20Debarment,%20Suspension,%20Ineligibility%20and%20Voluntary%20Exclusion%20for%20Covered%20Contracts%202017\\_02\\_06.pdf](http://www.squaremeals.org/Portals/8/FND%20Forms/Program%20Forms/Certification%20Regarding%20Debarment,%20Suspension,%20Ineligibility%20and%20Voluntary%20Exclusion%20for%20Covered%20Contracts%202017_02_06.pdf))

If Awarded a contract with Agency, I will abide by these policies and certifications.

Certified by Vendor \_\_\_\_\_  
(signature of Vendor)

### 3) **FINANCIAL STATEMENTS:** Agency must determine that an offeror has sufficient financial resources to perform stated work under this agreement. The offeror shall provide evidence of financial stability with its response to this RFP as further described herein below.

- Offeror must provide Financial Statements for the past two (2) fiscal years, including at a minimum, a Profit and Loss Statement and Balance Sheet for the last two years (2017 & 2018). If two (2) years of financial statements are not available, two years of Income Tax Returns and a Personal Financial Statement shall be provided to the fullest extent possible.

### 4) **CLOSURE OF LITIGATION:**

- a) Has the offeror, any of its subcontractors, or their officers, directors, or key personnel who may provide Services under any contract awarded pursuant to this solicitation, ever been convicted of a felony or any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception.

In regards to the statement in Item 4.a. YES \_\_\_\_\_ No \_\_\_\_\_

- b) Has the offeror been or currently in any civil litigation, arbitration, proceeding, or judgments against it or its subcontractors during the three (3) years preceding its offer, or which may occur during the term of any awarded to the Vendor pursuant to this solicitation, that involve (1) Services or related Goods similar to those provided pursuant to any contract and that involve a claim that may affect the viability or financial stability of the offeror, or (2) a claim or written allegation of fraud by the offeror or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the offeror or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Lawsuits and or judgments against offeror or subcontractor shall be disclosed to Agency to the extent they affect the financial solvency.

In regards to the statement in Item 4.b. YES \_\_\_\_\_ No \_\_\_\_\_

- c) All notices under subsection A and B herein shall be provided in writing to the Agency within thirty (30) calendar days after the offeror learns about any such criminal or civil matters. Details of settlements which are prevented from disclosure by the terms of the settlement shall be annotated as such. Offeror may rely on good faith certifications of its subcontractors addressing the foregoing, which certifications shall be available for inspection at the option of the Agency.
- 5) **CRIMINAL CONVICTION:** Has the offeror, an officer of the offeror, or an owner of a 25% or greater share of the offeror, (1) been convicted of a criminal offense incident to the application for or performance of a state, public or private contract or subcontract; (2) been convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards; or (3) been convicted under state or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the Agency, reflects upon the offeror's business integrity and such;

...that prohibits offeror from entering into a contract for Goods or Services with Agency

In regards to the statement in Item 5. YES \_\_\_\_\_ No \_\_\_\_\_

- 6) **ASSURANCES:** In the event that criminal or civil investigation, litigation, arbitration or other proceedings disclosed to the Agency pursuant to this Section, or of which the Agency otherwise becomes aware, during the term of the Agreement, causes the Agency to be reasonably concerned about:
- a) the ability of the Vendor or its subcontractor to continue to perform the Agreement in accordance with its terms and conditions, or
  - b) whether the Vendor or its subcontractor in performing Services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of the Agreement or violation of law, regulation or public policy, then the Vendor shall be required to provide the Agency all reasonable assurances requested by the Agency to demonstrate that: the Vendor or its subcontractors hereunder will be able to continue to perform the Agreement in accordance with its terms and conditions, and the Vendor or its subcontractors will not engage in conduct in performing Services under the Agreement which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.
- 7) **CONFIDENTIALITY OF DATA AND INFORMATION:** All RFP responses, information marked as confidential or proprietary, financial, statistical, personnel, technical and other data and information relating to the Agency's operation which are designated confidential by the Agency and made available to the Vendor in order to carry out the Agreement, or which become available to the Vendor in carrying out the Agreement, shall be protected by the Vendor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the Agency. If the methods and procedures employed by the Vendor for the protection of the

Vendor's data and information are deemed by the Agency to be adequate for the protection of the Agency's confidential information, such methods and procedures may be used, with the written consent of the Agency, to carry out the intent of this section. The Vendor shall not be required under the provisions of this section to keep confidential, (1) information generally available to the public, (2) information released by the Agency generally, or to the Vendor without restriction, (3) information independently developed or acquired by the Vendor or its personnel without reliance in any way on otherwise protected information of the Agency. Notwithstanding the foregoing restrictions, the Vendor and its personnel may use and disclose any information which it is otherwise required by law to disclose, but in each case only after the Agency has been so notified, and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

- 8) **PROJECT MANAGEMENT**: All project management and coordination on behalf of the Agency shall be through a single point of contact designated as the CEO. The Vendor shall designate a Vendor Project Manager who will provide a single point of contact for management and coordination of the Vendor's work. All work performed pursuant to the Agreement shall be coordinated between the Agency Project Manager and the Vendor Project Manager.
- 9) **MEETINGS**: The Vendor is required to meet with Agency personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the Agreement. Meetings will occur as problems arise and will be coordinated by the Agency's Site Operations Officer.. The Vendor will be given reasonable and sufficient notice of meeting dates, times, and locations. Face to face meetings are desired. However, at the Vendor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings, two (2) consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of the Agreement.
- 10) **STOP WORK ORDER**: The Agency may issue a written Stop Work Order to Vendor for cause at any time requiring Vendor to suspend or stop all, or any part, of the performance due under the Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to the Vendor. The ninety (90) day period may be extended for any further period for which the parties may agree.
  - a) The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Vendor, or within any extension of that period to which the parties agree, the Agency shall either:
    - i) Cancel the Stop Work Order, or
    - ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of the Agreement.
  - b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Vendor shall resume work. The Agency shall make an equitable adjustment in the delivery schedule, the Agreement price, or both, and the Agreement shall be modified, in writing, accordingly, if:
    - i) The Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to the performance of any part of the Agreement, and
    - ii) The Vendor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if the Agency decides the facts justify the action, the Agency may receive and act upon an offer submitted at any time before final payment under the Agreement.
  - c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the Agency, the Agency



shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.

d) The Agency shall not be liable to the Vendor for loss of profits because of a Stop Work Order issued under this term.

11) **TRANSITION ASSISTANCE:** If the Agreement is canceled prior to its expiration, for any reason, the Vendor must provide for up to two (2) months after the expiration or cancellation of the Agreement, all reasonable transition assistance requested by the Agency, to allow for the canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the Agency or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of the Agreement, (notwithstanding this cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The Agency shall pay the Vendor for any resources utilized in performing such transition assistance at the most current rates provided by the Agreement for Contract performance. If the Agency cancels the Agreement for cause, then the Agency will be entitled to off-set the cost of paying the Vendor for the additional resources the Vendor utilized in providing transition assistance with any damages the Agency may have otherwise accrued as a result of said cancellation.

12) **TERM EXTENSIONS:** Agency has at its discretion the option to extend this agreement for four (4) additional times for 12 consecutive months at a time..

13) **UNANTICIPATED TASKS:** In the event that additional work must be performed that was wholly unanticipated, and was not specified in the Agreement, but which in the opinion of both parties is necessary to the successful accomplishment of the contracted scope of work, the procedures outlined in this article will be followed. For each item of unanticipated work, the Vendor shall prepare a work authorization in accordance with the Agency's practices and procedures.

a) It is understood and agreed by both parties that all of the terms and conditions of the Agreement shall remain in force with the inclusion of any work authorization. A work authorization shall not constitute a contract separate from the Agreement, nor in any manner amend or supersede any of the other terms or provisions of the Agreement or any amendment hereto.

b) Each work authorization shall comprise a detailed statement of the purpose, objective, or goals to be undertaken by the Vendor, the job classification or approximate skill level or sets of the personnel required, an identification of all significant material then known to be developed by the Vendor's personnel as a Deliverable, an identification of all significant materials to be delivered by the Agency to the Vendor's personnel, an estimated time schedule for the provision of the Services by the Vendor, completion criteria for the work to be performed, the name or identification of Vendor's personnel to be assigned, the Vendor's estimated work hours required to accomplish the purpose, objective or goals, the Vendor's billing rates and units billed, and the Vendor's total estimated cost of the work authorization.

c) All work authorizations must be submitted for review and approval by the Texas Department of Agriculture F & N division. This submission and approval must be completed prior to execution of any work authorization documentation or performance thereunder. All work authorizations must be written and signed by the Vendor and the Agency prior to beginning work.

d) The Agency has the right to require the Vendor to stop or suspend performance under the "Stop Work" provision.

e) The Vendor shall not expend Personnel resources at any cost to the Agency in excess of the estimated work hours unless this procedure is followed: If, during performance of the work, the Vendor determines that a work authorization to be performed under the Agreement cannot be accomplished within the estimated work hours, the Vendor will be required to complete the work authorization in full. Upon receipt of such notification, the Agency may:

i) Authorize the Vendor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the work authorization, or

- ii) Terminate the work authorization, or
- iii) Alter the scope of the work authorization in order to define tasks that can be accomplished within the remaining estimated work hours.
- iv) The Agency will notify the Vendor in writing of its election within seven (7) calendar days after receipt of the Vendor's notification. If notice of the election is given to proceed, the Vendor may expend the estimated additional work hours or Services.

If offeror is awarded a contract with Agency, offeror understands and agrees to follow all conditions included in Section V above.

Certified by Vendor \_\_\_\_\_  
(Vendor Signature)

**VI. Proposal Content and Organization**

- 1) **CONTENTS OF PROPOSAL**: This section should contain all relevant and material information relating to the offeror’s organization, personnel, and experience that would substantiate its qualifications and capabilities to perform the Services described in this RFP.
- 2) **PROPOSAL CONTENT**: Demonstrate substantial conformity to the RFP specifications.
  - a) Rate your understanding of the following polies & procedures: (with 1 being least and 10 being most)
  - b) *Vendors picked for negotiation will be required to take an oral test over these policies/procedures*

i) TX-UNPS CACFP General Policies & Procedures	1 – 2 – 3 – 4 – 5 – 6 – 7 – 8 – 9 - 10
ii) Google <i>Shared Drive</i> Processes/Procedures	1 – 2 – 3 – 4 – 5 – 6 – 7 – 8 – 9 - 10
iii) CACFP Milk Requirements (portion sizes per age)	1 – 2 – 3 – 4 – 5 – 6 – 7 – 8 – 9 - 10
iv) Meal Pattern Requirements for all age groups	1 – 2 – 3 – 4 – 5 – 6 – 7 – 8 – 9 - 10
v) Required Fields on the CACFP Enrollment form	1 – 2 – 3 – 4 – 5 – 6 – 7 – 8 – 9 - 10
vi) Required Fields on the MBIEF	1 – 2 – 3 – 4 – 5 – 6 – 7 – 8 – 9 - 10
vii) Special Dietary Needs policies	1 – 2 – 3 – 4 – 5 – 6 – 7 – 8 – 9 - 10
viii) Time Distribution Report policies	1 – 2 – 3 – 4 – 5 – 6 – 7 – 8 – 9 - 10
ix) Non Profit Food Service Threshold policies	1 – 2 – 3 – 4 – 5 – 6 – 7 – 8 – 9 - 10
x) Procedures to validate store receipt with vendor	1 – 2 – 3 – 4 – 5 – 6 – 7 – 8 – 9 - 10

- c) Provide detailed description of the offeror’s firm (should include all of the following)  
(use this form OR complete your own form and label it **Addendum E**)

Company Name \_\_\_\_\_

Date Established (year) \_\_\_\_\_

Ownership Type (circle)    Sole Proprietor    Partnership    LLC    Corporation

Experience with Processing CACFP Forms:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Experience with Validation of Store Receipts/Invoices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- 3) **PROPOSAL FORMAT:** The Proposal should only contain the documents listed below under item 5. All addendums should be typewritten on standard 8 ½ x 11 paper and attached to that line item's documentation.
- 4) **GENERAL INSTRUCTIONS:** Vendors are strongly encouraged to adhere to the following general instructions in order to bring clarity and order to the offer and subsequent evaluation process:
  - a) Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective offer are not desired.
  - b) The response should be complete and comprehensive with a corresponding emphasis on being concise and clear.
- 5) **RFP RESPONSE ORGANIZATION:** The Proposal should be organized and indexed in the following format and should ONLY contain, the listed items in the sequence indicated.

Execution Section (*page 1*)  
Scope of Work (*Addendum A*)  
Personnel Infrastructure (*Addendum B*)  
Cost Proposal Form (*page 13*)  
Other Requirements and Special Terms (*pages 14-18*)  
Addendum D - Financials  
Proposal Content & Organization (*pages 19*)  
Addendum E – Offeror's Business Bio (*send back only if completed as an Addendum*)  
Information Technology Terms and Conditions (*sign and send back page 29*)  
Other Supporting Material Including Technical System Documentation. (*optional*)  
Training and Other Materials, Samples or Examples. (*optional*)

- 6) **ADHERENCE TO INSTRUCTIONS:** Any offer that does not adhere to these instructions may be deemed non-responsive and rejected on that basis.
- 7) **NON-DISCRIMINATION STATEMENT:**

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

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](#), (AD-3027) found online at: [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

This institution is an equal opportunity provider.

## **VII. Information Technology Terms and Conditions**

### **Section 1. General Terms and Conditions Applicable to All Purchases**

**1) DEFINITIONS:** As used herein;

Agreement means the contract awarded pursuant to this RFP.

Purchasing Agency shall mean the Agency purchasing the Services.

Services shall mean the duties and obligations undertaken by the Vendor under, and to fulfill, the specifications, requirements, terms and conditions of the Agreement.

Agency shall mean Advance Child Care, Inc., a contracting entity (CE) with the Texas Department of Agriculture.

**2) STANDARDS:** Any Deliverables shall meet all applicable state and federal requirements. Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender or provide to the Agency only those Deliverables that have been inspected and found to conform to the RFP specifications. All Deliverables are subject to operation, certification, testing and inspection, and any accessibility specifications.

**3) SUBCONTRACTING:** The Vendor may not subcontract the performance of required Services.

**4) TRAVEL EXPENSES: All travel expenses should be included in the Vendor's proposed Unit Rate.**

In the event that the Vendor, upon specific request in writing to the Agency, is deemed eligible to be reimbursed for travel expenses arising under the performance of the Agreement, reimbursement will be at the Agency's current per diem rates. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the Agency within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the Agency. The Agency will reimburse travel allowances only for days on which the Vendor is required to be in Texas performing Services under the Agreement.

**5) GOVERNMENTAL RESTRICTIONS:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the Agency's CEO. The Agency reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Agreement. The Agency may advise Vendor of any restrictions or changes in specifications required by Texas law, rule or regulatory authority that require compliance by the Agency. In such event, Vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the Agency, the Agency may terminate the Agreement and compensate Vendor for sums then due under the Agreement.

**6) PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the Agency for the purpose of obtaining any Contract or award issued by the Agency. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any Contract by the Agency, except as shall have been expressly communicated to the Agency Site Operations Officer in writing prior to acceptance of the Agreement or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign the Agreement and bind the Party to the terms and conditions of this RFP. Contract for future award of compensation as an inducement or consideration for making the Agreement. Subsequent discovery by the Agency of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Vendor(s) as permitted by any state or federal law covering debarment.

- 7) **AVAILABILITY OF FUNDS:** Any and all payments to Vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in the Agreement. If the Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of the Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is expressly contingent upon the appropriation, allocation and availability of funds for the purposes set forth in this RFP. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to take back any affected Deliverables and software not yet delivered under the Agreement, terminate any Services supplied to the Agency under the Agreement, and relieve the Agency of any further obligation thereof. The Agency shall remit payment for Deliverables and Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.
- 8) **ACCEPTANCE CRITERIA:** The Agency shall have the obligation to notify Vendor, in writing ten calendar days following provision, performance (under a provided milestone or otherwise as agreed) or delivery of any Services or other Deliverables described in the Agreement that are not acceptable. The notice shall specify in reasonable detail the reason(s) a given Deliverable is unacceptable. Acceptance by the Agency shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of any applicable inspection and testing procedures. Should a Deliverable fail to meet any specifications or acceptance criteria, the Agency may exercise any and all rights hereunder. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects or errors contained in the Deliverables or non-compliance with the specifications were not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure or correct the defect or replace or re-perform the Deliverables, the Agency reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price.
- 9) **PAYMENT TERMS:** Monthly Payment terms are Net 30 days after receipt of correct invoice after the completion of each claim month of the agreement period. All vendor fees for Services provided to Agency must be in the form of a site use fee, prorated into 12 monthly installments per site. No additional charges (licensing, maintenance, and set up fees) from vendor will be permitted under this RFP. Upon Vendor's written request of not less than thirty (30) days and approval by the r Agency, the Agency may:
- a) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
  - b) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s); however, in no event shall such approval and action obligate the Agency to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.
- 10) **EQUAL EMPLOYMENT OPPORTUNITY:** Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
- 11) **ADVERTISING/PRESS RELEASE:** The Vendor shall not publicly disseminate any information concerning the Agreement without prior written approval from the Agency.
- 12) **LATE DELIVERY:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered or performed at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure the particular substitute Services or other Deliverables.
- 13) **ASSIGNMENT:** Vendor may not assign the Agreement or its obligations hereunder except as permitted by Agency.. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm the Agreement attorning and agreeing to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under the Agreement.

**14) DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. A claim by the Agency shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under the Agreement. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under the Agreement, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

**15) CONFIDENTIALITY:** The Agency may maintain the confidentiality of certain types of information. Such information may include trade secrets and other information exempted from the Public Records Act. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL**". By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. **However, under no circumstances shall price information be designated as confidential.** The Agency may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought to compel the Agency to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the Agency, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the Agency and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the Agency in the action. The Agency agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The Agency shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The Agency shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction or other applicable law.

- a) Care of Information: Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the Agency during performance of any contractual obligation from loss, destruction or erasure. Vendor agrees to abide by all facilities and security requirements and policies of the agency where work is to be performed. Any Vendor personnel shall abide by such facilities and security requirements and shall agree to be bound by the terms and conditions of the Agreement.
- b) Vendor warrants that all its employees and any approved third party Vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in Texas. Vendor will, upon request of the Agency, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure. The Agency may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the Agency for Vendor's execution. The Agency may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Department of Information Technology pursuant to future statutory or regulatory requirements.
- c) Nondisclosure: Vendor agrees and specifically warrants that it, its officers, directors, principals and employees shall hold all information received during performance of the Agreement in the strictest confidence and shall not disclose the same to any third party without the express written approval of the Agency.

- d) The Vendor shall protect the confidentiality of all information, data, instruments, studies, reports, records and other materials provided to it by the Agency or maintained or created in accordance with this Agreement. No such information, data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written consent of the Agency. The Vendor will have written policies governing access to and duplication and dissemination of all such information, data, instruments, studies, reports, records and other materials.
  - e) All project materials, including software, data, and documentation created during the performance or provision of Services hereunder that are not licensed to the Agency or are not proprietary to the Vendor must be kept confidential or returned to the Agency, or destroyed. Proprietary Vendor materials shall be identified to the Agency by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be subject to a perpetual, royalty free, nonexclusive license to the Agency.
- 16) DEFAULT:** In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the Agency and if the failure is not cured within ten(10) days, or Vendor fails to meet the requirements of Paragraph 9) herein, the Agency may cancel the contract. Default may be cause for debarment.. The rights and remedies of the Agency provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
- a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by the Agreement, the Agency shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures. Vendor is responsible for the delays resulting from its failure to deliver or provide Services or other Deliverables.
  - b) Should the Agency fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences resulting from the Agency's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the Agency shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
  - c) Vendor shall provide a plan to cure any delay or default if requested by the Agency. The plan shall state the nature of the delay or default, the time required for cure, any mitigating factors causing or tending to cause the delay or default, and such other information as the Vendor may deem necessary or proper to provide.
- 17) WAIVER OF DEFAULT:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification of the terms of the Agreement, unless so stated in writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to the Agreement pursuant to Paragraph 40) herein below.
- 18) TERMINATION:** Any notice or termination made under the Agreement shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.
- a) The parties may mutually terminate the Agreement by written agreement at any time.
  - b) The Agency may terminate the Agreement, in whole or in part, pursuant to Paragraph 19), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:
    - i) Termination for Cause: In the event any service furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the Agency may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 22) and



23) herein. The rights and remedies of the Agency provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the Agency for damages sustained by the Agency arising from Vendor's breach of the Agreement; and the Agency may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.

**19) LIMITATION OF VENDOR'S LIABILITY:**

- a) Where Deliverables are under the Agency's exclusive management and control, the Vendor shall not be liable for direct damages caused by the Agency's failure to fulfill any Agency responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the Agency's intended use of the Deliverables. Vendor shall not be responsible for any damages that arise from (i) misuse or modification of Vendor's Software by or on behalf of the Agency, (ii) the Agency's failure to use corrections or enhancements made available by Vendor, (iii) the quality or integrity of data from other automated or manual systems with which the Vendor's Software interfaces, (iv) errors in or changes to third party software or hardware implemented by the Agency or a third party (including the vendors of such software or hardware) that is not a subcontractor of Vendor or that is not supported by the Deliverables, or (vi) the operation or use of the Vendor's Software not in accordance with the operating procedures developed for the Vendor's Software or otherwise in a manner not contemplated by this Agreement.
- b) The Vendor's liability for damages to the Agency arising under the contract shall be limited to two times the value of the Contract.
- c) The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranties pursuant to Section II, 2) of these Terms and Conditions, or to claims for injury to persons or damage to tangible personal property, gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors, the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on the Agreement. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the Agency under the Contract for the Vendor's failure to comply with the requirements stated therein.

**20) TIME IS OF THE ESSENCE:** Time is of the essence in the performance of the Agreement.

**21) DATE AND TIME WARRANTY:** The Vendor warrants that any Deliverable, whether Services, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs, modifies or affects any date and/or time data recognition function, calculation, or sequencing, will still enable the modified function to perform accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.

**22) INDEPENDENT CONTRACTORS:** Vendor and its employees, officers and executives shall be independent Vendors and not employees or agents of the Agency. The Agreement shall not operate as a joint venture, partnership, trust, agency or any other similar business relationship.

**23) TRANSPORTATION:** Transportation of any tangible Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing Agency. In cases where parties, other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.

- 24) NOTICES:** Any notices required under the Agreement should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.
- 25) TITLES AND HEADINGS:** Titles and Headings in the Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
- 26) AMENDMENT:** The Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the Agency and Vendor in conformance with Paragraph 36) herein.
- 27) TAXES:** Agency is exempt from sales tax. Agency may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agency, as applicable, during the term of the Agreement.
- 28) GOVERNING LAWS, JURISDICTION, AND VENUE:**
- a) The Agreement is made under and shall be governed and construed in accordance with the laws of the State of Texas and applicable Administrative Rules. The place of the Agreement or purchase order, its situs and forum, shall be Navarro County, Corsicana, Texas. where all matters, whether sounding in Contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to the Agreement, to the jurisdiction of the courts of the State of Texas, and stipulates that Navarro County shall be the proper venue for all matters.
  - b) Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in Texas shall govern the Agreement. To the extent the Contract entails both the supply of "Goods" and "Services," such shall be deemed "Goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "Goods" would result in a clearly unreasonable interpretation.
- 29) FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- 30) COMPLIANCE WITH LAWS:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
- 31) SEVERABILITY:** In the event that a court of competent jurisdiction holds that a provision or requirement of the Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of the Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.
- 32) CHANGES:** The Agreement and subsequent purchase order(s) is awarded subject to the provision of the specified Services and the shipment or provision of other Deliverables as specified herein. Any changes made to the Agreement or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency. The Agency shall not be responsible for Services or other Deliverables delivered without a purchase order from the Agency.
- 33) FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT:** The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

## Section 2: Terms and Conditions Applicable to Information Technology Goods and Services

- 1) **SOFTWARE LICENSE FOR HARDWARE, EMBEDDED SOFTWARE AND FIRMWARE:** Deliverables comprising of services may contain Vendor's software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a severable software product. Software may be included within the hardware at or prior to delivery. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. Agency grants the Vendor a license to use the Code (or any replacement provided) on, or in conjunction with, only the Deliverables purchased, or with any system identified in the solicitation documents. The Vendor shall have a worldwide, nonexclusive, non-sublicensable license to use such software and/or documentation for its internal use. The license set forth in this Paragraph shall terminate immediately upon the Vendor's discontinuance of the services provided under this contract. The Vendor shall not disassemble, decompile, reverse engineer, modify, or prepare derivative works of the embedded software, unless permitted under the solicitation documents.
- 2) **LICENSE GRANT FOR APPLICATION SOFTWARE, (COTS):** This paragraph recites the scope of license granted, if not superseded by a mutually agreed and separate licensing agreement, as follows:
- a) Agency grants to the Vendor and lawful clients a non-exclusive, non-transferable and non-sublicensable license to use, in object code format, Agency's software identified in the solicitation documents, Vendor's Statement of Work (SOW), or an Exhibit thereto executed by the parties ("Software"), subject to the restrictions set forth therein, such as the authorized computer system, the data source type(s), the number of target instance(s) and the installation site. Use of the Software shall be limited to the data processing and computing needs of the Agency and Vendor and lawful clients. This license shall be for the term of the contract, unless terminated as provided herein. The Vendor agrees not to distribute, sell, sublicense or otherwise transfer copies of the Software or any portion thereof.
  - b) Agency shall provide all encryption or identification codes or authorizations that are necessary or proper for the operation of the licensed Software.
  - c) The Agency may modify non-personal Software in machine-readable form for its internal use in merging the same with other software program material. Any action hereunder shall be subject to uses described in this paragraph, the restrictions imposed by Paragraph 3), and applicable terms in the solicitation documents or statements of work.
  - d) Agency warrants to the best of its knowledge that:
    - i) The licensed Software and associated materials do not infringe any intellectual property rights of any third party;
    - ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
    - iii) The licensed Software and associated materials do not contain any surreptitious programming codes, viruses, Trojan Horses, "back doors" or other means to facilitate or allow unauthorized access to the Agency or Vendor's information systems.
    - iv) The licensed Software and associated materials do not contain any timer, counter, lock or similar device (other than security features specifically approved by Customer in the Specifications) that inhibits or in any way limits the Software's ability to operate.
  - e) UNLESS MODIFIED BY AMENDMENT OR THE SOLICITATION DOCUMENTS, THE WARRANTIES IN THIS PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OR WHETHER ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NO OTHER REPRESENTATIONS OR WARRANTIES HAVE FORMED THE BASIS OF THE BARGAIN HEREUNDER.

**3) RESTRICTIONS:** Vendor's use of the Software is restricted as follows:

- a) The license granted herein is granted to the Vendor. If the License Grant and License Fees are based upon the number of Users, the number of Users may be increased at any time, subject to the restrictions on the maximum number of Users specified in the solicitation documents.
- b) No right is granted hereunder to use the Software to perform Services for commercial third parties (so-called "service bureau" uses). Services provided to the Texas Department of Agriculture's F & N employees is permitted.
- c) The Vendor may not copy, distribute, reproduce, use, lease, rent or allow access to the Software except as explicitly permitted under this Agreement, and Vendor will not modify, adapt, translate, prepare derivative works (unless allowed by the solicitation documents or statements of work,) decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Software or any internal data files generated by the Software.
- d) Vendor shall not remove, obscure or alter Agency's copyright notice, trademarks, or other proprietary rights notices affixed to or contained within the Software.

**4) PATENT, COPYRIGHT, AND TRADE SECRET PROTECTION:**

- a) Agency has created, acquired or otherwise has rights in, and may, in connection with the performance of Services by the Vendor, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Agency Technology"). To the extent that any Agency Technology is contained in any of the Deliverables including any derivative works, the Agency hereby grants the Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Agency Technology in connection with the Deliverables for the Vendor's purposes.
- b) Vendor shall not acquire any right, title and interest in and to the copyrights for Goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the Agency to Vendor. The Agency hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Vendor's internal use to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the Agency.
- c) Vendor will not be required to defend or indemnify the Agency if any claim by a third party against the Agency for infringement or misappropriation (i) results from the Agency's alteration of any Vendor-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and other Deliverables after receiving notice they infringe a trade secret of a third party.
- d) Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.

**5) AGENCY PROPERTY AND INTANGIBLES RIGHTS:** The parties acknowledge and agree that the Agency shall own all right, title and interest in and to the copyright in any and all software, technical information, specifications, drawings, records, documentation, data and other work products first originated and prepared by the Vendor for delivery to the Agency (the "Deliverables"). To the extent that any Agency Technology is contained in any of the Deliverables, the Agency hereby grants the Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Agency Technology in connection with the Deliverables for the Vendor's internal business purposes. Vendor shall not acquire any right, title and interest in and to the copyrights for Goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the Agency to Vendor. The Agency hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the Agency.

**The Vendor agrees to the conditions set forth in the Information Technology Terms and Conditions:**

Vendor Name \_\_\_\_\_

Vendor Signature \_\_\_\_\_

Date of Signature \_\_\_\_/\_\_\_\_/\_\_\_\_