

ADDITIONAL TERMS AND CONDITIONS ATTACHMENT C

1. Access to Records Requirements:

- 1.1 The Supplier agrees to comply with all record retention requirements of 2 CFR § 200.333 - §200.337. The Supplier agrees to maintain required records and supporting documentation, for validation of costs billed to the OSDH, for seven (7) years from the ending date of the contract. The Supplier also agrees to allow the State Auditor's Office, GAO, the Oklahoma Department of Management and Enterprise Services, the OSDH, or their authorized representatives access to the records, books, documents, accounting procedures, practices or any items of the service provider relevant to this contract for purpose of audit and examination. The Supplier further agrees to assure appropriate access by the aforementioned parties to any subcontractor's associated records.
- 1.2 If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the seven-year period, the records must be retained until completion of the action and resolution of all issues which arise from it; or, until the end of the regular seven-year period, whichever is later.
- 1.3 The OSDH may routinely request supporting documentation to validate Supplier payments.

2. Amendments, Unavailability or Redirection of Funding and Cancellation:

In the event state or federal funds used to support this contract become unavailable, either in full or in part, due to reductions in appropriations, the OSDH may terminate or reduce the contract upon notice in writing to the Supplier by certified mail or by email and send notification of such changes to the Supplier upon making such changes. The OSDH shall be the final authority as to the availability or redirection of funds. The effective date of such contract termination, increase or reduction shall be specified in the notice. All other modifications or amendments to this contract shall be in writing, dated and executed by both the Supplier and the OSDH and must receive final approval by the Office of Management and Enterprise Systems. In the event of a reduction, the Supplier may cancel this contract as of the effective date of the proposed reduction upon advance written notice to the OSDH. With exception of the above, this contract shall be in force until the expiration date, or until 30 days after written notice has been given by either party of its desire to cancel without cause. Notification of cancellation shall be by Certified Mail to the business address of record or by email to the designed Contact Person. In the event this contract is canceled by either party, the OSDH shall be responsible for reimbursement for goods or services received or provided prior to cancellation date. In the event this contract is cancelled under this section, Supplier agrees to take all reasonable steps to minimize termination costs. The OSDH agrees to reimburse Supplier for all work performed prior to the date of notice of termination of this contract for expenditures and non-cancelable commitments incurred in anticipation of performing under this contract. The OSDH shall not be responsible for reimbursement of unreasonable or unnecessary expenditures incurred after receipt of the cancellation notice.

3. Event of Default:

The OSDH may withhold payment or terminate the contract in whole or in part in the event (i) it has provided Supplier with written notice of material breach, and (ii) Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. If the contract or certain obligations under the contract are terminated, the OSDH shall be liable only for payment for products or services delivered and accepted prior to the date of such termination. Such termination shall not be an exclusive remedy but shall be in addition to any any other rights and remedies provided for by law. In no event shall the OSDH be liable to the Supplier, for compensation for any products or services provided by Supplier neither requested nor accepted by the OSDH. Any partial termination of the contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of the Supplier or the OSDH regarding portions of the contract that remain in effect.

4. Failure to Comply Statement:

The Supplier shall be subject to all applicable state and federal laws, rules and regulations, and all amendments thereto. The Supplier agrees that should it be in noncompliance, the OSDH may impose additional conditions as provided in 2 CFR §200.207; or, as provided in 2 CFR § 200.338, temporarily hold cash payments pending correction of the deficiency, disallow all or part of the cost of the activity or action not in compliance, suspend or terminate the contract in part or in whole, withhold further awards for the project or program, or take other remedies legally available. Compliance with the requirements shall be the responsibility of the Supplier, without reliance on or direction by the OSDH.

5. Assignment and Delegation:

The services to be performed under this contract shall not be assigned or transferred, in whole or in part, to any other person or entity without the prior written approval of the OSDH. If the Supplier cannot perform the services as identified in this contract, the Supplier will be responsible for subcontracting the services or making alternative arrangements for the provision of the services. The terms of this contract shall be included in any OSDH approved subcontract. The Supplier will be liable for all additional costs and expenses arising from such subcontract or substitution to cover performance. Approval by the OSDH of a subcontract shall not relieve the Supplier of any responsibility for performance under this contract.

6. Audit Requirements:

6.1 Suppliers expending federal funds from all funding sources in excess of the threshold established in 2 CFR Part 200.501 shall be required to have a single audit or a program-specific audit conducted in accordance with 2 CFR Part 200, Subpart F. Audit costs may not be charged to any OSDH contracts when no audit has been performed, or has not been prepared in accordance with this requirement.

6.2 Suppliers that are required to have an audit conducted for compliance with 2 CFR Part 200.501 shall submit to the Federal clearinghouse (FAC) a single copy of the data collection form and the reporting package as required by 2 CFR Part 200.512 within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period. If an independent audit is not posted in the required time, or there have been findings, the OSDH will have the option to consider taking action under the Failure to Comply clause of this contract.

6.3 If the Supplier is a tribal entity, and has chosen to opt out of audit report submission pursuant to 2 CFR §200.512, the Supplier shall submit a copy of the audit report in paper or electronic form to:

Oklahoma State Department of Health
Internal Audit Unit
424 S. Eastern Ave.
Moore, OK 73160

7. Charitable Choice Providers:

Providers who are members of the faith community are eligible to compete for contracts with the State of Oklahoma on the same basis as any other provider. Such providers shall not be required to alter their forms of internal governance, their religious character or remove religious art, icons, scripture, or other symbols. Such providers may not, however, discriminate against clients on the basis of their religion, religious beliefs, or clients' refusal to participate in religious practices (45 CFR Part 87.1c). Organizations that receive direct financial assistance from the OSDH under any OSDH program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the OSDH. If an organization conducts such activities, the activities must be offered separately, in time or location, from

the programs or services funded with direct financial assistance from the OSDH, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

8. Mandatory and Non-Mandatory Terms:

8.1 Whenever the terms "shall", "must", "will", or "is required" are used in this RFP, the specification being referred to be a mandatory specification of this RFP. Failure to meet any mandatory specification may cause rejection of the Bidder's Proposal.

8.2 Whenever the terms "can", "may", or "should" are used in this RFP, the specification being referred to is a desirable item and failure to provide any item so termed will not be cause for rejection.

9. Gratuities:

The right of the successful Supplier to perform under this contract may be terminated by written notice if the Contracting Officer determines that the successful Supplier, or its agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official or employee of the Office of Management and Enterprise Services (OMES), Central Purchasing (CP).

10. Conflict of Interest:

The Request for Proposal hereunder is subject to the provisions of the Oklahoma Statutes. All suppliers must disclose with the proposal the name of any officer, director or agency who is also an employee of the State of Oklahoma or any of its agencies. Further, all suppliers must disclose the name of any State Employee who owns, directly or indirectly, an interest of five percent (5%) or more in the suppliers firm or any of its branches.

11. State and Federal Taxes:

Purchases by the State of Oklahoma are not subject to any sales tax or Federal Excise tax. Exemption certificates will be furnished upon request.

12. Oral Agreements:

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the RFP or the resultant contract. OMES, Central Purchasing Division must make all modifications to the contract in writing.

13. Hold Harmless:

The Supplier shall indemnify and hold the State of Oklahoma harmless from all performance or failure of performance under the resulting contract.

14. Limitation of Liability:

The Supplier acknowledges that, under the laws of the State of Oklahoma, the Supplier may not contractually limit their potential liability. To the extent, any limitation of liability contained in any resulting contract is construed by a court of competent jurisdiction to be a limitation of liability in violation of Oklahoma law, such limitation of liability shall be void.

15. Liens:

The Supplier shall keep the State of Oklahoma free and clear from all liens asserted by any person or firm for any reason arising from the furnishing of services or materials by or to the Supplier.

16. Minor Deficiencies or Informalities:

16.1 "Minor deficiency" or "minor informality" means an immaterial defect in a bid or variation in a bid from the exact requirements of a solicitation that may be corrected or waived without prejudice

to other Suppliers. A minor deficiency or informality does not affect the price, quantity, quality, delivery or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.

16.2 The State Purchasing Director may waive minor deficiencies or informalities in a bid if the State Purchasing Director determines the deficiencies or informalities do not prejudice the rights of other Suppliers, or are not a cause for bid rejection.

17. Supplier Services:

The State of Oklahoma shall not guarantee any minimum or maximum amount of the Supplier services that may be required under this Contract.

18. Supplier Relationship:

18.1 In accordance with 2 CFR Part 200 (Uniform Grant Guidance), the relationship between the OSDH and the Supplier for this contract is that of a sub-recipient.

18.2 Applicants/recipients are expected to have systems, policies, and procedures in place by which they manage grant funds and grant-supported activities. They may use their existing systems for this purpose as long as organizational policies are consistently applied regardless of the source of funds. Supplier' systems must meet the standards and requirements set forth in 2 CFR Part 200, 45 CFR Part 75, or 7 CFR Part 3016, or as determined by the applicable Federal program guidance.

18.3 In addition, Suppliers shall request reimbursement of costs from OSDH only when those costs comply with the applicable Federal Cost Principles 2 CFR Part 200, FAR 31.2, or as determined by the applicable Federal program guidance to the Supplier's entity type. Any request for reimbursement of cost not allowable under the above Federal regulations must be specifically approved in the special conditions of the contract language and be supported by a specific line item within the Supplier's approved budget.

19. Definitions:

Applicant: A prospective Supplier on this RFP. Also, a person applying for WIC benefits.

Breastfeeding Women: Women up to one year postpartum who provide breast-milk to their infants at least once a day.

Caseload: The number of participants issued WIC benefits.

Certification: The use of criteria and procedures to assess and document each applicant's eligibility for the WIC program.

Certified WIC Nutrition Technician (CWNT): One who has successfully completed all the requirements of the WIC Service certified WIC nutrition technician training.

Children: Persons from one to five years of age.

Clerical: Clinic staff with skills including general office procedures and ability to learn and use the PHOCIS software program.

Competent Professional Authority (CPA): Those individuals, who determine nutritional risk, assign WIC foods and provide nutrition counseling and education. CPAs include physicians (MD or DO), physician's assistants (PA), registered nurses (RN), nutritionists, Certified WIC Nutrition Technicians (CWNT), licensed practical nurses (LPN), and registered/licensed dietitians (RD/LD).

Contract: The agreement executed between a purchasing agency and a provider for the provision of a particular service.

Supplier: An organization under contract that provides WIC services at the clinic level.

EBT: Electronic Benefits Transfer.

eWIC card: The instrument by which WIC food benefits are made available to WIC participants.

Estimate of Need: The plan developed by WIC Service in cooperation with the USDA FNS in order to estimate the number of potentially eligible women, infants and children.

Farmers' Markets: The WIC Service farmers' market was established by Congress in 1992 to provide fresh, unprepared, locally grown fruits and vegetables to WIC participants. Various farmers' markets approved by the OSDH WIC Service are located throughout the State of Oklahoma.

FNS: The Food and Nutrition Service, which acts on behalf of the USDA in the administration of the WIC program.

Federal Regulations: 7 CFR, part 246 – rules governing WIC issued by the USDA.

Food Costs: The cost of supplemental foods determined in accordance with Federal Regulations.

Food Delivery System: The method used by state and local agencies to provide supplemental foods to participants.

Food Package: The combination of approved foods assigned to the participant by the CPA.

FTE (Full Time Equivalent): A number indicating the percentage of time an employee works on an annual basis. One FTE equals 2,080 hours per year. Examples: an employee working 9 hours per month equals 0.05 FTEs or an employee working 80 hours per month equals 0.5 FTEs. One or more employees may share an FTE.

Health Services: Ongoing, routine pediatric and obstetric care such as infant and childcare and prenatal and postpartum examinations.

Homeless Individual: A woman, infant or child who does not have a fixed and regular nighttime residence or whose primary nighttime residence is a publicly or privately operated shelter, including a welfare hotel, a congregate shelter, or a shelter for victims of domestic violence.

Infant: Persons under one year of age.

Infant Mortality Rate: The death rate among infants less than one year old per 1,000

live births.

International Board Certified Lactation Consultant (IBCLC): A health care provider who possesses the necessary skills, knowledge, and attitudes to provide quality breastfeeding assistance in a wide variety of health care settings to mothers and babies. Also serves as a breastfeeding support and resource to fellow staff members.

Low Birth weight: Birth weight under 2500 grams or 5-lbs. 8 oz.

Non-breastfeeding Women: Women up to six months after termination of pregnancy, who are not breastfeeding their infants.

Non-profit Agency: An agency which is exempt from income tax under the Internal Revenue Code of 1954 as amended.

Nutrition Education: Individual and group sessions and the provision of materials that are designed to improve health status and achieve positive change in dietary and physical activity habits and that emphasize the relationship between nutrition, physical activity, and health, all in keeping with the personal and cultural preferences of the individual.

Nutrition Education Protocols: Guidelines for providing nutrition education developed by WIC Service.

Nutritional Risk: Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements; other documented nutritionally related medical conditions; dietary deficiencies that impair or endanger health; or conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.

Nutritionist: A qualified nutritionist includes a Registered/Licensed Dietitian (RD/LD) or registry eligible dietitian or a person with a bachelor or master's degree in Nutritional Sciences, Community Nutrition, Clinical Nutrition,

Dietetics, or Public Health Nutrition, or has met Academy of Nutrition and Dietetics (AND) education requirements for a dietetic internship.

OMES, CP: Office of Management and Enterprise Services, Central Purchasing.

OSDH: Oklahoma State Department of Health.

OSHA: Occupational Safety and Health Administration.

Participants: Certified or eligible pregnant women, breastfeeding women, non-breastfeeding women, infants, and children who are receiving WIC benefits from the program.

Primary Cardholder (PCH): The person to whom an eWIC card will be issued in order to purchase WIC benefits for the entire household.

Public Health Oklahoma Client Information System (PHOCIS): Software used to collect demographic and health data and to issue WIC benefits for participants.

Pregnant Women: Women determined to have one or more embryos or fetuses in utero.

Priorities: Priority categories by nutritional risk criteria as designated in 7 CFR, part 246, section 246.7 of the Federal Regulations.

Processing Standards: The time frames for certifying applicants—for pregnant women, Priority I infants under six months of age and migrants, within ten calendar days from request for services — for all other applicants, within 20 calendar days.

Service Area: A geographic area served by a local WIC program. WIC Service designates these areas by specific counties, cities, and towns or boundaries such as rivers, highways, etc.

Site(s): The location(s) where WIC services are provided to participants.

Unserved eligible: The projected total of people eligible for WIC benefits as determined by the USDA, that have chosen not to participate in the WIC Program either through personal choice or due to lack of knowledge of the WIC Program.

USDA: The United States Department of Agriculture.

Vendor: A grocery store, commissary, or pharmacy, which the OSDH has formally contracted with to provide WIC foods.

WIC Policy and Procedure Manual: The online policy and procedure manual describes the manner in which WIC Service intends to implement and operate all aspects of program administration at the clinic level. You may access the online manual at www.ok.gov/wic. This training link requires a username-“wic”-and password-“oklahoma”- all in lowercase.

WIC Information Form (ODH Form No. 350A): The form used to avoid duplication of services, which provides anthropometric and hematological data used for certifications. It is completed and signed by an applicant/participant’s health care provider.

WIC Service: The division within the OSDH, which administers WIC throughout the state.

20. Proprietary and/or Confidential:

- 20.1 Unless otherwise specified in the Oklahoma Open Records Act, Central Purchasing Act, or other applicable law, documents and information a Bidder submits as part of or in connection with a Bid are public records and subject to disclosure. If a Bidder claims any portion of its Bid as financial or proprietary confidential information, the Bidder must specifically identify what documents or portions of documents are considered confidential and identify applicable law supporting the claim of confidentiality. In addition, the Bidder shall submit the information separate and apart from the Bid and mark it Financial or Proprietary and Confidential. Pursuant to the Oklahoma State Finance Act, the State shall make the final decision as to whether the separately submitted information is confidential.
- 20.2 If the State does not acknowledge the information as confidential, OMES – CP will return or destroy the information with proper notice to the Bidder and the information will not be considered in the evaluation. A Bid marked, in total, as financial or proprietary and/or Confidential shall not be considered.

21. Communications Concerning Solicitation:

The procurement specialist listed on the cover page of this solicitation is the only individual in which the Bidder should be in contact with concerning any issues with this solicitation. Failure to comply with this requirement may result in the Bid being considered non-responsive and not considered for further evaluation.

22. General Solicitation Questions:

- 22.1 Suppliers who need clarification shall contact the State’s contracting officer shown on the RFP. Oral explanations or instructions given before proposal opening will not be binding. Any information given a Supplier concerning a solicitation will be provided promptly to all other Suppliers as an amendment, if that information is necessary in submitting proposals or if it would be prejudicial to other Suppliers.
- 22.2 General Solicitation Questions – Supplier may submit general questions concerning the specifications of the solicitation. These questions will be promptly answered in the form of an Amendment and sent to all responding suppliers via email.
- 22.3 When posing questions, every effort should be made to be concise and include section references, when possible.
- 22.4 Suppliers are advised that any questions received after the closing date and time to submit questions, shall not be answered.