STATE OF TEXAS	§	Division	Food and Nutrition	Location:	Austin
COUNTY OF TRAVIS	§	Payee Name:	Forte DFW LLC dba Forte Frozen	Program Name:	USDA Foods & Commodity Operations
		Payee TINS No:		Legal/Funding Authority:	Sections 12.0011 and 12.0025 of the Texas Agriculture Code
		Contract #:	Ref. 551-20-FN-1109	PO #:	

TEXAS DEPARTMENT OF AGRICULTURE STANDARD CONTRACT

FOR DISTRIBUTION, STORAGE AND WAREHOUSING OF USDA FOODS REGIONS 1&2

ARTICLE I. PARTIES TO CONTRACT

This agreement ("Contract") is entered into by and between the Texas Department of Agriculture ("TDA"), a Texas State Agency and Forte DFW LLC dba Forte Frozen, located at 3410 La Sierra Avenue, F93, Riverside, California 92503 ("Contractor") pursuant to TDA's authority under Title 2, Chapter 12, Section 12.0011 of the Agriculture Code.

ARTICLE II. PERIOD OF CONTRACT

The Contract Period shall begin upon execution and end May 31, 2021, unless extended or terminated as otherwise provided for in this Contract. Contractor's obligation is to cooperate with TDA and assist the agency and state with all transition deliverables and tasks, which transition provision survives the expiration or termination of this emergency Contract.

ARTICLE III. PURPOSES OF CONTRACT

The Contractor shall perform all of the services, functions and duties required by this Contract and Contractor's Proposal submitted in response to TDA's informal request for non-competitive proposals for Commercial Distribution of USDA Foods in Regions 1, 2 and 5. Contractor's Best and Final Offer (BAFO) pricing proposal is attached to this Contract as Appendix III and is incorporated by reference herein the same as if fully copied and set forth at length. TDA's Request for Proposals (RFP) No. 551-20-00687, to which no responses were received for the regions covered by this Contract, is attached to this Contract as Appendix I and is incorporated by reference herein the same as if fully copied and set forth at length.

ARTICLE IV. PAYMENT UNDER CONTRACT

There will be no direct funding provided from TDA to Contractor under this Contract. Contractor shall be paid by the applicable regional Contracting Entity (CE) according to the approved specified rates for the region as set forth below.

Contractor shall store and deliver USDA Foods pursuant to this Contract at the approved delivery and private storage rates accepted and approved by TDA for Regions 1 and 2. Contractor shall not be entitled to charge a minimum delivery fee under this Contract for any region.

The Contractor's rate to deliver USDA Foods for Region 1 (Dallas) is attached to Contractor's BAFO pricing proposal as Attachment A-Form J-Region 1. The per-case price for storage, handling, and pick-up is $1.65. The private storage rates per case (after 45 days of allocation of USDA Foods), for Contractor and accepted by TDA, are as follows:

1. For Dry Foods: $1.00 per case
2. For Chilled Foods: $1.00 per case
3. For Frozen Foods: $1.00 per case

The Contractor's rate to deliver USDA Foods for Region 2 (Longview) is attached to Contractor's BAFO pricing proposal as Attachment A-Form J-Region 2. The per-case price for storage, handling, and pick-up is $1.65. The private storage rates per case (after 45 days of allocation of USDA Foods), for Contractor and accepted by TDA, are as follows:

4. For Dry Foods: $1.00 per case
5. For Chilled Foods: $1.00 per case
6. For Frozen Foods: $1.00 per case

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Contractor's payments will be made by the CE in accordance with the foregoing rates and as outlined in the Description of Services in Sections 2 and 2.2 of the RFP No. 551-20-00687 and shall not exceed the prices or rates identified in this Contract as set forth above. Contractor must:

1. Invoice CEs at the approved delivery and pick-up rates either monthly or after each pick-up or delivery of USDA Foods;
2. Not bill CEs until after the pick-up or delivery is complete; and
3. Bill CEs for private storage charges monthly by the fifth (5th) calendar day of the month.

Contractor's invoice must include a summary of tickets for each pick-up or delivery at each delivery site. Contractor must number the pick-up and delivery tickets sequentially, listing the total number of units, cases, or packages.
Only with prior approval of TDA, Contractor may impose "C.O.D." (Cash on Delivery) or cease shipments on those CEs with frequent payment delays or checks returned because of "insufficient funds". C.O.D. or "no-ship status" will be removed once payment history improves.

ARTICLE V. DELIVERY SCHEDULING

Contractor shall have final responsibility for delivery scheduling. Contractor will work with each school district regarding delivery scheduling, and will try to accommodate each district. Nevertheless, Contractor shall have the flexibility to schedule deliveries further apart in order to increase case count for each stop as much as possible.

ARTICLE VI. GENERAL AND SPECIAL PROVISIONS OF CONTRACT
Attached hereto and incorporated herein by reference are the General Provisions and the Special Provisions indicated below with an "X" beside each:

Special Provisions A, Program Specific

Special Provisions B, Debarment (required if utilizing federal funds)
Special Provisions C, Lobbying (required if utilizing federal funds & over $100,000)

The Contractor must make full disclosure of its intent to employ or subcontract with an individual who is a former employee or retiree of TDA. Within the twenty four (24) months of leaving employment at TDA, a former employee or retiree selected by the Contractor for employment or subcontracting, shall not perform services on a project or fill a position that the former employee or retiree worked on while employed at TDA.

The Contractor shall be an independent contractor for matters relating to this Contract. The Contractor and its employees are not employees of TDA for any purpose and shall not be entitled to participate in any plan, arrangement, or distribution by TDA pertaining to or in connection with any pension, bonus, or other benefit extended to TDA employees.
ARTICLE VII. ENTIRE CONTRACT

This Contract specifically includes all specifications, terms, and conditions in Appendix I, together with the documents attached hereto and incorporated by reference herein, specifically, Appendix I; Special Provisions – B, Debarment and Suspension Certification; Special Provisions – C, Part A, Lobbying Certification; Special Provisions – C, Part B, Texas Department of Agriculture Disclosure of Lobbying Activities; and Appendix II, Form A, TDA General Contract Terms, Conditions, and Provisions. The Contract, RFP, Appendix 1, Special Provisions B and C (Parts A & B), Appendix II, General Terms and Conditions, and Appendix III, Contractor's BAFO pricing proposal, contain the entire agreement between the parties relating to the matters addressed in the Contract and the scope of work to be performed pursuant to this Contract. Any oral representations or modifications concerning this Contract shall be of no force or effect. This Contract may only be modified or revised by a written amendment executed by both parties.

In the event of conflicts in the interpretation of wording and/or meaning of the various sections, parts, appendices, general provisions, special provisions, and attachments of this Contract, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: this signed Contract and attachments and appendices; Special Provisions C and B (Parts A & B); Appendix II-TDA General Terms & Conditions-Form A; and Appendix III-Contractor's BAFO pricing proposal and rates.

ARTICLE VIII. NO WAIVER OF TDA DEFENSES, LIMITATIONS OR IMMUNITIES

Neither the terms of the Contract nor any conduct by a TDA representative under or in connection with the Contract shall be considered a waiver of any common law, constitutional or statutory defenses, immunities, limitations or privileges that would otherwise apply to the Contract, including sovereign immunity to suit.

ARTICLE IX. AUTHORITY TO BIND

Each person signing the Contract represents and warrants that he or she is authorized to execute and bind such party to the Contract. In the event the individual lacks such authority, the Contract shall be null and void and of no force whatsoever.

AGREED and accepted on behalf of the Contractor effective beginning on the date of the Contract as specified above and as indicated by signature below of a person authorized to bind Contractor.

FORTE FROZEN ~~FOOD COMPANY~~

Typed name: DANIEL FORTE

Typed title: Authorized Signature - CEO

This section reserved for TDA use.	
AGREED and accepted on behalf of Agency on 5/28/2020 (month/day/year) by a person authorized to bind Agency.	
Return contract to: Segundo Sanchez Texas Department of Agriculture Purchasing and Contracts Division 1700 North Congress Avenue, Rm. 1125E Austin, Texas 78701 Electronic version may be submitted to: Segundo.Sanchez@TexasAgriculture.gov	Jason Fearneyhough, Deputy Commissioner TAK

APPENDIX I

A. "Contractor" means the entity selected to engage in the distribution, storage and warehousing of USDA Foods in accordance with 7 CFR Part 250 and 2 CFR Part 200 relating to emergency contracts awarded on a noncompetitive basis, as well as this Contract and TDA's RFP. "Contracting Entity" or "CE" means a nonprofit organization, school, or school food authority that has the authority to receive and utilize USDA Foods pursuant to this Contract.

C. Description of Services/Activities:

See all of Section 2.0, including Sections 2.1-2.2 and following, in the "Statement of Work (SOW); Specifications; Deliverables," of TDA RFP No. 551-20-00687 for USDA and Texas Regions 1 and 2.

D. Budget:

There is no funding directly from TDA associated with this Contract. The approved Delivery Rate Schedules for this Contract are as set forth on page 1 above, for both Regions 1 & 2 (Forms I and J for each respective region) and attached to Contractor's BAFO pricing proposal as Attachment A for each region.

Special Provisions - B

Debarment and Suspension Certification
(Required for all federally-funded contracts)

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, §85.510, Participants' Responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19,160-19,211). The regulations may be viewed and downloaded from the website: http://www.sba.gov/sites/default/files/files/SBA%201624.pdf

READ INSTRUCTIONS ON NEXT PAGE BEFORE COMPLETING CERTIFICATION

CERTIFYING STATEMENT

(1) The prospective lower tier participant certifies, by submission of this Contract, that neither it nor its

principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Contract.

FORTE FROZEN

Organization Name

DANIEL FORTE CEO

Name and Title of Authorized Representative

Signature

Date 05/27/2020

Dept. of Agriculture Form LLL (7/97)

GENERAL INSTRUCTIONS FOR SPECIAL PROVISIONS - B
DEBARMENT AND SUSPENSION CERTIFICATION

Definitions:

Lower Tier Participant - Any organization or person receiving a grant or contract. This also includes subsequent subgrants and subcontracts.

Covered Transaction - The act of applying for federal funds or submitting a contract for federal funds.

Lower Tier Transaction - The making of a (1) subgrant to another entity or person or (2) procurement contract by a Lower Tier Participant to some other entity or person for goods or services, regardless of type, expected to equal or exceed a cumulative value of $25,000.

Principals - An administration head, key project/grant management person, officer, director within the Lower Tier Participant's organization or within a suborganization or subcontractor (i.e., superintendents and the key person in the school district who will exert control or management influence over this project. At a university, it would be the

president and principal investigator).

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this Contract, the prospective lower tier participant is stating that it is neither debarred nor suspended.

2. This certification is a material representation of fact upon which reliance was placed when this certification was signed. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment from federal funds participation.

3. The prospective lower tier participant shall provide immediate written notice to the organization to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "contract," and "voluntarily excluded," as used in this certification, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the organization to which this Contract is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this Contract that it will include the two-paragraph "CERTIFYING STATEMENT" without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Special Provisions - C
Part A

Lobbying Certification
(Required for all federally-funded contracts greater than $100,000)

Submission of this certification is required by the U.S. Department of Agriculture and Section 1352, Title 31 of the United States Code. It is a prerequisite for making or entering into a contract, subcontract, or subgrant over $100,000 with any organization. (See next page of this schedule for further instructions.)

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or

employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, Special Provisions D Part B "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) **The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.**

This certification is a material representation of fact on which the U.S. Department of Agriculture and the Texas Department of Agriculture relied when it made or entered into this grant or Contract. Any organization that fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

FORTE FROZEN
Organization Name

DANIEL FORTE CEO
Name and Title of Authorized Representative

Signature

Date 05/27/2020

Dept. of Agriculture Form LLL (7/97)

GENERAL INSTRUCTIONS FOR SPECIAL PROVISIONS - C
PART A
LOBBYING CERTIFICATION

This is a Congress of the United States and the U. S. Department of Agriculture requirement. The Contractor must submit this schedule to TDA for a federal-funded contract(s) with an approved amount in excess of $100,000. TDA will be unable to pay for any obligations established by the Contractor unless this schedule is submitted.

In addition, if the Contractor makes a subgrant or subcontract in excess of $100,000 to another organization of any type, then the Contractor shall require this form to be filed with and retained by the Contractor. According to federal law, failure to obtain the certification subjects the Contractor to civil penalties.

(1) This certification states that the Contractor is prohibited from using federal funds for influencing or attempting to influence any member of Congress or its employees or any federal agency employee concerning the making or awarding of a federal grant.

(2) This certification states that the Contractor is prohibited from using federal funds for influencing or attempting to influence any member of Congress or its employees or any federal agency employee concerning the making or awarding of a federal grant.

(3) This certification also states that if the Contractor pays or has paid any funds other than federal funds to any one person or organization for influencing or attempting to influence any member of Congress or its employees, or any federal agency employee concerning the making or awarding of a federal grant, that the Contractor will disclose to whom payments were made, how much money was involved and the type of work involved. The Contractors must use Special Provisions D Part B, Disclosure of Lobbying Activities for complying with this disclosure requirement. The Contractor shall require this form to be filed with the Contractor on any subgrants or subcontracts it makes in excess of $100,000 if funds have been spent as stipulated in this paragraph. The Contractor will then forward a legible copy of Special Provisions D Part B, Disclosure of Lobbying Activities to the Texas Department of Agriculture.

Additionally, this certification requires the Contractor to incorporate the language of this certification into any award or Contract documents for awarding subgrants or subcontracts that exceed $100,000 and that subgrantees and subcontractors shall certify and disclose accordingly.

TEXAS DEPARTMENT OF AGRICULTURE

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities for lobbying services procured (pursuant to Title 31 U.S.C. §1352). This disclosure form is required for any federal grant/contract received in excess of $100,000 and on any subgrant/subcontract made by the grantee/contractor. (Read the instructions for this schedule for further information.) **Do not complete and sign this disclosure form unless lobbying activities are being disclosed.**

Federal Program Name: ____

1. Type of Federal Action: Contract Grant	2. Status of Federal Action Bid/Offer/Application Initial Award Post-award	3. Report Type Initial Filing Material Change For Material Change Only: Year ____ Quarter ____ Date of Last Report: ____
4. Name and Address of Reporting Entity: Subawardee Tier ____, *if known:* Congressional District, if known: ____.	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Texas Department of Agriculture 1701 N. Congress Avenue Austin, Texas 78701 Congressional District: 10	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* ____	
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $	
10. A) Name and Address of Lobbying Registrant *(If individual, Last name, First name, MI):*	B) Individuals Performing Services (include address, if different from 10 A) *(Last name, First name, MI):*	
11. Information requested through this form is authorized by Title 31 U.S.C. §1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to Title 31 U.S.C. §1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: ____ Print Name: ____ Title: ____ Telephone No: ____ Date: ____	
Federal Use Only:		Authorized for Local Reproduction Standard Form—LLL

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GENERAL INSTRUCTIONS FOR SPECIAL PROVISIONS - C
PART B
DISCLOSURE OF LOBBYING ACTIVITIES

The filing of this form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

Each organization shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such organization. An event that materially affects the accuracy of the information reported includes:

(a) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
(b) A change in the organization(s) or individual(s) influencing or attempting to influence a covered Federal action; or
(c) A change in the officer(s), employee(s), or Member(s) of Congress contacted to influence or attempt to influence a covered Federal action.

4. Enter the full name, address, city, state, and zip code of the reporting entity. Include congressional district, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards, include but are not limited to, subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include congressional district, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award by the Federal agency, enter the Federal amount of the award for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

APPENDIX II

Form A
GENERAL CONTRACT TERMS AND CONDITIONS
TEXAS DEPARTMENT OF AGRICULTURE

1. **Definitions.** The following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

a. Agency - the Texas Department of Agriculture, sometimes referred to herein as "TDA."

b. Contract Manager - the individual designated by Contractor or TDA with overall responsibility for managing any contract resulting from this solicitation. See "Project Manager" below. Either Party may designate one person to be both the Contract Manager and the Project Manager.

c. Contractor - a Respondent selected for an award pursuant to this Solicitation.

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d. Include - include, includes and including are terms of inclusion and, where used in this Solicitation or resulting Contract, such terms shall be interpreted in accordance with their dictionary meaning and are deemed to be followed by the words "without limitation."

e. Key Person or Key Personnel - the employee or employees designated in the Response who are responsible for the overall supervision and management of the activities, projects, services, tasks or work made the subject of this Solicitation and resulting contract, including the timely and satisfactory delivery or completion of the goods, services or work.

f. Parties - all signatories to any contract resulting from this Solicitation. Individual signatories may be referred to herein or a resulting contract as a "Party."

g. Project Manager - the individual designated by Contractor or TDA with day to day responsibility for accomplishing the undertaking(s) made the subject of this Solicitation and resulting contract.

h. Respondent - an entity or person that submits an application, bid, offer, proposal, quote or response in reply to this Solicitation.

i. Response - an application, bid, offer, proposal or quote submitted in reply to this Solicitation.

j. Solicitation - the purchasing request made by TDA described and identified in this document, whether it be an Invitation for Bids (IFB), Quote Request, Request for Offers (RFO), Request for Proposals (RFP), Request for Qualifications (RFQ), Request for Non-Competitive Proposals, or other form of purchase.

2. **References.** Unless explicitly stated otherwise, any references to "appendices," "articles," "attachments," "exhibits," or "sections" are deemed to be references to appendices, articles, attachments, exhibits, or sections of this Solicitation or resulting contract (if any). These General Terms and Conditions shall be automatically incorporated into any contract resulting from this Solicitation without further reference.

3. **Order of Precedence.** In the event of a conflict or inconsistency among the various documents making up any contract resulting from this Solicitation, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: (a) Signed Contract or Notice of Award; (b) Appendices, Exhibits or Attachments to the Contract or Notice of Award; (c) the Solicitation document and any questions and official responses; and (d) Contractor's Response.

4. **Entire Agreement.** Any contract resulting from this Solicitation shall represent the entire understanding between the Parties with respect to its subject matter and shall constitute the entire agreement between the Parties, superseding and preempting any previous communications or agreements that may exist between the Parties.

5. **Federal, State and Local Tax and Withholding Requirements.** Contractor shall demonstrate onsite compliance with federal income tax laws including issuance of Form W-2s to employees. Contractor is responsible for federal and state unemployment insurance coverage and standard workers compensation insurance coverage. Contractor shall comply with all federal and state tax laws and withholding requirements. Neither TDA nor the State of Texas shall be liable to Contractor or its employees for any unemployment or workers compensation coverage, or federal or state withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission under or breach of this Section.

6. **Forms, Assurances, and Reports.** Contractor shall timely make and file with the proper authorities all forms, assurances and reports required by federal and state laws and regulations. TDA shall report any failure by Contractor that comes to TDA's attention and may deny payment or recover payments in the event of noncompliance with this Section.

7. **Key Person or Key Personnel.** Contractor shall ensure that key persons or key personnel assigned to any contract resulting from this Solicitation shall remain available for the entirety of the project, service or work required by the contract, unless TOA agrees, in writing, to a change in the Key Person or Key Personnel.

8. **Federal Rules, Laws, and Regulations.** Contractor shall be subject to and shall abide by all federal laws, rules, and regulations pertaining to any contract resulting from this Solicitation, including:

a. Americans With Disabilities Act, 42 U.S.C. § 12101, and the regulations effectuating its provisions, as each may be amended from time to time;

b. Title VI of the Civil Rights Act of 1964, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions;

c. Title IX of the Education Amendments of 1972, as amended (prohibition of sex discrimination in educational institutions) and the regulations effectuating its provisions;

d. Section 504 of the Rehabilitation Act of 1973, as amended (nondiscrimination on the basis of handicapping condition), and the regulations effectuating its provisions;

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e. The Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and the implementing regulations; and

f. The Anti-Lobbying Act, 18 U.S.C. 1913 (prohibition against the use of federal grant funds to influence legislation pending before Congress), and the Byrd Amendment on government lobbying, 31 U.S.C. 1352 (prohibition against the use of federal grant funds to influence certain federal contracting and financial transactions).

9. **Protests.** Any actual or prospective bidder or contractor who is aggrieved in connection with the solicitation, evaluation or award of this or any other contract by TOA may submit a formal protest to TOA in accordance with Title 4, Part 1, Chapter 1, Subchapter- Q of the Texas Administrative Code. The protest procedures contained in Subchapter Q shall be the exclusive method by which anyone may challenge any aspect of TDA's contracting process.

10. **Insurance.** Contractor represents and warrants that it will obtain and maintain for the term of any contract resulting from this Solicitation all insurance coverage required to ensure proper fulfillment of the contract and its liabilities thereunder. Contractor shall insure its motor vehicles used to fulfill its duties under the contract and require its subcontractors do the same. Such insurance shall comply with Texas statutory requirements and cover personally being picked up or delivered in the performance of the contract. Contractor represents and warrants that all of the above coverage will be obtained from companies that are licensed in the State of Texas, have an "A" rating from Best, and are authorized to provide the coverage. Contractor must provide at least 30 days written notice of its intent to cancel any insurance coverage required by the contract and provide immediate notice to TDA ~~TOA or~~ replacement coverage. Further, all insurance required by the contract must include a waiver of all subrogation rights against ~~TOA~~ TDA DF.

Unless otherwise specified in this Solicitation or a resulting contract, Contractor must maintain insurance in the amounts specified below:

a. Workers Compensation and Employee Liability
Contractor must maintain Workers Compensation insurance coverage in accordance with the following statutory limits:
Employers Liability - Each Accident $1,000,000
Disease - Each Employee $1,000,000
Disease - Policy Limit $1,000,000

b. Commercial General Liability Coverage
Contractor must maintain the minimum general liability insurance coverage as reflected below:

Bodily Injury and Property Damage
Each occurrence limit: $1,000,000
Aggregate limit: $2,000,000
Medical Expense each person: $10,000
Personal Injury and Advertising Liability: $1,000,000 per occurrence / $2,000,000 aggregate
Products /Completed Operations Aggregate Limit: $2,000,000
Damage to Premises Rented to You: $50,000

11. **Invoicing.** Invoicing should be consistent with the accepted cost proposal. Invoices for goods are to be submitted within thirty (30) days after all ordered goods have been delivered and accepted.

Invoices for services delivered for an hourly rate are to be submitted on the first business day of each month for the number of hours worked the previous month. Each invoice must clearly outline the number of hours worked on each item with a detailed description of the item billed. If the hourly rate varies by staff, the staff assigned to the item must be included. Invoices for services rendered on a flat or project rate are to be submitted within thirty (30) days after all services for the item or project have been delivered and accepted.

12. **Payment Approval.** No payment can be made for work provided before a Purchase Order is issued. Payment is contingent upon receipt of all items required for proper invoicing and payment, including:

a. W-9 - Contractor's correctly completed W-9 form.

b. Texas Identification Number- Contractor's State of Texas taxpayer identification number.

c. Delivery of the Goods; Completion of Services - Payment for goods or services described in any contract resulting from this Solicitation is contingent upon delivery and acceptance of the goods or satisfactory completion of the services. Acceptance or satisfaction will be determined by TOA, in its sole discretion. Unless otherwise stated, payment will be made upon submission of an invoice, properly prepared and certified, outlining expenditures and services by cost category. Invoices must include the contract number (if any), purchase order number, and Contractor's Texas Comptroller of Public Accounts Texas Identification Number (TIN). The cost categories or services provided in the invoice must correspond with the cost categories or services detailed in the approved budget. The invoice must detail the activities, services or tasks completed during the billing period included in the invoice. Final payment is contingent upon satisfactory performance of all services or work required under the contract, or TDA's acceptance of the goods made the subject of the contract.

d. Good Standing. In order for TOA to process payment under an invoice, Contractor must be in

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good standing with the Texas Comptroller of Public Accounts. Contractor may verify its account status at: https://mycpa.cpa.state.tx. us/coa.

e. Direct Deposit. The Texas Comptroller of Public Accounts encourages vendors to receive payment by direct deposit. To receive payments by direct deposit, contact your paying agency to obtain the form applicable to you.

13. **Prohibition of Text Messaging While Driving.** Federal grant recipients and their personnel are prohibited from text messaging while driving a government owned vehicle or while driving their vehicle during official grant business, or from using government supplied electronic equipment to text message or email while driving. Recipients must comply with these conditions under Executive Order 13512, "Federal Leadership On Reducing Text Messaging While Driving," effective October 1, 2009.

14. **Antitrust Affirmation.** Contractor represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Contractor nor the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Contractor.

15. **Buy Texas Affirmation.** In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

16. **Child Support Obligation Affirmation.** Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

17. **Computer Equipment Recycling Program.** Contractor certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

18. **Dealing with Public Servants Affirmation.** Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Response.

19. **Debts and Delinquencies Affirmation.** Contractor agrees that any payments due under the contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

20. **Disaster Recovery Plan.** In accordance with 13 TAC§ 6.94(a)(9), Contractor shall provide to Agency the descriptions of its business continuity and disaster recovery plans.

21. **Disclosure of Prior State Employment.** In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Contractor certifies that it does not employ an individual who has been employed by Agency or another agency at any time during the two years preceding the submission of the Response or, in the alternative, Contractor has disclosed in its Response the following:
(i) the nature of the previous employment with Agency or the other agency;
(ii) the date the employment was terminated; and
(iii) the annual rate of compensation for the employment at the time of termination.
22. **Dispute Resolution.** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract.

23. **Entities that Boycott Israel.** Pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that either
(i) it meets an exemption criterion under Section 2270.002; or
(ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification in its Response.

24. **E-Verify Program.** Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of: (1) all persons employed by Contractor to perform duties within Texas; and (2) all persons, including subcontractors, assigned by Contractor to perform work pursuant the contract within the United States of America.

25. **Excess Obligations Prohibited.** Any contract resulting from this Solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature.

26. **Excluded Parties.** Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

27. **Executive Head of a State Agency Affirmation.** Under Section 669.003 of the Texas Government Code, relating to contracting with an executive head of a state agency, Contractor represents that no person who served as an executive of Agency, in the past four (4) years, was involved with or has any interest in the contract. If Contractor employs or has used the services of a former executive of Agency, then Contractor shall provide the following information in the Response: name of the former executive, the name of the state agency, the date of separation from the state agency, the

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position held with Contractor, and the date of employment with Contractor.

28. **False Statements.** Contractor represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.

29. **Financial Participation Prohibited Affirmation.** Under Section 2155.004(b) of the Texas Government Code, Contractor certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.

30. **Foreign Terrorist Organizations.** Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

31. **Former Agency Employees.** Contractor represents and warrants that none of its employees including those authorized to provide services under the contract were former employees of the Agency during the twelve (12) month period immediately prior to the date of execution of the contract.

32. **Governing Law and Venue.** The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflict of laws provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency.

33. **Indemnification. (General)** CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH TDA AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TDA AND THEOFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

34. **Indemnification. (IP)** CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS AGENCY AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTIONW ITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF CONTRACTORPURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGUREDSERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) AGENCY'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO AGENCY BY CONTRACTOR OR OTHERWISE TO WHICH AGENCY HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT.
CONTRACTOR AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH TDA AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TDA AND THE OAG. IN ADDITION, CONTRACTOR WILL REIMBURSE AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF AGENCY'S COUNSEL.

35. **No Conflicts of Interest.** Contractor represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

36. **Prior Disaster Relief Contract Violation.** Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

37. **Public Information Act.** Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

38. **Signature Authority.** By submitting the Response, Contractor represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to

sign such documents on behalf of the Contractor and to bind the Contractor under any contract that may result from the submission of this Response.

39. **State Auditor's Right to Audit.** The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

40. **Suspension and Debarment.** Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

41. **Technology Access Clause.** Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairment. Accordingly, Contractor represents and warrants to Agency that the technology provided to Agency for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:
- providing equivalent access for effective use by both visual and non-visual means;
- presenting information, including prompts used for interactive communications, in formats intended for non- visual use; and
- being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

42. **Television Equipment Recycling Program.** Contractor certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.

43. **Terms and Conditions Attached to Response.** Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response.

44. **Texas Bidder Affirmation.** Contractor certifies that if a Texas address is shown as the address of the Contractor on this Response, Contractor qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

45. **Agency's Right to Audit.** Contractor will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Contractor pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Agency and the State of Texas.

46. **American's With Disabilities Act.** Contractor represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing provisions, as each may be amended.

47. **No Assignment.** Contractor shall not assign its rights under the contract or delegate the performance of its duties without prior written approval from the Agency. Any attempted assignment in violation of this Section is void and without effect.

48. **Binding Effect.** The contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees and delegates.

49. **Change in Law and Compliance with Laws.** Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without the necessity of a written amendment, and shall become effective on the date designated by such law or by regulation.

50. **Damage to Government Property.** Contractor shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. Contractor shall notify the Agency in writing of any such damage within one (1) calendar day. Contractor is responsible for the removal of all debris resulting from work performed under the contract.

51. **Disclosure of Interested Parties.** Contractor represents and warrants that if selected for award of a contract as a result of the Solicitation, Contractor will submit to Agency a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code.

52. **Discounts.** If Contractor at any time during the term of the contract provides a discount on the final contract costs, Contractor will notify Agency in writing ten (10) calendar days prior to effective date of discount. Agency will generate a Purchase Order Change Notice and send a revised Purchase Order to Contractor.

53. **Drug-Free Workplace.** Contractor represents and warrants that it shall comply with he applicable provisions of the Drug-Free Work Place Act of 1988 and maintain a drug-free workenvironment.

54. **Electrical Items.** All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).

55. **Equal Employment Opportunity.** Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

56. **Federal Occupational Safety and Health Law.** Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter15).

57. **Force Majeure.** Neither Contractor nor Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

Further, TDA, in its sole and absolute discretion, has the right to cancel, delay, reduce, suspend or terminate this Contract or the performance of any or all items or services required by this Contract, including, without limitation, the delay, reduction or suspension of payment(s) required for services under this Contract, should performance of any deliverable, obligation, performance, service or work created or required by this Contract become illegal, impractical or impossible by reason or as a result of the coronavirus disease known as "COVID-19" and all other acts, causes, circumstances, events and matters related to public health, whether local, state, regional, national or worldwide, including, without limitation, disease, epidemic, pandemic, viral or bacterial outbreaks, and any other cause not specified herein but which pertains to public health and is beyond the reasonable control of the parties. In such event, TDA shall provide at least seven days notice of the event of force majeure and the actions or remedies it is taking as a result of a force majeure.

58. **Immigration.** Contractor represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C.§ 1101 et seq.) and all subsequent immigration laws and amendments.

59. **Independent Contractor.** Contractor acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Contractor and its personnel are not employees of the Agency or the State of Texas.

60. **Legal and Regulatory Actions.** Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Contractor or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Contractor's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. In addition, Contractor represents and warrants that it shall notify Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update Agency shall constitute breach of contract and may result in immediate termination of the contract.

61. **License Grant (Simple).** Contractor hereby grants to Agency a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the deliverables, in each case without any restrictions and without accounting to Contractor; and (b) to sublicense any or all such rights to third parties.

62. **Limitation on Authority.** Contractor shall have no authority to act for or on behalf of Agency or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Contractor may not incur any debt, obligation, expense or liability of any kind on behalf of Agency or the State of Texas.

63. **Lobbying Prohibition.** Contractor represents and warrants that Agency's payments to Contractor and Contractor's receipt of appropriated or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.

64. **Media Releases.** Contractor shall not use Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without Agency's prior written approval. Agency does not endorse any vendor, commodity, or service. Contractor is not authorized to make or

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participate in any media releases or public announcements pertaining. to this procurement, the Response or the services to which they relate without Agency's prior written consent, and then only in accordance with explicit written instructions from Agency.

65. **No Felony Criminal Convictions.** Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised Agency in writing of the facts and circumstances surrounding the convictions.

66. **No Implied Waiver.** No provision of the contract shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Agency as an agency of the State of Texas or otherwise available to Agency. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the contract or otherwise available to Agency by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

67. **No Quantity Guarantees.** Agency makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the contract.

68. **No Third-Party Beneficiaries.** The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

69. **Permits, Certifications, and Licenses.** Contractor represents and warrants that it has determined what licenses, certifications and permits are required under the contract and has acquired all applicable licenses, certifications, and permits.

70. **Prompt Payment.** Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and nonpayment.

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

72. **Records Retention.** Contractor shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Contractor for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

73. **Refund.** Contractor will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by Agency which are not expressly authorized under the contract.

74. **Restricted Employment for Certain State Personnel.** Pursuant to Section 572.069 of the Texas Government Code, Contractor certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for Agency involving Contractor within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015

75. **Secure Erasure of Hard Disk Capability.** All equipment provided to Agency by Contractor that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC § Chapter 202.

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76. **Severability.** If any provision of the contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

77. **Sovereign Immunity.** The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by the Agency or the State of Texas of any immunities from suit or from liability that the Agency or the State of Texas may have by operation of law.

78. **Subcontractors.** Contractor may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of the Agency. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of the contract. Should Contractor subcontract any of the services required in the contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), Agency is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.

79. **Survival.** Expiration or termination of the contract for any reason does not release Contractor from any liability or obligation set forth in the contract: (a) that is expressly stated to survive any such expiration or termination; (b) that by its nature would be intended to be applicable following any such expiration or termination; or (c) that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

80. **Taxes.** Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Agency will furnish Tax Exemption Certificates upon request. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. Agency shall not be liable for any taxes resulting from the contract.

81. **TDA Remedies and Liquidated Damages.** TDA may utilize the following remedies in the event Contractor fails to perform under a contract resulting from this Solicitation:
a. Upon initial breach or failure to perform, TDA will provide Contractor with written notice of same and give Contractor fourteen (14) calendar days to provide TDA with a corrective action plan (CAP) and cure the breach or failure to perform. At a minimum, the CAP must include the following items: (i) the cause of the breach or failure to perform; (ii) an outline of actions that will be taken to cure the breach or failure to perform; (iii) the expected outcome for each action; (iv) the date for completion of each action; (v) the individuals responsible for completion of each action; and (vi) all steps Contractor will take to ensure that there are no further breaches of Contract or failures to perform under the contract. TDA will provide Contractor with written acceptance or rejection of Contractor's CAP and cure within fourteen (14) calendar days after Contractor's completion of the cure. Failure to provide a CAP, or fully or properly complete a cure, as required by this Section 80.a, is a material breach of contract.
b. Upon a second breach or failure to perform, TDA will provide Contractor with written notice of same and give Contractor seven (7) calendar days to provide TDA a CAP that meets the requirements of Section 80.a, above, and cure the breach or failure to perform. Additionally, TDA will withhold up to ten (10%) of all future payments due Contractor as liquidated damages for Contractor's breach, and as security for proper and timely performance of the contract. If Contractor fully and faithfully provides full, complete and timely performance under the contract following said breach, TDA will release all sums withheld under this Section 80.b within thirty (30) days of closing out and winding up the contract. Further, TDA will provide Contractor with written acceptance or rejection of Contractor's CAP and cure within fourteen (14) calendar days after Contractor's completion of the cure. Failure to provide a CAP, or fully and properly complete a cure, as required by this Section 80.b, is a material breach of contract.
c. If Contractor fails to cure the breach or fails to perform within the designated cure period specified in Sections 80.a or 80.b above, or upon a third or subsequent breach or failure to perform, TDA may immediately terminate the contract upon written notice to Contractor. Further, all sums withheld by TDA under Section 80.b above will be retained by TDA as liquidated damages to offset TDA's costs and damages resulting from Contractor's breach or failure to perform.
d. Notwithstanding the graduated remedies schedule and liquidated damages specified above, in the event Contractor commits a material breach of contract, TOA reserves the right to immediately terminate the contract upon written notice to Contractor. A breach is material if: (i) Contractor completely fails to perform an activity, service or task required by the contract; or (ii) the breach is substantial and prevents the contract from being completed or defeats the purpose of the contract.

82. **Termination for Cause or Convenience.** Agency reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if Agency determines that such termination is in the best interest of the agency or the state. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Agency shall only be liable for payments limited to the portion of work Agency authorized in writing and which Contractor has completed, delivered to Agency, and which has been accepted by Agency. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. Agency shall have no other liability whatsoever to any person, party or entity, including for liability for any costs associated with the termination.

83. **Trademark License.** Agency hereby grants to Contractor, to the extent expressly provided by a written contract between the parties, for the term of the contract, a limited non-exclusive, royalty-free, non-assignable, non-transferable license to reproduce Agency's trademarks, as depicted and described in the contract, on published materials in the United States related to the performance of the contract, provided that such license is expressly conditional upon, and subject to, the following: (a) Contractor is in compliance with all provisions of the contract; (b) Contractor's use of the trademarks is strictly in accordance with the quality standards and in conformance with the reproduction requirements set forth in the contract or as otherwise communicated in writing by the Agency; (c) Contractor takes no action to damage the goodwill associated with the trademarks, and

refrains from any attempt to contest, attack; dispute, challenge, cancel and/or oppose Agency's right, title and interest in the trademarks or their validity; (d) Contractor makes no attempt to sublicense any rights under this trademark license; and (e) Contractor complies with any marking requests Agency may make in relation to the trademarks, including without limitation to use the phrase "Registered Trademark", the symbol "TM", the registered trademark symbol"®" and/or any equivalent thereof.

84. **Trademark Ownership.** Contractor hereby acknowledges and agrees that the trademarks remain the exclusive property of Agency, that all right, title and interest in and to the trademarks is exclusively held by Agency, and all goodwill associated with such trademarks inures solely to Agency.

85. **Unfair Business Practices.** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

86. **Use of State Property.** Contractor is prohibited from using State Property for any purpose other than performing Services authorized under the contract. State Property includes, but is not limited to, Agency's office space, identification badges, Agency information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any Agency-issued software, and the Agency Virtual Private Network (VPN client)), and any other resources of Agency. Contractor shall not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access Agency's network or e-mail while outside of the continental United States. Contractor shall not perform any maintenance services on State Property unless the contract expressly authorizes such services. During the time that State Property is in the possession of Contractor, Contractor shall be responsible for (i) all repair and replacement charges incurred by Agency that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Contractor's use of State Property that exceeds the contract scope. Contractor shall fully reimburse such charges to Agency within ten (10) calendar days of Contractor's receipt of Agency's notice of amount due. Use of State Property for a purpose not authorized by contract shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to Agency under contract, at law, or in equity.

87. **Waiver of Consequential Damages.** NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, ANTICIPATED OR OTHERWISE, OR LOSS OF REVENUES IN CONNECTION WITH OR ARISING OUT OF, OR IN CONNECTION WITH, THE SUBJECT MATTER OR THE PERFORMANCE OF THIS CONTRACT.

88. **Transition.** Contractor represents and warrants that at the expiration or termination of a contract resulting from this Solicitation, Contractor shall assist with and fully cooperate with TOA in transition of data, deliverables, documentation, reports and services to TOA or a new provider. Data, deliverables, documentation and reports shall be delivered in a form and manner acceptable to TOA This obligation shall survive the termination or expiration of a contract resulting from this Solicitation and shall be a continuing obligation of the contract until Contractor has fully complied with all transition obligations required by this Section. Additionally, this transition obligation shall not be subject to additional costs or fees of any kind and shall be provided by Contractor at no cost to TOA or the State of Texas.

89. **Capital Outlay.** If Contractor purchases capital outlay, such as furniture or equipment, to accomplish the contract project, title will remain with Contractor for the period of the contract. TOA reserves the right to transfer capital outlay items for contract noncompliance during the contract period, or if the items are needed after expiration or termination of the contract. This provision applies to furniture or equipment purchased by Contractor for the performance of the contract, regardless of price or how the item is classified in Contractor's accounting record.

90. **Notices.**

a. **Delivery of Written Notices.** Any notice required under a contract resulting from this Solicitation shall be in writing and shall be addressed to the receiving party at the address specified in the notice of award. The notice shall be deemed to have been given immediately if delivered in person or by electronic transmission. If notice is given through the United States Postal Service, notice shall be deemed to have been given five days following the date the notice is deposited with the United States Postal Service, postage prepaid, for delivery by registered or certified mail with return receipt requested, addressed to the receiving party at the address specified in the notice of award or otherwise specified by Contractor in accordance with Section 91.b below.

b. **Change of Address.** Contractor shall notify TDA's Contract Manager in writing of any change in the contact person or address for delivery of notices within ten (10) calendar days of the date of such change.

Binding Offer and Effect of TDA Acceptance. By submitting a Response to this Solicitation, if such Response is not withdrawn prior to the time for opening offers arrives, Contractor understands and agrees that it is making a firm offer to enter into a contract, which firm offer may be accepted by TDA and which will result in a binding contract in reliance on these affirmations and provisions and the signature below.

Agreed and Acknowledged by:

DF

FORTE FROZEN FOOD COMPANY

Signed:
Title: CFO
Date: 05/27/2020

APPENDIX III

Contractor' BAFO pricing proposal, dated May 6, 2020, along with the Delivery and Storage Rate Schedules applicable to Regions I and 2, (Forms I and J for each region) are attached to this Appendix III of this Contract and are incorporated into this Appendix III and this Contract for all purposes. (See Attached documents).
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