



# State of Arizona

Department of Education

## Request For Proposal

### Cover Page

Arizona Department of Education  
Procurement Section/3<sup>rd</sup> Floor  
1535 W. Jefferson Street, Bin 37  
Phoenix, AZ 85007  
Phone: (602) 364-2517  
Fax: (602) 364-0598

**Solicitation Number:** RFP ED09-0018

**Solicitation Due Date / Time:** January 5, 2009, at 3:00 P.M. Mountain Standard Time

**Submittal Location:** Arizona Department of Education  
Procurement Section/3<sup>rd</sup> Floor  
1535 West Jefferson Street, Bin #37  
Phoenix, Arizona 85007

**Description of Procurement:** Commodity Processing of USDA Donated Foods

**Pre-Offer Conference:** December 16, 2008  
**Time:** 1:00 pm – 2:30 pm MST  
**Location:** Arizona Department of Education, Rooms 100-101  
2005 N. Central Avenue, Phoenix, AZ 85004

In accordance with A.R.S. § 41-2534, competitive sealed proposals for the materials or services specified will be received by the Arizona Department of Education's Procurement Section at the above specified location until the time and date cited. Offers received by the correct time and date will be opened and the name of each Offeror will be publicly read.

Offers must be in the actual possession of the Arizona Department of Education's Procurement Section on or prior to the time and date, and at the submittal location indicated above. ***Late offers will not be considered.***

Offers must be submitted in a sealed envelope or package with the Solicitation Number and the Offeror's name and address clearly indicated on the envelope or package. All offers must be completed in ink or typewritten. Additional instructions for preparing an offer are included in this Solicitation.

Persons with disabilities may request special accommodations such as interpreters, alternate formats, or assistance with physical accessibility. Requests for special accommodations must be made with 72 hours prior notice. Such requests are to be addressed to the Solicitation Contact Person or Procurement Officer.

***OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.***

\_\_\_\_\_  
Clay Dones, Procurement Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
(602) 364-2517  
Telephone Number

**OFFER AND AWARD**

ARIZONA DEPARTMENT OF EDUCATION  
Procurement Section  
1535 West Jefferson Street, Bin #37  
Phoenix, Arizona 85007



**SOLICITATION NO. RFP NO. ED09-0018**

**OFFER**

The Undersigned hereby offers and agrees to furnish the materials, service(s) or construction in compliance with all the terms, conditions, specifications and amendments in the solicitation.

The Undersigned additionally certifies that the offeror does not have scrutinized business operations in either the Sudan (A.R.S. 35-391) or Iran (A.R.S. 35-393).

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

Name of Person Authorized to Sign Offer \_\_\_\_\_

Street Address \_\_\_\_\_

Title of Authorized Person \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Signature of Authorized Person \_\_\_\_\_ Date of Offer \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Offeror's Arizona Transaction (Sales) Privilege Tax License Number: \_\_\_\_\_

Offeror's Federal Employer Identification Number: \_\_\_\_\_

Acknowledgement of Amendment(s):  
*(Offeror acknowledges receipt of amend-  
ment(s) to the Solicitation for Offers and  
related documents numbered and dated*

Amendment No. Date  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Amendment No. Date  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ACCEPTANCE OF OFFER AND CONTRACT AWARD**

*(For State of Arizona Use Only)*

Your Offer, dated \_\_\_\_\_, is hereby accepted as described in the Notice of Award. You are now bound to perform based upon the solicitation and your Offer, as accepted by the State.

This Contract shall henceforth be referred to as Contract Number **ED09-0018-**\_\_\_\_\_.

You are hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until you receive an executed purchase order, contract release document, or written notice to proceed, if applicable.

**State of Arizona**

Awarded this \_\_\_\_\_ day of \_\_\_\_\_ 2009

\_\_\_\_\_  
Douglas C. Peoples, MBA, CPPB, CPCM  
Chief Procurement Officer

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# SECTION 1 SCOPE OF WORK

ARIZONA DEPARTMENT OF EDUCATION  
Procurement Section  
1535 West Jefferson Street, Bin #37  
Phoenix, Arizona 85007

**SOLICITATION NO. RFP NO. ED09-0018**

## 1. **BACKGROUND:**

- A. The State of Arizona seeks to contract with USDA food processing vendors to process donated food commodities into end products for use in Arizona schools and other food program sponsors. These services are being sought on behalf of the Arizona Department of Education (ADE) and other State Agencies and political subdivisions eligible to participate in the National School Lunch Program. This effort will result in the establishment of statewide contracts that ADE, other state agencies, eligible political subdivisions and sponsors may use to purchase end products for use in their federally assisted meal programs. Refer to Exhibit 7.2, Process Time Line, for an overview of the major steps involved in this procurement process.
- B. ADE Health and Nutrition Services administer the Food Distribution Program for Arizona. The USDA Food Distribution Program removes farm surpluses from the market and provides a variety of nutritious foods to schools. Due to USDA food specifications, these foods are of equal or better quality compared to commercially prepared foods. USDA commodity purchases represent about 15-20% of the market value of the schools' food service in their lunch and breakfast programs.
- C. Schools and sponsors that participate in the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) are eligible to receive USDA commodities. USDA gives the State of Arizona an entitlement dollar amount each school year based on the number of meals served in Arizona the previous school year. This entitlement is divided up among the Arizona sponsors participating in the Food Distribution Program based on their Average Daily Participation in their school lunch program. As of June 2008, the Approximate Average Daily Participation was 599,801 lunches.
- D. The USDA Food Distribution Program also includes the Summer Food Service Program (SFSP). The SFSP is designed to ensure that children in needy areas continue to receive nutritious meals during school intersession and vacations that are comparable to those served under the NSLP and SBP.
- E. During the school year that began in July 2007 and ended in June of 2008, there were 373 school districts (both public and charter schools) that participated in the NSLP. There were a total of 310 of those sponsors that also participated in the ADE Food Distribution Program, some operating multiple sites.
- F. Historically in December of each year, the Food Distribution Program, administered by the ADE, receives and processes applications from interested food processors to process donated food commodities into end products for use in Arizona.
- G. This Request for Proposal (RFP) has been developed to establish contracts on behalf of schools/sponsors in accordance with the Arizona Procurement Code and the sponsor's procurement requirements.
- H. Further, the establishment of contracts through the solicitation process will eliminate barriers that have prevented smaller sponsors from participating in this program. This will increase participation and the number of meals served and more children may benefit. For the Contractors, this will result in an increase in the amount of donated commodities that are received and processed into end products.
- I. These contracts will ease the workload of the sponsors making it easier for them to write purchase orders to Contractors to process the commodities into end products.
- J. While the schools and sponsors may use these contracts for their purchases, unique requirements (e.g., delivery or volume issues) may require a discussion of their situation with the Contractor to determine if their needs can be met under this contract. Should an impasse arrive, sponsors may choose to make their purchases under existing cooperative purchasing agreements or other means available to them.

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## 2. COMMODITY PROCESSING GOAL:

- A. In order to obtain the best quality product at the lowest reasonable price for USDA commodity processing, a formal procurement process will be conducted through the issuance of this Request for Proposal and all phases of the procurement will be conducted in accordance with the Arizona Procurement Code.
- B. The State is seeking to establish commodity processing contracts with USDA food processors to process food from the USDA into end products commonly used in schools in Arizona. The foods to be processed include, but are not limited to, orange juice, apples, apricots, cherries, blueberries, raspberries, strawberries, blackberries, raisins, peaches, pineapples, pears, prunes, chickens, turkeys, eggs, beef, pork, ham, cheese, nonfat dry milk, flour, peanut butter, and vegetable oil.
- C. Through the award of resultant contracts, schools/sponsors will be able to buy quality products at no higher than the established contract prices throughout the entire term of the contract.

## 3. GENERAL REQUIREMENTS:

- A. **Diverting:** Under this/these contract(s), the schools/sponsors and the ADE will work together to determine what commodities to divert to Contractors. In all cases a minimum of one truckload will be delivered to a Contractor, if they are selected for diversion by the sponsors. Contents of the truck can be owned solely by Arizona or be shared with another State. As long as the delivery is made to the Contractor, USDA covers the entire cost of the delivery.
- B. **Processing:** Under the terms and conditions of this/these contract(s) the Contractor(s) will convert the commodity to an end product and deliver the product to the designated commercial distribution warehouse, or in some cases directly to a warehouse or storage facility designated by the school/sponsor.
- C. **Deliveries:** All items shall be delivered Freight on Board (FOB) destination to the Arizona-designated commodity storage center or to a storage center selected by the ADE or to a storage facility designated by the school/sponsor that is purchasing the product. Since a state warehousing contract has not been awarded at the time of this RFP, processors will be notified of warehouse shipping information upon contract award.  
  
Contractor shall set up a delivery schedule to the selected facility with school/sponsor prior to delivery of product, as well as notify the school/sponsor of changes to the schedule.
- D. **Reports:** Refer to the National Processing Agreement (NPA) for USDA required reports. Refer to Paragraph 4 (Specific Requirements) in Section 1 (Scope of Work) for ADE required reports.

## 4. SPECIFIC REQUIREMENTS:

In addition to the USDA requirements contained in the National Processing Agreement, the Contractor agrees to the following requirements as required by the ADE, local or State laws:

- A. Categories of Donated Foods in Processing (Refer to NPA)
  - (1) Batching - USDA Commodities of the State of Arizona may be combined with like commodities of other states for a production run.

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- (2) Commingling - Inventories of raw meat may be stored together with other states' raw meat but must be accounted for separately. This is also applicable to end products.
- (3) In neither case shall USDA Beef over 12 months old nor pork over 9 months old be batched and commingled with State of Arizona Commodities. This does not apply to finished products.
- (4) Contractors will use entire Arizona School District Name with assigned "CTD" code for all documentation with the ADE. Please refer to the sponsor directory for School District Name and "CTD" code. This directory will be provided to processors upon contract award.

B. Processing Arrangements (Refer to NPA)

- (1) The return of broken pieces will be at the discretion of the Local Educational Agency (LEA). LEAs refusing broken pieces shall be reimbursed the value of the pounds or cases that would have been returned. Under no circumstances shall broken pieces be considered part of the yield.
- (2) When deliveries are made to commercial distributor, Contractor shall provide the following information to distributor two weeks prior to delivery:
  - (a) Master Bill of Lading
  - (b) Product Number
  - (c) Detailed description of product
  - (d) Case length
  - (e) Case width
  - (f) Case height
  - (g) Case weight – Gross weight & Net weight
  - (h) TiHi
  - (i) Quantity per case
  - (j) Shelf life
  - (k) Storage temperature
  - (l) Cube

C. Summary End Product Data Schedules (Refer to NPA) SEPDS must include the following information:

- Processor Signature
- USDA signature
- Distribution/Value Pass Through Method (FFS, NOI, etc.)
- Arizona Pricing for EACH Value Pass Through Method (FFS, NOI, etc.)
- If a product is Child Nutrition (CN) labeled, include the CN number on the SEPDS.

D. Inspection and Grading Requirements for Processing (Refer to NPA) Acceptance Service Grading (Refer to NPA)

ADE may grant waivers under any of the following circumstances:

- (1) Contractors have given AMS 10 days notification and an inspector is unavailable.
- (2) Cost of grading unduly excessive.
- (3) Documented urgency of LEA needs.

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E. Donated Food Containers (Refer to NPA)

The funds (cash versus credit) received from the sale of DF containers will be returned to the LEA.

F. Nutritional Information

The Contractor shall submit nutrition analysis for each product with Summary End Product Data Schedules (SEPDS). The analysis shall include at a minimum, the following information per serving:

**\* Calories, Protein, Fat, Carbohydrate, Cholesterol, Sodium, Vitamin A, Vitamin C, and CN# if applicable**

G. The Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act [42 USC 1857 (h)], Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under nonexempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities.

H. By-Products of Donated Food Processing (Refer to NPA)

I. Monthly Performance Reports

See Exhibits section (Exhibit 7.3) for a sample Monthly Performance Report.

J. Direct Shipment Spreadsheet

When a Contractor delivers the end product **directly** to the LEA, **an individual spreadsheet shall be submitted for each LEA** with the appropriate Monthly Performance Report containing the following information (a template is in the Exhibits section - Exhibit 7.4):

- (1) School
- (2) CTD number
- (3) Invoice #
- (4) Ship date
- (5) Product #
- (6) Description of product
- (7) Quantity shipped

K. All records and contracts pertaining to the Processing of USDA Commodities shall be maintained as required by paragraph 3.1 of the Uniform Terms and Conditions of this Contract.

### 5. ADDITIONAL REQUIREMENTS:

A. The Contractor shall abide by all requirements specified in this Scope Of Work and the Special Terms and Conditions portion of this Contract that includes, but is not limited to, the areas of food processing, summary end product data schedules, inspection and grading, donated food containers, nutritional information, all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, by-products of donated food processing, performance reports, and maintenance of records and reports.

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- B. The NPA, contains USDA processing requirements. A number of these direct the Contractor to contact ADE for its review, approval or concurrence for specific actions. The Contractor shall send these to the technical contact (Section 2, Special Terms and Conditions, page 18, paragraph 30.B).

**SECTION 2**  
**SPECIAL TERMS AND CONDITIONS**

ARIZONA DEPARTMENT OF EDUCATION  
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1. **Definition of Terms Used in these Special Terms and Conditions.** As used in these Special Terms and Conditions, the following terms, in addition to those terms defined in Section 3, Paragraph 1, have the following meaning:
- A. *"ADE"* means the Arizona Department of Education
  - B. *"AMS"* means Agriculture Market Service
  - C. *"Arizona schools"* means an Arizona School District or Charter School eligible to participate in the National School Lunch Program, the Special Milk Program, or the School Breakfast Program.
  - D. *"CCC"* means Commodity Credit Corporation.
  - E. *"CN"* means *Child Nutrition*
  - F. *"CTD"* means *County Type District*
  - G. *"Department"* means the Arizona Department of Education
  - H. *"DA"* means Distributing Agency (ADE for this contract)
  - I. *"DF"* means Donated Food
  - J. *"EPDS"* means End Product Data Schedule
  - K. *"FOB"* means Freight on Board
  - L. *"FNS"* means Food Nutrition Services
  - M. *"FNSRO"* means the appropriate Food and Nutrition Services Regional Office
  - N. *"FSIS"* means Food Safety Inspection Service
  - O. *"LEA"* means Local Educational Agency
  - P. *"NPA"* means *National Processing Agreement*
  - Q. *"Procurement Officer"* means the person duly authorized by the State to enter into and administer Contracts, direct contract changes and make written determinations with respect to the Contract or their designee.
  - R. *"SEPDS"* means *Summary End Product Data Schedule*
  - S. *"SPA"* means *State Participation Agreement*
  - T. *"Sponsor"* means the same as *"Arizona Schools"*, but also includes non-profit ownership's participating in the educational system of the State, public or non-profit residential childcare institution (RCCI) which operates principally for the care of children.
  - U. *"USDA"* means *United States Department of Agriculture*

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**2. Changes.**

- A. The Procurement Officer may at any time, by written order, and without notice to the sureties, if any, make mutually acceptable changes within the general scope of this Contract in any one or more of the following:
- (1) Description of services to be performed;
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.); and
  - (3) Place of performance of the services.
  - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specifically manufactured for the State in accordance with the drawings, designs, or specifications.
  - (5) Method of shipment or packing.
  - (6) Place of delivery.
- B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, the Procurement Officer shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the contract.
- C. The Contractor must assert its right to an adjustment under this provision within 30 days from the date of receipt of the written order. However, if the Procurement Officer decides that the facts justify it, the Procurement Officer may receive and act upon a proposal submitted before final payment of the Contract.
- D. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Procurement Officer shall have the right to prescribe the manner of the disposition of the property.
- E. Failure to agree to any adjustment shall be a dispute under the Contract Claims provision of this Contract. However, nothing in this provision shall excuse the Contractor from proceeding with the Contract as changed.

**3. Indemnification.**

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, LEAs, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation

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against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

*This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.*

**4. Insurance.**

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Fire Legal Liability \$ 50,000
- Each Occurrence \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: *“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor”.*

b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. **Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: *“The State of Arizona, its departments, agencies, boards, commissions,*

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*universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor".*

- b. Policy shall contain a waiver of subrogation against the State of Arizona, as departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. § 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

- 1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.
- 2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
- 3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to the office named in paragraph 30. C. of this section and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

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- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- All certificates required by this Contract shall be sent directly to the office named in paragraph 30.C. of this section. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**
- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract shall be made by the Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
- H. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.
5. **Contract Term.** The term of this Contract shall commence on the date the Procurement Officer signs the Offer and Acceptance Form, signifying ADE's acceptance of the Offeror's proposal and will remain in effect for one year, unless terminated, canceled, or extended as otherwise provided herein.
6. **Option to Extend the Term of the Contract.**
- A. ADE may, at its sole option, extend the term of this Contract by written notice to the Contractor within sixty (60) calendar days of the Contract expiration date.
- B. If ADE exercises this option, the extended Contract shall be considered to include this option provision as well as all other terms and conditions of the original contract, as modified.
- C. The total duration of this Contract, including the exercise of any options under this provision, shall not exceed three (3) years.
7. **Pricing.** All pricing shall be firm, fixed and be inclusive of all labor, equipment, materials, products, freight (FOB Destination), consumable supplies, insurance, and all other costs incidental to the services provided.

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8. **Multiple Awards:** The State has a large number and variety of potential eligible Local Educational Agencies at locations throughout Arizona. In order to assure that any ensuing contracts will allow the State to fulfill current and further requirements, ADE reserves the right to award contracts to multiple companies. The actual utilization of any contract will be at the sole discretion of each using entity. The fact that the state may make multiple awards should be taken into consideration by each potential contractor.
9. **Price Adjustments.**
- A. The Procurement Officer may review a fully documented request for a price increase only after the Contract has been in effect for one year. Any requested increase(s) shall be based on a cost increase to the Contractor that was clearly unpredictable at the time of the Offer and is directly correlated to the price of the services contractually covered. A price increase adjustment shall only be considered at the time of a Contract extension and shall be a factor in the extension review process.
- B. All written requests for price adjustments made by the Contractor shall be initiated at least 90 calendar days in advance of any desired price increase. The 90 calendar days advance notice is required to allow the Procurement Officer sufficient time to make a fair and equitable determination to any such request.
- C. The Procurement Officer shall determine whether the requested price increase or an alternate option is in the best interest of the State.
10. **Licenses.** The Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.
11. **Eligible Local Educational Agencies:** This Contract shall be for the use of ADE, other state agencies, political subdivisions and sponsors that participate at their own discretion. Upon Contract award, the ADE will provide the Contractor with a complete listing of all eligible Local Educational Agencies with their appropriate identification numbers and addresses. The Contractor can only reduce inventory on sales of approved end products to these Local Educational Agencies.
12. **Samples:** The Contractor shall provide a representative sample to a school/sponsor of an item provided on this Contract upon request or at a scheduled processing workshop. If the item shipped does not match the sample, the Contractor shall either cancel the invoice for the item shipped, or arrange for the return of the item at no cost to the school/sponsor. Failure of the Contractor to ship items that match the samples or the specifications for the item may result in the cancellation of the Contract. Inspection criteria shall include, but not be limited to, conformity to the Specifications, physical integrity, quality, workmanship and materials. Distributing Agency or sponsor may exempt end products from testing if they have been used previously, have been determined to be acceptable by sponsor and have no changes to specifications.
13. **Removal of Contractor Personnel.** The Contractor agrees to utilize only experienced, responsible and capable employees in the performance of the work. ADE may require that the Contractor remove from the job, by this Contract, employees who endanger person or property or whose continued employment under this Contract is, in the opinion of ADE, not justified due to unacceptable performance of duties, or is inconsistent with the interests of ADE.
14. **Employment of State Personnel.** The Contractor shall not employ any person or persons in the employ of the State of Arizona for any work required by the terms of this Contract, without prior written approval of the Procurement Officer.
15. **Purchase Orders.** Work under this Contract will be funded and ordered through separate purchase orders issued by the participating sponsors (LEAs).

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**16. Warranty of Services.**

- A. All items furnished under this Contract shall conform to the requirements of this Contract and shall be free from defects in design, materials and workmanship.
- B. The warranty period for workmanship and materials shall be for an initial period of twelve (12) months and commence upon acceptance by ADE.
  - (1) The Contractor shall indicate on the Price Sheet the duration of the warranty and any applicable limitations or conditions which may apply.
  - (2) The Contractor agrees that he will, at his own expense, provide all labor and parts required to remove, repair or replace, and reinstall any such defective workmanship and/or materials which becomes or is found to be defective during the term of this warranty. The Contractor shall guarantee the equipment to be supplied complies with all applicable regulations.

**17. Acceptance.** Each item delivered will be subject to a complete inspection by the receiving personnel prior to acceptance. Inspection criteria shall include, but not limited to, conformity to the Specifications, mechanical integrity, quality, workmanship and materials.

**18. Defective Products.** All defective products shall be replaced and exchanged by the Contractor. The Contractor shall pay the cost of transportation, unpacking, inspection, repackaging, reshipping or other like expenses. School districts, schools and charter schools must receive all replacement products within seven (7) calendar days of initial notification.

**19. Inspection of Services – Fixed Price.**

- A. The Contractor shall provide and maintain an inspection system acceptable to ADE covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to ADE during contract performance and for as long afterwards as the Contract requires.
- B. ADE has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. ADE shall perform inspections and tests in a manner that will not unduly delay the work.
- C. If any of the services do not conform with Contract requirements, ADE may require the Contractor to perform the services again in conformity with Contract requirements, at no increase in Contract amount. When the defects in services cannot be corrected by re-performance, ADE may -
  - (1) Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and
  - (2) Reduce the Contract price to reflect the reduced value of the services performed.
- D. If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, ADE may -

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- (1) By Contract or otherwise, perform the services and charge to the Contractor any cost incurred by ADE that is directly related to the performance of such service; or
  - (2) Terminate the Contract for default.
20. **Ownership.** All deliverables and/or other products of this Contract (including, but not limited to, all software documentation, reports, records, summaries and other matter and materials prepared or developed by the Contractor in performance of this Contract) shall be the sole, absolute and exclusive property of ADE, free from any claim or retention of rights thereto on the part of the Contractor, its agents, subcontractors, officers, or employees, with the exception of third party proprietary software packages which may be procured under this or separate agreement.
21. **Estimated Quantities.** This Contract references quantities as a general indication of the needs of ADE. However, the quantities shown are estimates only and ADE reserves the right to increase or decrease any quantities actually purchased. The Contractor understands and hereby acknowledges that ADE makes no representations nor guarantees the Contractor any minimum or maximum number of units of work.
22. **Inclusive Offeror.** Offeror(s) are encouraged to make every effort to utilize subcontractors that are small, women-owned and/or minority owned business enterprises. Offerors who are committing a portion of their work to such subcontractors shall do so by identifying the type of service and work to be performed by providing detail concerning your organization's utilization of small, women-owned and/or minority business enterprises. Emphasis should be placed on specific areas that are subcontracted and percentage of contract utilization and how this effort will be administered and managed, including reporting requirements.
23. **Cooperation with Other Contractors and Subcontractors.** The Contractor shall fully cooperate with other ADE contractors, subcontractors and assigns and shall carefully plan and perform its own work to accommodate the work of other ADE contractors. The Contractor shall not intentionally commit or permit any act which will interfere with the performance of work by any other ADE contractors.
24. **Confidentiality of Records:** The Contractor shall establish and maintain procedures and controls that are acceptable to the ADE for the purpose of assuring that no information contained in its records or obtained from the ADE or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information shall be referred to the ADE. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Contractor as needed for the performance of duties under the contract, unless otherwise agreed to in writing by the ADE.
25. **Subcontracts:** The Contractor may, with the approval of the USDA, enter into written subcontract(s) for performance of certain of its functions under the Contract. Subcontractors must be approved in writing by the USDA prior to the effective date of any subcontract.
  - A. No subcontract, which the Contractor enters into, with respect to performance under the Contract, shall in any way relieve the Contractor of any responsibility for performance of its duties.
  - B. The Contractor shall give the Procurement Officer immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor which in the opinion of the Contractor may result in litigation related in any way to the Contract with the ADE.

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- C. The Contractor shall not assign and/or delegate any of the duties and/or responsibilities to process DF under this Contract to any party, either by way of subcontract or any other arrangement, without the prior written consent of the USDA. Prior to utilizing the services of any subcontractor under this Contract the Contractor shall complete and submit to the USDA a Subcontractor Agreement (Refer to NPA) for each proposed subcontractor. Even if a subcontract is approved, the Contractor remains responsible as prime Contractor to ensure that DF is accounted for and processed according to the terms and conditions contained in this Contract and is obligated to inform the subcontractor of these requirements.
26. **Report Standards.** Reports or written materials prepared by the Contractor in response to the requirements of this Contract shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Procurement Officer, and shall be submitted in draft form for advance review and comment by the Procurement Officer, if necessary or specified. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with the Contract requirements shall be borne by the Contractor.
27. **Offshore Performance of Work Prohibited**  
Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers. Offerors shall declare all anticipated offshore services in the proposal.
28. **Compliance Requirements for A.R.S. § 41-4401, Government Procurement: E-Verify Requirement**
- A. The contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)
- B. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the contractor may be subject to penalties up to and including termination of the contract.
- C. Failure to comply with a State audit process to randomly verify the employment records of contractors and subcontractors shall be deemed a material breach of the contract and the contractor may be subject to penalties up to and including termination of the contract.
- D. The State Agency retains the legal right to inspect the papers of any employee who works on the contract to ensure that the contractor or subcontractor is complying with the warranty under paragraph 1.
29. **Payment/Invoices & Mailing of Payments:** The Contractor will be paid upon the submission of proper invoices. The Contractor shall submit invoices as specified on the Local Educational Agencies purchase order(s).
- A. The Contractor shall submit invoices in a mutually acceptable format for work that has been performed in accordance with the Contract terms and conditions and accepted by the Local Educational Agencies. The Local Educational Agencies shall pay the Contractor within thirty (30) working days of receipt of invoices, provided the invoices include the required information and supporting documentation.

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- B. Each invoice shall provide the following information, as applicable: Contract number, purchase order number and description of services performed, or commodities (end product items) delivered, and date of delivery.
- C. List below the address to which payment should be mailed, if different than that listed on the Offer and Award Form.

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City & State)                      (Zip Code)

**30. Contract Administration**

- A. Contractor representative to contact for contract administration purposes:

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City & State)                      (Zip Code)

\_\_\_\_\_  
(Telephone & Facsimile Numbers)

\_\_\_\_\_  
(E-Mail Address)

- B. The ADE representative to contact for technical or programmatic matters concerning contract performance (NOTE: this person is not authorized to direct contractor performance or make changes in contract requirements.)

Tina Herzog, Program Director  
Food Distribution Program  
Health and Nutrition Services  
1535 West Jefferson Street, Bin 7  
Phoenix, Arizona 85007  
Phone: (602) 542-8781  
FAX: (602) 542-6978  
E-Mail: [Tina.Herzog@azed.gov](mailto:Tina.Herzog@azed.gov)

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- C. All contract administration matters will be managed by the Procurement Office. All correspondence concerning this contract shall be directed to:

Contracts Management Unit  
1535 West Jefferson Street #37C  
Phoenix, Arizona 85007  
Phone: (602) 364-2517  
Fax: (602) 542-4056  
E-Mail: [procurementinbox@azed.gov](mailto:procurementinbox@azed.gov)

**31. USDA REQUIREMENTS**

Refer to the National Processing Agreement (NPA).

It can be located at the following website: <http://www.fns.usda.gov/fdd/processing/national/default.htm>

See Exhibit 7.5 for National Processing Agreement

## SECTION 3 UNIFORM TERMS AND CONDITIONS

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*Version 7*

1. **Definition of Terms.** As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:
  - A. *“Attachment”* means any item the Solicitation requires the Offeror to submit as part of the Offer.
  - B. *“Contract”* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement of Scope of Work; the Offer and any Final Proposal Revisions; and any Solicitation Amendments or Contract Amendments.
  - C. *“Contract Amendment”* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
  - D. *“Contractor”* means any person who has a Contract with the State.
  - E. *“Days”* means calendar days unless otherwise specified
  - F. *“Exhibit”* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
  - G. *“Gratuity”* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
  - H. *“Materials”* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
  - I. *“Procurement Officer”* means the person duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract or their designee.
  - J. *“Services”* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
  - K. *“Subcontract”* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
  - L. *“State”* means the State of Arizona and Department or Agency of the State that executes the Contract.
  - M. *“State Fiscal Year”* means the period beginning with July 1 and ending June 30.
2. Version 7.0 of the State of Arizona’s Uniform Terms and Conditions are hereby incorporated by reference. These documents may be accessed through State Procurement Office website by accessing the internet at <http://www.azdoa.gov/spo/agency-resources/documents-forms> or by calling either, State Procurement Office at 602-542-5511 or the Arizona Department of Education at 602-364-2517. ***It is the Offeror’s responsibility to obtain the current revision of the documents.***

**SECTION 4**  
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1. **Definition of Terms Used in these Special Instructions.** As used in these instructions, the following terms, in addition to those terms defined in Section 2, Paragraph 1, have the following meaning:
  - A. “*ADE*” means the Arizona Department of Education.
  - B. “*Department*” means the Arizona Department of Education.
  
2. **Required Information.** The following shall be submitted concurrent with and as part of the Offer:
  - A. Offer and Contract Award Form;
  - B. Contract Administration; Section 2 Paragraph 30.
  - C. Attachment 6.1, State Participation Agreement;
  - D. Attachment 6.2, List of Required Information;
  - E. Attachment 6.3, Offeror’s References;
  - F. Attachment 6.4, Sole Proprietor Certificate (if applicable);
  - G. Attachment 6.5, Contact Sheet;
  - H. Attachment 6.6, Data Destination Form;
  - I. Attachment 6.7, Summary End Product Data Schedules
  - J. Attachment 6.8, Offeror's Checklist;
  - K. Attachment 6.9, Arizona Substitute W-9; and
  - L. Solicitation Amendments (if any).
  
3. **Authorized Signature.**
  - A. For any document that requires the Offeror’s signature, the signature provided must be that of the Owner, Partner or Corporate Officer duly authorized to sign contractual agreements. Additionally, if requested by ADE, disclosure of ownership information shall be submitted.
    - (1) Privately Owned: The Owner must sign the contract.
    - (2) Partnership: A Partner must sign the contract.
    - (3) Corporation: A Corporate Officer must sign the contract.
  - B. If a person other than these specified individuals signs the contract, a Power of Attorney indicating the employee’s authority must accompany the contract. All addenda to the contract shall be signed by the authorized individual who signed the contract except that they may be signed by a duly authorized designee.

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4. **Pre-proposal Conference:** A Pre-Proposal Conference will be held in conjunction with this solicitation. Please refer to the cover page of this solicitation for details concerning this meeting. Attendance at this meeting is **STRONGLY ENCOURAGED**. You may wish to submit comments or questions to the Procurement Officer by sending either a facsimile to the attention of Clay Dones at (602) 542-4056 or by e-mail to [clayton.dones@azed.gov](mailto:clayton.dones@azed.gov) referencing the solicitation number. It is the responsibility of the Offeror to submit questions or comments with enough time to permit a response prior to the submission date specified. Unless the Procurement Officer issues a solicitation amendment, the requirements stated in this solicitation stand and are to be provided by the resultant Contractor.
5. **Proposal Opening:** As this is a Request For Proposals, Offers shall be opened publicly at the time and place designated on the cover page of this document. The name of each offeror shall be read publicly and recorded. Prices will not be read. Proposals will not be subject to public inspection until after Contract award.
6. **Suspension or Debarment Certification:** By signing the offer section of the Offer and Acceptance page the bidder or offeror certifies that the firm, business or person submitting the bid or offer has not been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity with any Federal, State or Local Government. Signing the offer section without disclosing all pertinent information about a debarment or suspension shall result in rejection of the bid or offer or cancellation of a contract. The State also may exercise any other remedy available by law.
7. **Award of Contract.** Award of a contract will be made to the most responsible Offeror(s) whose offer(s) is determined to be the most advantageous to the State based on the evaluation criteria set forth in the Solicitation.
8. **Inclusive Offeror:**

Offeror(s) are encouraged to make every effort to utilize subcontractors that are small, women-owned and/or minority owned business enterprises. Offerors who are committing a portion of their work to such subcontractors shall do so by identifying the type of service and work to be performed by providing detail concerning your organization's utilization of small, women-owned and/or minority business enterprises. Emphasis should be placed on specific areas that are subcontracted and percentage of contract utilization and how this effort will be administered and managed, including reporting requirements.
9. **Federal Immigration and Nationality Act:**

By submission of the offer, the offeror warrants that both it and all proposed subcontractors are and shall remain in compliance with all federal, state and local immigration laws and regulations relating to the immigration status of their employees. The State may, at its sole discretion require evidence of compliance during the evaluation process. Should the State request evidence of compliance, the offeror shall have 5 days from receipt of the request to supply adequate information. Failure to comply with this instruction or failure to supply requested information within the timeframe specified shall result in the offer not being considered for contract award.
10. **Offer Format and Content.**
  - A. **One clearly marked original and six (6) copies** of offer(s) shall be submitted. Subcategories of information in each of the volumes should be highlighted for ease of evaluating the information contained therein. If the Offeror finds it necessary to take exception(s) to any of the requirements specified in this Solicitation, clearly indicate each such exception in the proposal along with a complete explanation of why the exception was taken and what benefit accrues to the State thereby. All substantive exceptions and supporting rationale shall be identified as such and consolidated into one section of the Offer.

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- B. To facilitate evaluation, the Offer must be specific, and complete to clearly and fully demonstrate the Offeror has a thorough understanding of the requirement, can provide detailed information and relate experience concerning previous performance of similar services. Statements that the Offeror understands, can or will comply with the Scope of Work, statements paraphrasing the Scope of Work or parts thereof, and phrases such as “*standard procedures will be employed*” or “*well-known techniques will be used*”, etc., will be considered unacceptable. Offerors should note that data previously submitted shall not be relied upon nor incorporated in the Offer by reference.
- C. **Offeror shall submit a signed original of the Summary End Product Data Schedules in a separate envelope or box with pricing clearly marked “Summary End Product Data Schedules.” SEPDS must have USDA’s signature and must include Arizona pricing in the far right column.**
- D. Binding and Labeling. Each copy of the Offer shall be presented in three ring binders with the cover indicating the Solicitation number, the Offeror’s name and address and copy number (i.e. Copy 2 of 6).
- E. Indexing. The sections of each copy of the Offer shall be indexed to indicate the applicable parts and elements. Orderliness of the Offer, readability and similar factors should be considered in offer preparation.
- F. Format. The mandatory information to be placed in each copy of the Offer is listed below. Each copy shall furnish sections for information discussed in the Scope of Work. **Lack of these submissions may cause the Offer to be declared unacceptable.**
- (1) Section One of the Offer shall be titled **Executive Summary**. This Section shall include a signed copy of the Offer and Award Form and completed Attachments 6.1, 6.3, 6.4 (if applicable), 6.5, 6.6, 6.8, and 6.9.
  - (2) Section Two of the Offer shall be titled **Pricing**. **Offeror shall submit a signed original of the summary end product data schedules in a separate envelope or box clearly marked “Summary End Product Data Schedules.”** Submission of SEPDS with USDA approval, signatures, proper calculations, distribution (value pass through) methods with pricing for each, and CN labeling (if applicable). SEPDS must have USDA’s signature.
  - (3) Section Three of the Offer shall be titled **Method of Approach and Implementation Plan** and shall provide a narrative on the methodology to be used to accomplish Scope of Work responsibilities to the extent possible for evaluation purposes. The language of the narrative should be straightforward and limited to facts, solutions to problems and proposed plans of action.
  - (4) Section Four of the Offer shall be titled **Nutritional Information and Labeling** and shall provide information which reflects the nutritional contribution and the marketability of the end product. Marketability includes how schools are contacted, and their response. Product marketability is defined as the desirability of the product to the schools.
  - (5) Section Five of the Offer shall be titled **Offeror’s Experience, Expertise and Reliability** and shall provide information which reflects the Offeror's experience and reliability, including personnel, to accomplish Scope of Work responsibilities. This Section shall specifically address or include:
    - (a) At least three (3) verifiable professional references must be provided regarding services provided by the Offeror similar to those required under this Solicitation. This information should be provided on Attachment 6.3.

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11. **Samples.** As described in paragraph 12 of the Special Terms and Conditions, the ADE reserves the right for the Donated Food program sponsors (Local Educational Agencies) to request a representative sample of the items proposed. **If samples are required, the Local Educational Agencies will contact the Contractor after Contract award. Samples will not be required for the evaluation of offers in conjunction with this solicitation.**
  
12. **Summary End Product Data Schedules:** The information provided on the Summary End Product Data Schedules will be used as the basis for determining points for cost. The information and pricing submitted on the summary end product data sheets will be used to establish the Contract pricing upon which all parties will base their purchases. The Offeror shall use the November 15<sup>th</sup> USDA commodity price for the upcoming school year information in preparing the Summary End Product Data Schedule. If selecting “Indirect Sales,” (also known as Net Off Invoice “NOI”) contractor shall demonstrate successful implementation of the program, and the program shall be demonstrated to ADE prior to submission.
  
13. **Evaluation and Selection.** Evaluation of offers may be accomplished in four steps.
  - A. Step One. Initial review of offer to determine basic responsiveness to the Solicitation, where offers will be reviewed to insure they include all required information.
  
  - B. Step Two. Evaluation of offer to assess the Offeror’s capability to deliver the required services in accordance with the terms and conditions set forth in the Solicitation and requirements of the Scope of Work.
  
  - C. Step Three. (Optional) Discussions with Offerors concerning their offers. This step includes requests for Final Proposal Revisions from Offerors still considered susceptible of winning contract award(s).
  
  - D. Step Four. Contract award(s) made to the responsible Offeror(s) whose offer(s) is determined to be the most advantageous to the State, based on the following criteria (in bold print below), which are listed in descending order of importance.
    - (1) **Price:** Submission of SEPDS with USDA approval, signatures, proper calculations, distribution (value pass through) methods with pricing for each, and CN labeling (if applicable).
  
    - (2) **Method of Approach and Implementation Plan:** Demonstrated capability to meet the needs of the State: Distribution method and available service delivery areas. This shall include information on how Offeror plans on conducting business in the State of Arizona.
  
    - (3) **Nutritional information and labeling:** The nutritional contribution and the marketability of the end product. Marketability includes how schools are contacted, and their response. Product marketability is defined as the desirability of the product to the schools.
  
    - (4) **Offeror’s Experience, Expertise and Reliability:** Demonstrated experience in processing donated USDA food commodities into end products. This can be Arizona experience, or another State Food Distribution Program, and will include evaluation of references submitted.
  
14. **Evaluation of Optional Terms.** ADE will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate ADE to exercise the option(s).
  
15. **Discussions.** In accordance with A.R.S. § 41-2534, after the initial receipt of offers, ADE reserves the option to conduct discussions with those Offerors who submit offers determined by the State to be reasonably susceptible of being selected for award.

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**16. Final Proposal Revisions.**

- A. In the event the Procurement Officer determines discussions are required, discussions on the areas, items, and factors specified in this Solicitation will be held with all Offerors determined to be in the competitive range.
- B. The Offeror is permitted to make revisions during negotiations. Offerors should be aware that a complete understanding as to pricing, technical, and all other terms and conditions of the proposed contract must exist between the Offeror and ADE at the conclusion of negotiations.
- C. Discussions will be concluded when a mutual understanding has been reached with each Offeror remaining in the competitive range. This mutual understanding will become the basis for the Offeror's Final Proposal Revision.
- D. The Final Proposal Revision must be returned, signed and dated by the Offeror within the time and date specified to be eligible for award.

- 17. Certificate of Insurance Form.** ADE recommends that the Offeror consider using the sample Certificate of Insurance included in this Solicitation as Exhibit 7.1. If the Offeror wishes, it may submit a substantially similar Certificate of Insurance. If the Offeror so elects, the proposed Certificate of Insurance shall be submitted to ADE for review and approval.

## SECTION 5 UNIFORM INSTRUCTIONS TO OFFERORS

ARIZONA DEPARTMENT OF EDUCATION  
Procurement Section  
1535 West Jefferson Street, Bin #37  
Phoenix, Arizona 85007

**SOLICITATION NO. RFP NO. ED09-0018**

*Version 7.1*

1. **Definition of Terms.** As used in these Instructions, the terms listed below are defined as follows:
  - A. “Attachment” means any item the Solicitation requires an Offeror to submit as part of the Offer.
  - B. “Contract” means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Final Proposal Revisions; and any Solicitation Amendments or Contract Amendments; and any terms applied by law.
  - C. “Contract Amendment” means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
  - D. “Contractor” means any person who has a contract with the State.
  - E. “Days” means calendar days unless otherwise specified.
  - F. “Exhibit” means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
  - G. “Offer” means bid, proposal or quotation.
  - H. “Offeror” means a vendor who responds to a Solicitation.
  - I. “Procurement Officer” means the person duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract or his or her designee.
  - J. “Solicitation” means an Invitation for Bids (“IFB”), a Request for Proposals (“RFP”), or a Request for Quotations (“RFQ”).
  - K. “Solicitation Amendment” means a written document that is authorized by the Procurement Officer and issued for the purpose of making changes to the Solicitation.
  - L. “Subcontract” means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
  - M. “State” means the State of Arizona and Department or Agency of the State that executes the Contract.
2. Version 7.0 of the State of Arizona’s Uniform Instructions to Offerors are hereby incorporated by reference. These documents may be accessed through State Procurement Office website by accessing the internet at <http://www.azdoa.gov/spo/agency-resources/documents-forms> or by calling either, State Procurement Office at 602-542-5511 or the Arizona Department of Education at 602-364-2517. ***It is the Offeror’s responsibility to obtain the current revision of the documents.***

**ATTACHMENT 6.1**

**STATE PARTICIPATION AGREEMENT (SPA)  
NATIONAL PROCESSING AGREEMENT (NPA)**

**SOLICITATION NO. ED09-0018**

This Agreement is subject to the terms and conditions set forth in the National Processing Agreement made by and between the U.S. Department of Agriculture, Food and Nutrition Service and

\_\_\_\_\_ (Processor).

\_\_\_\_\_ (Processor) duly attests that no alterations have been made to the ACDA Core State Participation Agreement (SPA).

**State Distributing Agency:**  
**Arizona Department of Education**

**Processor** \_\_\_\_\_

**Federal EIN:** \_\_\_\_\_

**Name**                    **Tina Herzog**

**Name** \_\_\_\_\_

**Title**                    **Food Distribution Program**  
**Director**

**Title** \_\_\_\_\_

**Address**                **1535 W. Jefferson St. Bin#7**

**Address** \_\_\_\_\_

**City, State, Zip**      **Phoenix, AZ 85007**

**City, State, Zip** \_\_\_\_\_

**Contact**                **Leona Benally**

**Contact** \_\_\_\_\_

**Phone**                  **(602) 364-1965**

**Phone** \_\_\_\_\_

**Fax**                      **(602) 542-6978**

**Fax** \_\_\_\_\_

**E-mail**                  **Leona.Benally@azed.gov**

**E-mail** \_\_\_\_\_

**Web Address**  
**http://www.azed.gov/health-safety/cnp/fdp**

**Web Address** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**Date** \_\_\_\_\_

**Period of Agreement:** This Agreement shall become effective on July 1, 2009 and will terminate on or before June 30, 2010 pursuant to USDA Policy Memorandum FD-048 (Maximum of 3 years). Additionally, the SPA may be amended as necessary should any of the information change during the agreement period. This Agreement shall not be amended except by a written agreement signed by the parties hereto.

## ATTACHMENT 6.1

1. **Value Pass Through Systems.** State Agency will indicate which value pass through systems are acceptable in their State. Processor will indicate which value pass through systems they desire to use in the State and have been approved by USDA in the NPA (National Processing Agreement).

Permitted By State	Value Pass Through System	Selected by Processor
X	Direct Sale	
X	Refund to Recipient Agency	
X	Net Price Through Distributor (NOI)*	
	Alternate Value Pass Thru System* (requires FNS approval)	
X	Fee for Service – billed by processor	
	Fee for Service – billed by distributor	
X	Modified Fee for Service	

\*Sales Verification Required

**If sales verification is required, check one:**

State delegates sales verification to the processor [see 7 CFR 250.19(2)(vi)(C)]

**Processor must submit their procedure for conducting Sales Verification to the State Agency.**

State will conduct sales verification

2. **Summary End Product Data Schedules (SEPDS).** Processor will submit SEPDS to State with the completed State Participation Agreement. The SEPDS contains summary information from approved EPDS and a master SEPDS approved by USDA. Processor may select specific EPDS for processing in a given state. The state also has the option to accept or reject individual products listed on the SEPDS, and in the case of multiple commodities available for processing, may accept or reject certain commodities for processing. **USDA approved and signed SEPDS (which contains prices – as stated in section 1, part C) must be submitted with other contract documents by the solicitation due date and in a separate envelope marked “Summary End Product Data Schedules”.** Note: the case weight listed on the SEPDS **MUST** match the label on the finished case.

Do you use a subcontractor for the production of any items covered in this agreement?

Yes  No

If yes, please identify the subcontractor by name, address, USDA plant number, and each item produced.

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Processor must provide written notification to the State Agency of any change(s) to the SEPDS including the nature of the change(s); notification may be made electronically.

3. **CN Labeling.** Products, which contribute toward the school meal pattern requirements, may qualify for CN labeling. State should check those that apply.

CN Labeling is optional. Recipient agencies may request CN labeled products.

CN Labeling is required, if applicable for the processed product.

**ATTACHMENT 6.1**

Submit CN labels with SEPDS.

4. **Nutritional Information.** Recipient agencies need nutritional information to comply with USDA regulations. Please check those that apply:

Processor must provide nutrition information to RA upon request.

Processor's nutrition information has been submitted to USDA Database.

Processor's nutrition information is available on their web site.

\_\_\_\_\_ (Provide the web address)

Processor must submit nutrition information with the SEPDS

5. **Grading.** Red Meat grading will be performed under (**check one**)

Full Certification per AMS Instruction MGC 640 (formerly known as Option 2 grading)

PCCP per AMS Instruction MGC 638

A written waiver must be granted by the State and supplied to grader if other certification (i.e. Traditional – Option 1+ Metal Detection Only) is to be performed

6. **By products.** If by products are produced, describe method of valuation and credit.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. **List of Eligible Recipient Agencies.** State will provide a list of eligible recipient agencies to the processor upon State approval of the State Participation Agreement.

8. **Backhauling of DF.** If backhauling is permitted, processor must notify the State before backhauling products. Please check those that apply.

State permits backhauling     Yes     No

Backhauling permitted from    State Warehouse     School District

State requires attached form for requesting approval to backhaul     Yes     No

9. **Special Instructions for Delivery of End Product to Designated Delivery Locations:**

a.        Discount from end product price for full truckloads delivered to a Local Education Authority's Warehouse.

b.        Discount from end product price for less than full truckloads delivered to a Local Education Authority's Warehouse. What is the minimum quantity required to obtain this price?

If payment is made within \_\_\_\_\_ calendar days after acceptance of goods and/or services, the above quoted price, excluding sales tax, shall be discounted by \_\_\_\_\_%.

(Refer to Uniform Instructions to Offerors for discount requirements.)

Reference Scope of Work Section 4

## ATTACHMENT 6.1

c. If you have weight restrictions on the delivery of your product please indicate below:

---

---

d. Below please describe the minimum weight restriction for delivery made to commercial distributor, and/or describe the minimum weight restriction for delivery made to school:

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### 10. Additional State Requirements.

- Processor will notify State immediately of any shipments that are short, over, or damaged, and complete an FNS 57 and submit to State, if necessary.
- Processor must register on the USDA's Electronic Commodity Ordering System (ECOS). Registration form can be downloaded from the USDA/FDD website at: <http://www.fns.usda.gov/fdd/ECOS/ProcessorProfileInfo.doc> and submitted to the ECOS Help Desk at [ECOS-HelpDesk@fns.usda.gov](mailto:ECOS-HelpDesk@fns.usda.gov) Please register prior to submitting SPA.
- Processor will complete "Receive Shipments," under Shipment Notification promptly in ECOS. (Within 5 days of receipt)
- Processor will submit all direct shipment sales on a monthly basis with performance reports. (See exhibit 7.4 for sample direct shipment report and exhibit 7.3 for sample MPR's)
- Processor will ensure a Master Bill of Lading (BOL) is included with all deliveries received in the state contracted warehouse. Shipments without a Master BOL are subject to additional fees.
- At a minimum, the State and processor must provide each other with the following hold and recall contact information:

#### **Primary Point of Contact**

- Name
- Telephone Number
- Mobile Phone Number
- Fax Number
- Email Address

#### **Back-up Contact, if primary is unavailable**

- Name
- Telephone Number
- Mobile Phone Number
- Fax Number
- Email Address

## ATTACHMENT 6.2

### REQUIRED INFORMATION

SOLICITATION No. ED09-0018

- (1) **Executive Summary.** In a maximum of two (2) pages, provide a summary of the steps your firm would take to assist the State of Arizona in meeting its commodity processing goal as stated in Paragraph 3 of the Scope of Work of the solicitation. Please include information specific to your distribution methods and available service delivery areas.
- (2) **Method of Approach/Implementation Plan** Please address each of the following areas in your response with a maximum of three (3) pages
  - (a) A summary of the quality and nutritional value of end products, and other documentation to support net case weight, serving per case, portion size, etc.
  - (b) The Offeror's capabilities to meet the State's food processing needs, and
  - (c) A description of the variety of end items the Offeror is including in its proposal.
- (3) **Offeror's Experience, Expertise and Reliability** This Section shall specifically address or include the following at a minimum:
  - (a) At least three (3) verifiable professional references must be provided regarding services provided by the Offeror similar to those required under this Solicitation. Emphasis should be placed on providing references that can further demonstrate your experience in processing donated USDA food commodities into end products. (The Offeror should use the designated Attachment 6.3 or, at a minimum, provide the same type and level of information specified in this Attachment.)
  - (b) In a maximum of two (2) pages, provide a summary narrative of your firm's experience and expertise relative to meeting the Scope of Work requirements specified in this solicitation.
- (4) **Summary End Product Data Schedules** Submit summary schedules with all proposed product(s) in accordance with the requirements specified in the Special Terms and Conditions (pg. 19, paragraph 31) portion of this solicitation and in the USDA National Processing Agreement. **Please pay special attention to the instructions concerning submittal of these documents.**

**ATTACHMENT 6.3**

**OFFEROR'S REFERENCES**  
**SOLICITATION No. ED**

*OFFERORS SHALL PROVIDE A MINIMUM OF THREE (3) REFERENCES.*

1. Company/Organization \_\_\_\_\_
  - A. Address \_\_\_\_\_  
\_\_\_\_\_
  - B. Point of Contact/Phone # \_\_\_\_\_
  - C. Description of Services and When Provided \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
2. Company/Organization \_\_\_\_\_
  - A. Address \_\_\_\_\_  
\_\_\_\_\_
  - B. Point of Contact/Phone # \_\_\_\_\_
  - C. Description of Services and When Provided \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
3. Company/Organization \_\_\_\_\_
  - A. Address \_\_\_\_\_  
\_\_\_\_\_
  - B. Point of Contact/Phone # \_\_\_\_\_
  - C. Description of Services and When Provided \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTACHMENT 6.4**



**ARIZONA DEPARTMENT OF ADMINISTRATION  
RISK MANAGEMENT SECTION**

1818 WEST ADAMS  
PHOENIX, ARIZONA 85007  
FAX 542-1982

**SOLE PROPRIETOR WAIVER**

NOTE: THIS FORM APPLIES ONLY TO STATE OF ARIZONA AGENCIES, BOARDS, COMMISSIONS AND UNIVERSITIES UTILIZING SOLE PROPRIETORS WITH NO EMPLOYEES. IF YOU ARE CONTRACTING WITH A CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP OR SOLE PROPRIETORS WITH EMPLOYEES, THIS FORM DOES NOT APPLY.

The following is a written waiver under the compulsory Workers' Compensation laws of the State of Arizona, A.R.S. §23-901 (et. seq.), and specifically, A.R.S. §23-961(L), that provides that a Sole Proprietor may waive his/her rights to Workers' Compensation coverage and benefits.

I am a sole proprietor and I am doing business as \_\_\_\_\_ (name of Sole Proprietors Business). I am performing work as an independent contractor for the State of Arizona, \_\_\_\_\_, for Workers' Compensation purposes, and therefore, I am not entitled to Workers' Compensation benefits from the State of Arizona, \_\_\_\_\_.

I understand that if I have any employees working for me, I must maintain Workers' Compensation insurance on them.

Name of Sole Proprietor: _____		
Social Security Number: _____	Telephone #: _____	
Street Address/P.O. Box: _____		
City: _____	State: _____	Zip Code: _____
Signature of Sole Proprietor: _____		Date: _____

Agency: <u>Arizona Department of Education</u>	Agency #: <u>455</u>
Signature of Agency Contract Administrator: _____	Date: _____

Both signatures must be signed and the completed form submitted to the State of Arizona, Department of Administration, Risk Management Section, Insurance Unit, 1818 W. Adams, Phoenix, Az 85007. An authorized Risk Management Representative will sign and return to the agency to be maintained in their records.

\_\_\_\_\_  
Signature of Risk Management Authorized Signer

\_\_\_\_\_  
Date

**ATTACHMENT 6.5**

**CONTACT SHEET**  
**(SOLICITATION NO. ED09-0018)**

**Processor Name:** \_\_\_\_\_

**General Processor Contact**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**Performance Report Contact**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**Summary End Product Data Schedule Contact**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**SPA Contract Contact**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

# ATTACHMENT 6.5

## Receiving Documents

(documents sent to state contracted warehouse, includes bill of lading, ownership of product spreadsheet etc...)

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

### Broker

Company Name: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

### Forwarding Notice/ECOS Receiving Contact

Delivery Location: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

### Commodity Hold and Recall Contact

**Name:** \_\_\_\_\_  
Phone: \_\_\_\_\_  
Mobile Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
**Back-Up Name:** \_\_\_\_\_  
Phone: \_\_\_\_\_  
Mobile Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

## ATTACHMENT 6.6

<b>DESTINATION DATA FOR DELIVERY OF DONATED FOODS</b> FNS Instr. 709-5		TYPE OF ACTION <input type="checkbox"/> NEW <input type="checkbox"/> CHANGE <input type="checkbox"/> DELETE	
<b>SEE INSTRUCTIONS ON REVERSE</b>			
1. NAME OF STATE DISTRIBUTING AGENCY  Arizona Department of Education	2. DESTINATION (CITY) RECEIVING POINT	3. STATE IN WHICH DISTRIBUTING AGENCY IS LOCATED  AZ -104	
4. CONSIGN TO Arizona Department of Education Food Distribution Program 1535 W. Jefferson, Bin #7 Phoenix, AZ 85007		5. CARE OF:	
ENTITY NO:			
6. DELIVER TO: <i>(Street address, team track, warehouse, etc.)</i>			
A. FOR RAIL DELIVERY		LIMITATIONS	
B. FOR TRUCK DELIVERY		LIMITATIONS	
7. SHIP BY <i>(Shipment may be made by rail or truck unless one of the following is checked)</i>  <input type="checkbox"/> RAIL ONLY <input type="checkbox"/> TRUCK ONLY		EXPLANATION OF NEED FOR THE RESTRICTION SHOWN	
8. TITLE AND ADDRESS ONLY OF PERSON TO WHOM THE FORWARDING NOTICE AND DISTRIBUTION AGENCY CONSIGNEE RECEIPT SHOULD BE SENT Arizona Department of Education Food Distribution Program 1535 W. Jefferson, Bin #7 Phoenix, AZ 85007		9. TITLE AND ADDRESS ONLY OF PERSON TO WHOM THE NOTICE OF SHIPMENT SHOULD BE SENT  Arizona Department of Education Food Distribution Program 1535 W. Jefferson, Bin #7 Phoenix, AZ 85007	
10. OUTLET(S) SERVED <input type="checkbox"/> NUTRITION PROGRAM FOR THE ELDERLY (TITLE III) <input type="checkbox"/> SCHOOLS <input type="checkbox"/> CHILD CARE FOOD PROGRAM <input type="checkbox"/> NEEDY FAMILIES <input type="checkbox"/> CHARITABLE INSTITUTIONS <input type="checkbox"/> SUMMER CAMPS <input type="checkbox"/> SUMMER FOOD SERVICE PROGRAM <input type="checkbox"/> SUPPLEMENTAL FOOD PROGRAM <input type="checkbox"/> OTHER <i>(Specify)</i>			
<b>IF DESTINATION IS A WAREHOUSE, COMPLETE ITEMS 11 THROUGH 14</b>			
11. TYPE OF WAREHOUSE  <input type="checkbox"/> STATE OWNED AND OPERATED <input type="checkbox"/> COMMERCIAL		12. IF COMMERCIAL WAREHOUSE DELIVERY ACCEPTABLE BY  <input type="checkbox"/> TRANSFER OF TITLE <input type="checkbox"/> LOCAL PICKUP	
13. TYPE(S) OF STORAGE PROVIDED  <input type="checkbox"/> DRY <input type="checkbox"/> REFRIGERATED <input type="checkbox"/> FREEZER		14. HANDLING OF PERISHABLE FOODS <i>(Check one)</i> <input type="checkbox"/> SHIPMENT ALWAYS ENTIRELY UNLOADED AND PLACED IN STORAGE  <input type="checkbox"/> PART OF SHIPMENT ALWAYS OR SOMETIMES DISTRIBUTED FROM CAR OR WAREHOUSE PLATFORM	
<b><i>The above information is true and correct to the best of my knowledge and belief.</i></b>			
15. DATE		16. SIGNATURE OF AGENCY REPRESENTATIVE	

DISTRIBUTING AGENCY: Send the original, white, and yellow copies to the Food and Nutrition Service Regional Office; retain the green and pink copies  
 FNS REGIONAL OFFICE: Send the original to the Kansas City ASCS Commodity Office and the yellow copy to the Food Distribution Division; retain the white copy.

## ATTACHMENT 6.6

### INSTRUCTIONS

It is important that a separate form be prepared for each destination (Item 2) when delivery conditions require changes in elements of information in Items 5, 6, 7, 8, or 9.

In the "Type of Action" entry, check one box only indicating whether the form is to provide data for: (1) a NEW destination, (2) notification of CHANGE in data for an existing receiving point, or (3) DELETION of a destination receiving point.

- 1 Self-explanatory.
- 2 Name of the City to which shipment is to be made. Show only if different from item 3.
- 3 Self-explanatory.
- 4 Enter the title of the Distributing Agency's representative who is accountable for distribution of donated foods. Names are not to be shown unless essential to the Distributing Agency's operations. The Entity Number is the code designation assigned by USDA for a destination receiving point, and will be filled in by the Distributing Agency each time the form is submitted.
- 5 If delivery at destination is to be accepted by the Distributing Agency's representative (shown in item 4), enter "Same as item 4". If delivery at destination is to be accepted by someone other than the representative shown in Item 4, that person's title is inserted here. Names are not to be shown unless essential to the Distributing Agency's operation.
- 6 This item is used jointly with Item 7 since the information to be supplied is dependent upon the method of shipment indicated in Item 7.

A. For Rail Delivery – No entry is to be made unless delivery to a specific location is essential to program operations, e.g., the receiving warehouse is located on a rail siding. When an entry is necessary, the address shown shall include the specific location at which the car is to be placed for unloading. Where reciprocal switching is not in effect at the point of delivery, the name of the railroad which serves this location shall be shown. For example:

"Blank's Warehouse, ACL," or "Industrial Siding, PPP." Where reciprocal switching is in effect at the point of delivery, no delivering carrier shall be specified. If delivery is to be made on a team track, the name of a specific team track shall not be shown unless it is essential to program requirements.

Limitations. Show limiting conditions, if any, at the destination point, e.g., "Cannot handle cars over maximum

length of 53 feet."

B. For Truck Delivery – Show exact street address for location at which delivery will be accepted. If same as for "Rail Delivery," enter "Same as for rail delivery."

Limitations. Show limiting conditions, if any, at the destination point, e.g., "12 ½ foot clearance."

- 7 It is desirable that shippers be allowed to make shipment by either rail or truck so that the means of transportation can be selected which will result in least transportation costs. Distributing agencies may restrict the method of shipment only when necessary to their program operations. If a specific mode of transportation is shown, an explanation must be made of the need for the restriction.
- 8 If this person is the same as the one to whom the Notice of Shipment is sent, enter "Same as Item 9." Names are not to be shown unless essential to the Distributing Agency's operations.
- 9 Self-explanatory. Names are not to be shown unless essential to the Distributing Agencies operations.
- 10 Indicate the outlet(s) to which distributions are made from this destination point.
- 11 12, 13, and 14 self-explanatory.
- 15 And 16 The Distributing Agency's representative (Item 4) will complete these entries.

## ATTACHMENT 6.7

### Summary End Product Data Schedules SOLICITATION No. ED09-0018

The following pages contain the Summary End Product Data Schedules and Instructions.

- A. SEPDS A – all donated foods excluding guaranteed minimum return
- B. SEPDS B – For meat and poultry processed under guaranteed minimum return

**\* The forms must be submitted with USDA's signature along with a price column with pricing information for Arizona.**

**SEPDS must be submitted with prices for each end product you wish to include in this RFP, which shall be in a separate envelope. The envelope should be clearly marked "Summary End Product Data Schedules."**

## ATTACHMENT 6.7.1

### INSTRUCTIONS AND EXPLANATIONS SUMMARY END PRODUCT DATA SCHEDULE SEPDS A -- ALL COMMODITY FOODS

This form can be used for both substitutable and commodity food end products. All end products to be processed must be submitted on an End Product Data Schedule (EPDS) and approved by either USDA or the State Agency. Each applicable DA must approve the Summary of End Product Data Schedule (SEPDS).

Check the appropriate box for “National Summary” if the EPDS were approved by USDA or “State Summary” if the EPDS were approved by the state.

Enter name of processor in upper right hand corner in place of "processors name". If multiple pages are needed, the processors name will appear on each page.

SEPDS are valid for the processing year from July 1 to June 30. After the initial SEPDS is approved, processors should submit an additional SEPDS for revised data for products listed on the original SEPDS or for additional (new) products. To assist state agencies in tracking revised or new products, please indicate revised product information by showing all data in italics and new products by copying the “new” starburst (  ) when applicable.

Column A	List finished end product code and product name as shown on the label (Column 1 of the EPDS).
Column B	List the net weight of one case of finished product as shown on the label (Column 2 of EPDS).
Column C	Indicate the minimum number of servings per case (Column 3 of EPDS).
Column D	Indicate the net weight of each serving (Column 4 of EPDS).
Column E	List all commodity codes of commodity food that will be used in the formulation of each end product. The short title will automatically update from the commodity code.
Column F	This is the amount of commodity drawdown per case of product and varies dependent on the commodity: For substitutable foods -- Column 10 of EPDS 1 For Guaranteed Return of red meat products -- Column 8 of EPDS 1 For Standard Yield of Poultry products -- Column 8 of EPDS 3 For Dairy Products -- Column 9 of EPDS 4
Column G	Check the box if By-Products other than Re-Work result. If no by-products are produced leave check box blank.
Column H	Value per pound for the commodity as established in accordance with USDA stipulated pricing (November 15th Price File see: <a href="http://www.fns.usda.gov/fdd/programs/state/">http://www.fns.usda.gov/fdd/programs/state/</a> ). This field has a formula in the cell and will automatically update once the commodity code
Column I	Discount or refund value per case of finished product is calculated by multiplying the per pound value in Column H by the pounds of commodity Column F. This has a formula in it & will automatically calculate.
Column J	State Agency to complete. Indicate the effective date for each approved end product. It is recommended the effective date be July 1. For products approved after the beginning of the school year, states may choose to back date the effective date to the first of the year (this is the simplest for accounting and tracking purposes). If the state prefers not to back date, select the first date of the chosen month.

## ATTACHMENT 6.7.1

Column K If the processor is not able to offer all products listed on the EPDS to a particular state, the processor may check the appropriate box for “State Approval” to indicate which products they desire to have approved for processing in that state. Ideally, processors will customize SEPDS for states by “hiding” the rows of products they are unable to offer in a given state. States have the option to decline to approve certain products for their state.

The Processor and State agency must always sign the SEPDS. If the state has approved the EPDS, the SEPDS is optional. If “state summary” is checked in upper left hand corner, then the state approved the EPDS and the schedule should not be submitted to USDA and USDA will not sign it.

In the bottom margin the date report is printed will automatically update. Please do not modify this feature as it will help everyone easily track the most current SEPDS. Update the school year if necessary in the page set up, bottom margin. The page number and number of pages will automatically update.

Instructions for Processors: Add as many additional lines in the main body of the schedule to accommodate all products. In this way, multiple pages will print automatically if needed and there will be one set of signature blocks on the last page. Electronic file submission is HIGHLY DESIRABLE. A scanned graphic company signature inserted into documents will be recognized as an official signature. This will be handled with discretion and professionalism. After documents are approved documents are locked to secure all signatures.

USDA will lock the parts of the Excel spreadsheet when they approve the schedule and return it electronically to the processor. After USDA has signed the SEPDS processors may complete additional columns. Processors have the option of hiding certain rows, (even if the data is locked), to prepare customized summary schedules for various states. For example, a state requiring products be submitted to a state University for testing prior to acceptance for processing, would not want all of a company’s products listed on the SEPDS, but just those available in the state. Processors are encouraged to list only those products you request be approved for individual states. USDA will not sign duplicative SEPDS customized for each state.

Instruction for Federal Agency approval of SEPDS:

Columns A – G are based on approved EDPS. This information is to be verified by the agency approving the EPDS and signified by signing the second signature block. Approved SEPDS are to be returned to the Processor.

Instructions for States:

Column H and I are calculated and updated with formulas. However, the state agency should verify that contract value (Column H) and the calculation in column I is correct. For all calculations, use normal round-off procedures to two (2) decimal places except Column H, which should reflect the actual commodity value, which will be expressed in four (4) decimal places. State should complete columns J and K.

## ATTACHMENT 6.7.1

Submit all SEPDS

to:

[npa@fns.usda.gov](mailto:npa@fns.usda.gov)

Fax 703-305-2430

Mail: USDA/FNS Headquarter

Food Distribution Division

Attn: Processing Initiative Team

3101 Park Center Drive, Room 510

Alexandria, VA 22302-1500

Questions:

Call USDA FNS at 703-305-2680



## ATTACHMENT 6.7.2

### INSTRUCTIONS AND EXPLANATIONS ALL COMMODITY FOODS SUMMARY END PRODUCT DATA SCHEDULE SEPDS B

This form is created to summarize data for 1) meat products (beef and pork) processed under guaranteed minimum return (GMR) and reported on EPDS 1 and 2) bulk poultry products processed under guaranteed minimum return and reported on EPDS 2. All end products to be processed must be submitted on an End Product Data Schedule (EPDS) and approved by either USDA or the State Agency. Each applicable DA must approve the Summary of End Product Data Schedule (SEPDS).

Check the appropriate box for “National Summary” if the EPDS were approved by USDA or “State Summary” if the EPDS were approved by the state.

SEPDS are valid for 1 year. After the initial SEPDS is approved, processors should submit an additional SEPDS for revised data for products listed on the original SEPDS or for additional (new) products. To assist state agencies in tracking revised or new products, please indicate revised product information by showing all data in italics and new products by copying the “new” starburst (  ) when applicable.



#### Column A

List finished end product code and product name as shown on the label (Column 1 of EPDS).

#### Column B

List the net weight of one case of finished product as shown on the label (Column 2 of EPDS).

#### Column C

Indicate the minimum number of servings per case (Column 3 of EPDS).

#### Column D

Indicate the net weight of each serving (Column 4 of EPDS).

#### Column E

List all commodity codes and commodity foods that can be used in the formulation of each end product. If there are multiple commodity foods possible in a single product, copy a check mark box from another part of the schedule, so that states may indicate which commodity will be available for processing in their state.

#### Column F

If applicable, list the percent of breading (column 6 of EPDS 2). This column may be left blank for breaded meat products.

#### Column G

For poultry products only, show the estimated cases of finished product per truckload. (Column 7 of EPDS 2)

#### Column H

For meat products only, show the pounds to produce a case (Column 8 of EPDS 1)

## ATTACHMENT 6.7.2

### Column I

Show the percent Guaranteed Minimum Return (at bottom of EPDS-1 or column 8 of EPDS-2)/

### Column J

Check the box if By-Products other than re-work result. If no by-products are produced leave check box blank. If by products are produced, provide the value and method credit will be given.

### Column K

Indicate the effective date for each approved end product. It is recommended the effective date be July 1. For products approved after the beginning of the school year, states may choose to back date the effective date to the first of the year (this is the simplest for accounting and tracking purposes). If the state prefers not to back date, select the first of the chosen month.

### Column L

If the processor is not able to offer all products listed on the EPDS to a particular state, the processor may check the appropriate box for "State Approval" to indicate which products they desire to have approved for processing in that state. Ideally, processors will customize SEPDS for states by "hiding" the rows of products they are unable to offer in a given state. States have the option to decline to approve certain products for their state.

At the bottom of the schedule, show the Contract value per pound for the commodity as established in accordance with USDA stipulated pricing. The actual commodity value should be expressed in four (4) decimal places. While the value per pound does not impact the fee for service, it must be stated for the purposes of paying for lost or damaged products, or missed yields.

The Processor and State agency must always sign the SEPDS. If "state summary" is checked in upper left hand corner, then the state approved the EPDS and the schedule should not be submitted to USDA and USDA will not sign it.

In the Bottom Margin the date report is printed will automatically update. Please do not modify this feature, as it will help everyone easily track the most current SEPDS. Update the school year if necessary. The page number and number of pages will automatically update

Instructions for Processors: Add as many additional lines in the main body of the schedule to accommodate all products. In this way, multiple pages will print automatically if needed and there will be one set of signature blocks on the last page. Submit the form to USDA for approval with the company signature.

USDA will lock the parts of the Excel spreadsheet when they approve the schedule and return it electronically to the processor. After USDA has signed the EPDS processors may complete additional columns as necessary. Processors have the option of hiding certain rows, (even if the data is locked), to prepare customized summary schedules for various states. For example, a state might require products be submitted to a state University for testing prior to acceptance for processing. Processors are encouraged to list only those products they desire to be approved for individual states. USDA will not sign duplicative SEPDS customized for each state.

## ATTACHMENT 6.7.2

### Instruction for Federal Agency approval of SEPDS:

Columns A – J are based on approved EPDS. This information is to be verified by the agency approving the EPDS and signified by signing the second signature block.

### Instructions for States:

State DA should complete Column K and L, the effective date and state agency approval blocks for each product listed. Any questions about the accuracy of the SEPDS data can be verified by contacted USDA. The DA should verify that contract value (at the bottom of the page) is correct.

Submit all SEPDS to:

[npa@fns.usda.gov](mailto:npa@fns.usda.gov)

Fax 703-305-2430

Mail: USDA/FNS Headquarter

Food Distribution Division

Attn: Processing Initiative Team

3101 Park Center Drive, Room 510

Alexandria, VA 22302-1500

Questions:

Call USDA FNS at 703-305-2680



## ATTACHMENT 6.8

### OFFEROR'S CHECKLIST SOLICITATION No. ED09-0018

*Instructions: Offerors must submit the items listed below. In the column titled "Offeror's Page #", the Offeror must enter the appropriate page number(s) from its Proposal where the ADE evaluators may find the Offeror's response to that requirement.*

Required Item	Solicitation Reference:	Offeror's Proposal Page #:
1. Complete and Sign Offer and Award Form	Page 1	
2. Complete State Processing Agreement – including Sales Verification Procedure, if applicable	Attachment 6.1	
3. Required Info: Provide an Executive Summary (maximum two pages) Provide a Method of Approach/Implementation Plan (maximum three pages) Provide a Summary Narrative of your Firm's Experience & Expertise Relative to the Scope of Work Requirements (maximum two pages) Summary End Product Data Schedules	Attachment 6.2	
4. Provide the required number of References	Attachment 6.3	
5. Sole Proprietor Certificate Waiver (if applicable)	Attachment 6.4	
6. Contact Sheet	Attachment 6.5	
7. Data Destination Form (For each delivery location)	Attachment 6.6	
8. Provide an original and one (1) copy of the Summary End Product Data Schedule (as appropriate)	Attachment 6.7	
9. Offeror's Checklist	Attachment 6.8	
11. W-9	Attachment 6.9	

# ATTACHMENT 6.9

## State of Arizona Substitute W-9 & Vendor Authorization Form



**Purpose:** Establish or update a vendor account with the State of Arizona. This form meets the Federal requirements to request a taxpayer identification number (TIN), request certain certifications and claims for exemption, as well as the State of Arizona requirements for vendor establishment.

**Instructions:** Complete form if

1. You are a U.S. person (including a resident alien);
2. You are a vendor that provides goods or services to an Arizona state agency; **AND**
3. You will receive payment from the State of Arizona.

**Return completed form to the state agency with whom you do business, for review and authorization.**

See instructions below or refer to the IRS instructions at [www.irs.gov](http://www.irs.gov) for details on completing this form.

**Type of Request (Must select at least ONE)**

New Request   
  New Location (Additional Mail Code)   
  Change (Select the type(s) of change from the following:

Tax ID   
  Legal Name   
  Entity Type   
  Minority Business Indicator  
 Main Address   
  Remittance Address   
  Contact Information

**Taxpayer Identification Number (TIN) (Provide ONE Only)**

Social Security Number (SSN)  -  -  OR Federal Employer Identification Number (FEIN)  -

**Entity Name Must Provide Legal Name (\*Must match SSN or FEIN given. If Individual or Sole Proprietorship enter First, Middle, Last Name.)**

Legal Name\*

**Entity Type Must Select One of the Following (Coding (X#) is for Internal Purposes Only)**

Individual/Sole Proprietor or Sole Proprietor organized as LLC, PLLC (6I)   
  State of Arizona employee (1E)   
 STATE HRIS EIN   
 Corporation NOT providing health care, medical or legal services (5A)   
  LLC, PLLC organized as corporation NOT providing health care, medical or legal services (5A)  
 Corporation providing health care, medical or legal services (5M)   
  LLC, PLLC organized as corporation providing health care, medical or legal services (5M)  
 Partnership, LLP or Partnership organized as LLC or PLLC (5C)   
  A state, a possession of the US, or any of their political subdivisions or instrumentalities (4G)  
 An international organization or any of its agencies/instrumentalities (5U)   
  Other: Tax Reportable Entity (5P)   
 Description   
 The US or any of its political subdivisions or instrumentalities (2G)   
  Other: Tax Exempt Entity (5H)

**Minority Business Indicator Must select one of the following (Coding (X#) is for internal purposes only)**

<input type="radio"/> Small Business (01)	<input type="radio"/> Small, Woman Owned Business- Hispanic (31)	<input type="radio"/> Minority Owned Business- African American (04)
<input type="radio"/> Small Business- African American (23)	<input type="radio"/> Small, Woman Owned Business- Native American (33)	<input type="radio"/> Minority Owned Business- Asian (32)
<input type="radio"/> Small Business- Asian (24)	<input type="radio"/> Small, Woman Owned Business- Other Minority (11)	<input type="radio"/> Minority Owned Business- Hispanic (74)
<input type="radio"/> Small Business- Hispanic (25)	<input type="radio"/> Woman Owned Business (03)	<input type="radio"/> Minority Owned Business- Native American (15)
<input type="radio"/> Small Business- Native American (27)	<input type="radio"/> Woman Owned Business- African American (17)	<input type="radio"/> Minority Owned Business- Other Minority (02)
<input type="radio"/> Small Business- Other Minority (05)	<input type="radio"/> Woman Owned Business- Asian (18)	<input type="radio"/> Non-Profit, IRC §501(c) (88)
<input type="radio"/> Small, Woman Owned Business (06)	<input type="radio"/> Woman Owned Business- Hispanic (19)	<input type="radio"/> Non-Small, Non-Minority or Non-Woman Owned Business (00)
<input type="radio"/> Small, Woman Owned Business- African American (29)	<input type="radio"/> Woman Owned Business- Native American (21)	
<input type="radio"/> Small, Woman Owned Business- Asian (30)	<input type="radio"/> Woman Owned Business- Other Minority (08)	<input type="radio"/> Individual, Non-Business (00)

**Main Address** Where tax information and general correspondence is to be mailed   
**Remittance Address** Where payment is to be mailed   
 Same as Main

DBA/Branch/Location    
 DBA/Branch/Location

Address    
 Address

City  State  Zip code    
 City  State  Zip code

**Vendor Contact Information**

Name  Title

Phone #  Ext.  Fax  Email

**Certification**  Exempt from backup withholding

Under Penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me) AND
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding AND
3. I am a U.S. person (including U.S. resident alien).

Certification instructions: You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN.

*The Internal Revenue Service does not require your consent to any provision of this document other than the certification required to avoid backup withholding.*

Signature  Title  Date

**STATE OF ARIZONA AGENCY USE ONLY - AGENCY AUTHORIZATION**      **VENDOR: DO NOT WRITE BELOW THIS LINE**

State HRIS EIN  Print Name  Signature

AGY  Title  Phone #  Email  Date

**STATE OF ARIZONA GAO USE ONLY**      **VENDOR & STATE AGENCY: DO NOT WRITE BELOW THIS LINE**

IRS TIN Matching   
  Corporation Commission   
 Vendor Number    
 Processed by    
 Date Processed   
 HRIS   
  GAO-03   
  Other

**EXHIBIT 7.1**



**CERTIFICATE OF INSURANCE**

**CONTRACT NO. ED05-**

**VENDOR:**

**ARIZONA DEPARTMENT  
OF EDUCATION  
PROCUREMENT SECTION  
1535 WEST JEFFERSON, Bin 37  
PHOENIX, ARIZONA 85007  
(602) 364-2517**

Prior to commencing services under this Contract, the Contractor must furnish the State, certification from insurer(s) for coverages in the minimum amounts as stated below. The coverages shall be maintained in full force and effect during the term of this Contract and shall not serve to limit any liabilities or any other Contractor obligations.

Name and Address of Insurance Agency::	Company Letter	Companies Affording Coverage:
	<b>A</b>	
	<b>B</b>	
Name and Address of Insured:	<b>C</b>	
	<b>D</b>	

LIMITS OF LIABILITY MINIMUM – EACH OCCURRENCE	COMPANY LETTER	TYPE OF INSURANCE	POLICY NUMBER	DATE POLICY EXPIRES
Bodily Injury Per Person Each Occurrence Property Damage <b>OR</b> Bodily Injury and Property Damage Combined		Comprehensive General Liability Form Premises Operations Contractual Independent Contractors Products/Completed Operations Hazard Personal Injury Broad Form Property Damage Explosion & Collapse (If Applicable) Underground Hazard (If Applicable)		
Same as Above		Comprehensive Auto Liability Including Non-Owned (If Applicable)		
Necessary if underlying is not above minimum		Umbrella Liability		
Statutory Limits		Workmen's Compensation and Employer's Liability		
		Other		

State of Arizona and the Department named above are added as additional insureds as required by statute, contract, purchase order, or otherwise requested. It is agreed that any insurance available to the named insured shall be primary of other sources that may be available.

It is further agreed that no policy shall expire, be canceled or materially changed to affect the coverage available to the State without thirty (30) days written notice to the State. This Certificate is not valid unless countersigned by an authorized representative of the insurance company.

Name and Address of Certificate Holder:	Date Issued: _____ <hr/> Authorized Representative
---	---

## EXHIBIT 7.2

### Process Time Line

December 5, 2008	Arizona donated commodity food RFP advertised and available to interested processor/offerors for review.
November 15, 2008	USDA releases commodity price file. Interested processors/ offerors must use this information in preparing their EPDS (prices)
December 16, 2008	Pre-proposal conference held for interested processors/offerors to answer their questions regarding this solicitation.
Post December 16, 2008	ADE will Issue amendment to RFP to answer in writing those questions brought-up at the pre-proposal conference, and in writing, by interested processors/offerors regarding this solicitation.
January 5, 2009 @ 3:00 p.m. M.S.T.	Proposals from interested processors/offerors due to ADE, Procurement Office, Third Floor, 1535 West Jefferson Street, Phoenix, Az. 85007.
January 19, 2009	ADE will complete its review/evaluation of proposals and award contracts to successful processors/offerors.
January 26, 2009	ADE will issue commodity catalogs based on new contracts and EPDS to sponsors for use in determining where to divert donated commodities.
February 13, 2009	Cheese survey due.
March 2, 2009	ADE will issue commodity cheese diversion orders to USDA.
March 20, 2009	Remaining commodities survey due.
April 15, 2009	ADE will issue remaining commodity diversion orders to USDA.
July 1, 2009	The new contracts become effective for sponsors to use in buying end products containing donated commodities.

## INSTRUCTIONS FOR COMPLETING STATE MONTHLY PERFORMANCE REPORT STANDARD YIELD - POULTRY

Due to the number of new products available, report layout is acceptable in either landscape or portrait.

Enter the name of Processor, Commodity Name and Code being reported, the State for which the report is being prepared and the month for which the report covers

1. **Beginning Inventory:** Enter the pounds of commodity that were in inventory at the beginning of the month being reported. Compare the beginning inventory with ending inventory from the previous month. These numbers must be reconciled in order for the report to be considered correct and complete. Any anomalies must be specifically addressed, explained, and submitted with the report for the current month.
2. **Quantity of Commodity Received this Month:** Enter the pounds of raw commodity received during the month being reported. Record Delivery Order Number, Certificate Number, and each load will have a received weight of 36000 lbs.
3. **Transfers +/-:** Enter the pounds of commodity for any transfers in and/or transfers out that were performed during the month being reported. Include explanation for adjustments made.
4. **Total Raw Commodity Available:**  $M1 + M2 (+ \text{ or } -) M3 = M4$ .
5. **Quantity of Commodity Delivered:** Must be the same number as the Grand Total pounds shown in the "Summary of the Pounds Shipped". Attach a list of recipient agencies, the items codes or CN identifier delivered, and number of pounds by white/dark received.
6. **Ending Inventory of Commodity:**  $M4 \text{ raw commodity available minus } M5 \text{ raw pounds contained in commodity delivered} = M6$ .
7. **YTD Columns:** Tracks year to date quantities. Add current MTD totals to previous months report YTD figures except for Beginning Inventory which remains the same.
8. **Review/Submittal:** Processor's authorized representative must review the information being submitted, sign, date, and submit to the state for which the report was prepared.



## EXHIBIT 7.3.2

# INSTRUCTIONS FOR COMPLETING PERFORMANCE REPORT -- COMMODITIES GMR Meat/Poultry Only

Due to the number of new products available, report layout is acceptable in either Landscape or Portrait format.

### PART A. INVENTORY OF RAW COMMODITY

1. **Processor:** Enter the Processor's Name and ID Number (if required).
2. **Commodity Code:** Enter Commodity Title and Code being reported.
3. **State Agency:** Enter State Abbreviation for the state the report is being prepared.
4. **Date:** Enter the Month and Year for which you are reporting.
5. **Beginning Inventory:** Enter the pounds of commodity that were in inventory at the beginning of the month being reported. Compare this beginning inventory with the ending inventory from the previous month. These numbers must be reconciled in order for the report to be considered correct and complete. Any anomalies must be specifically addressed and explained in the email that accompanies the report for the current month.
6. **Quantity of Commodity Received:** For direct diversions pounds received must be same as reported on the Bill of Lading or other acceptable document.
7. **Transfers +/-:** Enter the pounds of commodity for any transfers in and/or transfers out that were performed during the month being reported.
8. **Adjustments +/-:** Enter the pounds of commodity for any adjustments in and/or adjustments out that were performed during the month being reported.
9. **Condemned Commodity:** Enter the pounds of commodity condemned. Attach supporting documentation.
10. **Raw Commodity Available:** Add A1, beginning inventory + A2, received commodity +/- A3, adjustments - A4, condemned commodity = A5
11. **Quantity of Commodity Processed:** Must equal total number of pounds as shown on grading certificates for processing during the report month. Must match the total of pounds of recorded in B(3).
12. **Ending Inventory of Commodity:** A5, commodity available minus A6, pounds of DF processed = Ending Inventory. List date at the close of the reporting period
13. **YTD Columns:** Tracks year to date quantities. Add current MTD totals to previous months report YTD figures except for Beginning Inventory which remains the same.

### PART B. INVENTORY OF END PRODUCTS AND RECONCILIATION OF GUARANTEED MINIMUM YIELD

1. **Name of End Product:** Must be an end product approved by the state agency. List each end product on a separate line. Show rework products as an end product.
2. **Product Code or CN Label Number:** Enter either the company's product code or the FNS Child Nutrition Label number.
3. **Pounds of DF Processed:** For each end product, show the pounds of commodity processed. The total quantity of commodity processed for all end products must be the same as A6. For rework, enter the number of pounds of rework that was added to a subsequent production run during the month as shown on the grading certificates. (Rework pounds are NOT included in the Total DF Processed).

## EXHIBIT 7.3.2

4. **Cases Guaranteed:** Calculate the cases guaranteed by dividing B3 by the DF Pounds to Produce a Case for meat items Column H SEPDS A. For all other items refer to SEPDS A Column I. See Article 36 of Processing Agreement for details on determining the Guaranteed Minimum Return (GMR).
5. **Beginning Inventory:** Entered by item from ending case inventory for preceding month's report.
6. **Cases Produced:** Sum of cases by item code reported on Grading Certificates issued in the month being reported.
7. **Over/Short Cases:** Indicates over or under Guaranteed Minimum Return (GMR). Calculate by subtracting B4, cases guaranteed from B6, cases produced.
8. **Total Cases Available:** For end products, add B5, beginning inventory and B6, cases produced = available finished cases. For rework, calculate B5, beginning inventory minus B3, pounds DF rework processed plus B6, cases of rework produced.
9. **Cases Delivered:** Must be summary of end products by cases delivered during the month. For rework, enter the total number of pounds delivered to recipient agencies or for which payment of the value of the commodity food was made. Attach list showing number of cases of end product by code delivered to recipient agencies.
10. **Ending Inventory:** B8, available cases minus B9, cases delivered represents the number of cases of each end product in the processor's inventory except the first line represents remaining pounds of rework
11. **Review/Submittal:** Processor's authorized representative must review the information being submitted, sign, date, and submit to the state for which the report was prepared.



## EXHIBIT 7.3.3

### INSTRUCTIONS FOR COMPLETING PERFORMANCE REPORT - SUBSTITUTABLE--All Commodities except Meat/Poultry

Due to the number of products available, report layout is acceptable in either Landscape or Portrait format.

All Commodity Codes (except for GMR Meat/Poultry) are to be reported on one Performance Report.

#### PART A. INVENTORY OF RAW COMMODITY (Page 1)

1. **Processor:** Enter the Processor's Name and ID Number (if required).
2. **Date:** Enter the Month and Year for which you are reporting. Enter date you are submitting report.
3. **Commodity Code:** Enter Commodity Codes for all substitutable commodities being reported.
4. **Beginning Inventory:** Enter the pounds of commodity that were in inventory at the beginning of the month being reported. Compare the beginning inventory with ending inventory from the previous month. These numbers must be reconciled in order for the report to be considered correct and complete. Any anomalies must be specifically addressed, explained, and submitted with the report for the current month.
5. **Quantity of Commodity Received this Month:** Enter the pounds of raw commodity received during the month being reported.
6. **Transfers +/-:** Enter the pounds of commodity for any transfers in and/or transfers out that were performed during the month being reported.
7. **Total Raw Commodity Available:**  $A1 + A2 (+ \text{ or } -) A3 = A4$ .
8. **Quantity of Commodity Delivered:** Must be the same number of pounds as shown in the Grand Total Line, Part B.
9. **Ending Inventory of Commodity:**  $A3 - A4 = A5$ .
10. **YTD Columns:** Tracks year to date quantities. Add current MTD totals to previous months report YTD figures except for Beginning Inventory which remains the same.

#### PART B. UNITS OF END PRODUCTS DELIVERED TO RECIPIENT AGENCIES (Page 2)

Enter Processor Name and Month being Reported.

1. **Commodity Code:** Enter the commodity codes for product delivered in the month being reported.
2. **Item Codes:** Fill in the finished product item numbers per commodity code delivered during the month being reported.
3. **Recipient Agencies:** List the recipient agencies delivered product during the month being reported.
4. **Product Delivered:** Enter the number of finished cases delivered by finished product item number.
5. **TOTAL UNITS:** Calculate by adding all cases delivered per commodity code and item code.
6. **LBS PER UNIT:** Enter the pounds to produce one case/unit as shown in Column 10 of the End Product Data Schedule (Column 8 for NFD).
7. **TOTAL POUNDS:** Multiply the total number of cases delivered by the pounds of DF per case.
8. **GRAND TOTAL:** Add TOTAL POUNDS by Commodity Code. Transfer to Page 1 5A.
9. **Review/Submittal:** Processor's authorized representative must review the information being submitted, sign, date, and submit to the state for which the report was prepared.

# State Monthly Performance Report

## Substitutable Commodities Only (Excluding Meat/Poultry)

Company: \_\_\_\_\_  
 Company ID #: \_\_\_\_\_  
 Month: \_\_\_\_\_  
 Year: \_\_\_\_\_

Date \_\_\_\_\_  
 State Agency/Recipient Agency \_\_\_\_\_

**A. Raw Commodity Inventory**

Commodity Codes:

--	--	--	--	--	--	--	--	--	--

Month To Date

- 1 Beginning Inventory:
- 2 Receipts:
- 3 \*Transfer In/Out:
- 4 \*Adjustments In/Out:
- 4 Total Raw Commodity Available
- 5 Commodity Shipped\*\*
- 6 Ending Inventory:

0	0	0	0	0	0	0	0	0	0	0

Year to Date

- Beginning Inventory:  
 Receipts:  
 Transfers In/Out:  
 Adjustments In/Out:  
 Commodity Shipped:  
 Ending Inventory:

0	0	0	0	0	0	0	0	0	0	0

\* Please add explanation for transfers and/or adjustments.  
 \*\*Obtained from grand total per commodity code, Page 2

I certify that enough donated food is in inventory or is on order to account for the quantities needed for production of end products for State Processing Contracts and enough commercially purchased inventory is on hand or on order in adequate quantities to meet production requirements.

\_\_\_\_\_  
 Signature of Processor Representative

\_\_\_\_\_  
 Date

## EXHIBIT 7.3.4

# INSTRUCTIONS FOR COMPLETING STATE MONTHLY PERFORMANCE REPORT - GUARANTEED RETURN Red Meat Only

Due to the number of new products available, report layout is acceptable in either landscape or portrait.

### PART A. INVENTORY OF RAW COMMODITY

1. **Beginning Inventory:** Enter the pounds of commodity that were in inventory at the beginning of the month being reported. Compare this beginning inventory with the ending inventory from the previous month. These numbers must be reconciled in order for the report to be considered correct and complete. Any anomalies must be specifically addressed and explained in the email that accompanies the report for the current month.
2. **Quantity of Commodity Received:** For direct shipment, must be same as on Bill of Lading or other acceptable document. For backhaul, show the date in lieu of the D.O. No. and the amount picked up by processor. Prior approval to backhaul may be required by DA.
3. **Transfers +/-:** Enter the pounds of commodity for any transfers in and/or transfers out that were performed during the month being reported.
4. **Adjustments '+/-:** Enter the pounds of commodity adjustments made to raw inventory ('+/-) during the month being reported. Attach explanation.
5. **Product Condemned:** Report the pounds of condemned commodity, attach explanation.
6. **Raw Commodity Available:** Add A1, beginning inventory + A2, received commodity +/- A3, adjustments - A4, condemned commodity = A5
7. **Commodity Delivered:** Must be the same number of pounds as shown in the TOTAL Line for B-3.
8. **Ending Inventory of Commodity:** A-5 minus A-6
9. **YTD column:** Tracks year to date quantities. Add current MTD totals to previous months report YTD figures except for Beginning Inventory which remains the same.

### PART B. MONTHLY USAGE

1. **Name of End Product:** Must be an end product approved by the state agency for which the report is being prepared. List each end product on a separate line.
2. **Product Code or CN Label Number:** Can be either the company's product code or the FNS Child Nutrition Label number.
3. **Pounds to Produce One Case:** The pounds that it takes to produce one case of the item as shown on the SEPDS (column 8).
4. **Guaranteed Cases Delivered:** Must be summary of end products by cases delivered during the month. Attach a list showing number of cases end products by item code delivered to recipient agencies.
5. **Commodity Delivered:** For each end product, show the pounds of commodity delivered. This is calculated by multiplying B-3 by B-4.
6. **Additional Cases Delivered:** The total of extra cases delivered over the guaranteed amount. The pounds of commodity in these cases are NOT included in B-5 nor drawn down in A-6.
7. **Review/Submittal:** Processor's authorized representative must review the information being submitted, sign, date, and submit to the state for which the report was prepared.



**DIRECT SHIPMENT REPORT**

When a Contractor delivers the end product **directly** to the LEA, **an individual spreadsheet shall be submitted listing each LEA** with the appropriate Monthly Performance Report containing the following information:

- (1) School
- (2) CTD number
- (3) Invoice #
- (4) Ship date
- (5) Product #
- (6) Description of product
- (7) Quantity shipped



**NATIONAL PROCESSING AGREEMENT**

Agreement is made by and between the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) and the following processing company (Processor):

Company Name \_\_\_\_\_  
Company Representative \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip Code \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Telephone \_\_\_\_\_  
Fax \_\_\_\_\_  
E-Mail \_\_\_\_\_

and is made with respect to the following facts:

USDA has made federally donated foods (DF) available to State Distributing Agencies (DA) for distribution to eligible Recipient Agencies (RA), using the DF identified on End Product Data Schedules (EPDS) and Summary End Product Data Schedules (SEPDS). Individual State DAs desiring the Processor's finished product have the option to participate in this Agreement by signing a State Participation Agreement (SPA) with the Processor.

The USDA is desirous of arranging with the Processor for the production of end product(s) as described on the USDA approved EPDS at the Processor's plant location(s) listed in Appendix 1.

This agreement is governed by the current and applicable sections of Title 7 Code of Federal Regulations, Parts 210 and 250, including any subsequent changes, and FDD Policy Memoranda.

The negotiation of this Agreement in no way constitutes a commitment that any DF will be shipped to the Processor. USDA cannot guarantee that any donated food will be available for processing. DF is made available depending upon the USDA's ability to purchase and acquire such item.

Processor will notify USDA of any change in material facts that might have bearing on this Agreement. An example might be a change in ownership or other such events.

In consideration of the terms and conditions contained within this Agreement, the parties agree as follows:

## EXHIBIT 7.5

### 1. AGREEMENT INTENT

This Agreement sets forth obligations under which Processor may utilize DF to manufacture and deliver specified end product(s) to eligible RA to ensure the return of quantity, quality and value of such DF.

### 2. CATEGORIES OF DONATED FOODS IN PROCESSING

Processor shall adhere to the processing and handling procedures applicable to the category of DF to be processed under this Agreement as defined below:

A. **Fully Substitutable Donated Foods** - Such DF may be substituted, interchanged, or commingled in storage and production with a commercial food of the same generic identity and of equal or better quality. All donated foods, except beef, pork, and poultry, are fully substitutable.

The Processor must return to the DA or RA, 100% of the donated food in the finished end products. The manufacturing loss must be excluded when calculating the pounds of donated food actually contained in a case of end product. This is the 100-percent yield requirement.

- 1) Processor shall maintain documentation that the commercial food interchanged, commingled, or substituted for the DF is:
  - a. Of U.S. origin; and
  - b. Identical or superior to the DF specification.
- 2) The Processor may utilize substitutable DF in the manufacture of end product sold commercially, but shall not otherwise sell or dispose of the DF in bulk form. Should the Processor elect to utilize a commercial food in anticipation of replacement with DF, the DA or USDA cannot guarantee such replacement and assumes no liability for such replacement. The Processor enters negative inventory at his own risk.
- 3) The Processor must be able to demonstrate that purchases of commercial foods are sufficient to meet commercial production needs.
- 4) If use of concentrated skim milk to replace donated nonfat dry milk is approved by the USDA, the Processor must comply with 7CFR Part 250.30 (f)(3). Substitution with concentrated skim is prohibited for processing under FD-001: Nonfat Dry Milk Processing.

B. **Limited Substitutable Donated Foods** – 7 CFR 250.30(f) allows substitution of commercial bulk pack poultry parts for USDA donated bulk pack poultry and poultry parts with restrictions.

- 1) Limited substitution is an option available to processors, not a mandatory practice. Participation in limited substitution requires the processor to submit and obtain FNS and Agricultural Marketing Service (AMS) approval of a poultry substitution plan. The substitution plan may include the option to produce a Standard Yield.
- 2) Restrictions include, but are not limited to, prohibition against substituting for backhauled poultry commodity product and substitution of certain types of the same generic commodity.
- 3) Substitution of commercial poultry or poultry parts for the commodity poultry or poultry parts must be performed using poultry of U.S. origin that is equal or superior to the USDA processing poultry.
- 4) If a processor chooses not to adopt the limited substitution option for poultry, the processor shall meet all provisions stipulated for commodities.
- 5) Processor must be able to demonstrate that purchases of commercial foods are sufficient to meet commercial production needs.

Substitution may occur in advance of the actual receipt of DF. Should the Processor choose to use the substitution option prior to the DF being purchased by USDA, the Processor shall assume all risks. USDA,

## EXHIBIT 7.5

DA, and RA cannot guarantee replacement of commercial food utilized in anticipation of replacement with a DF and assumes no liability for such replacement. The Processor enters negative inventory at his own risk.

Any donated poultry not used in end products because of substitution shall only be used by the Processor at one of its facilities in other commercially processed products and cannot be sold as an intact unit. However, in lieu of processing the donated poultry, the Processor may use the commodity product to fulfill other USDA contracts awarded for delivery to another processor provided all terms of the other contract are met.

- C. **Donated Foods** - Donated beef or pork shall not be interchanged, commingled or substituted with a commercial food that could be used in place of the DF in the product formulation. Donated meat and poultry may be substituted with specific approval by USDA.

Processor shall store such DF apart from all commercial foods and process them apart from regular commercial production. Processor shall return all products produced above guaranteed minimum return on the EPDS. If actual yield falls below the guaranteed minimum return, the Processor shall make up the difference between actual and guaranteed minimum return by either:

- 1) Utilizing commercial food that is of U.S. origin and identical to or superior in every particular to the DF as evidenced by certification performed by or acceptable to the applicable federal acceptance service to produce additional end product. A USDA certificate must be obtained to certify the quality of replacement meat and poultry; or
- 2) Reimbursing the RA or USDA the value of DF that would have been used to produce the end product.

### 3. **PROCESSING ARRANGEMENTS**

USDA will allow the use of any valid value-pass-through system listed below or in FDD Policy Memoranda. Individual State DA's will designate allowable value-pass-through system(s) that are valid for use in that State in the SPA for end products sold to eligible RA's. One or more systems may be allowed by the DA. USDA reserves the right to disallow continued use of a value pass-through system if poor performance is indicated.

Processor shall maintain delivery and/or billing invoices, refund applications, canceled checks or other documentation as applicable, to substantiate that proper value pass through occurred or proper fee for service was charged.

Arrangements for processing DF into various end products will be based on one of the following:

#### A. **Donated Food Value Pass-Through System**

The processing of DF is incorporated into the Processor's normal manner of business, including production, pricing, and delivery of the end product. The specific value of DF shall be established based on the designated USDA value. The Processor shall ensure that the full value of the DF contained in the end product shall be passed on to the eligible purchasing RA. The dollar pass-through value of DF contained in the end product shall be provided to the RA either by the USDA or the processor at the option of the USDA.

- 1) Direct Sales
  - a. Discount System

The Processor shall invoice the RA/DA at net case price which shall reflect a discount for the value of the DF. Only when end product has been delivered to the RA/DA or the RA's/DA designee may DF inventory be reduced.

- b. Refund System

Processor shall invoice the RA at the commercial/gross price of the end product. Refunds that reflect the value of the DF contained in the end products shall be made to the RA upon proof of purchase. Refund payments shall be initiated or paid as follows:

- (1) RA shall submit a refund application to the Processor within 30 days from the end of the month of the date of delivery. RAs may submit refund applications to the

## EXHIBIT 7.5

processor on a quarterly basis if the total refund due is \$25 or less during the quarter.

- (2) Within 30 days of the receipt of the refund application, Processor shall compute the amount and issue payment of refund directly to RA. Processors may issue payment of refunds on a quarterly basis if the total payment due to that RA is \$25 or less during the quarter. Sales cannot be reported and the inventory cannot be reduced until refunds are actually issued.
- (3) Copies of refund applications and payment to RAs shall be forwarded to appropriate DA by the Processor with the monthly performance report.
- (4) Processor may optionally accept refund applications by electronic submission through the Internet, e-mail, or by other electronic means. Processor must maintain documentation to support the electronic submission was received.

### 2) Indirect Sales

#### a. Discount System (Hybrid System)

The Processor shall sell to the distributor at the commercial/gross price. The distributor will invoice the RA at the net case price plus the distributor's markup. The net case price shall reflect a discount equal to the full value of DF established in this Agreement. The distributor shall apply for a refund or credit from the Processor for the full value of the DF. Sales verification is required for this pass-through system. (See Article 4)

#### b. Refund System

The Processor shall sell to the distributor at the commercial/gross price. The distributor will invoice the RA this price plus the distributor's markup. Refunds shall be made to the RA by the Processor that reflects the value of the DF contained in the end products upon receipt of refund application. Refund payment shall be initiated and paid the same as listed above in paragraph 1) b. 1 through 4.

### 3) Other Value Pass-Through Systems

Processors are permitted to use alternate value pass-through systems if approved by FNS. These systems must comply with the sales verification requirements outlined in 7 CFR 250.19 (b)(2) or alternate verification system as approved by FNS.

## B. **Fee-For-Service System**

A "fee-for-service" system is a price by pound or by case representing a Processor's cost of ingredients (other than the DF), labor, packaging, overhead and other costs incurred in the conversion of the DF into the specified end product. A discount or refund per case is not established; consequently there is no credit for the value of DF. The net price is based on the charge per pound or per case for processed finished product. End products produced under fee-for-service agreements may be delivered and invoiced to RA in one of the following ways:

- 1) The Processor delivers the end products directly to the RA or RA's designee and bills the RA for the agreed upon fee for service.
- 2) Delivery is made by commercial distributors. Three options for arranging payment for end products are:
  - a. A dual billing system whereby the RA is billed by the Processor for the fee for service and the distributor bills the RA for storage and delivery of end products; or
  - b. Processor arranges for the delivery with a distributor for the RA. The Processor's invoice must include both processing fee and the distributor's charges as separate identifiable charges; or

## EXHIBIT 7.5

- c. Processor arranges for delivery and billing by a distributor in accordance with

FD-025: Fee-For-Service Billing Methods Through a Distributor. Processor retains financial obligations for sales to ineligible recipients. The distributor never assumes this obligation as the processing Agreement is between the Processor and USDA.

#### 4. **PROCESSOR SALES VERIFICATION**

If sales verification is delegated by the DA in the SPA for discount sales made by distributors the Processor shall verify sales conducted under the terms of Article 3.A.2. and 3.A.3. Verification shall include a statistically valid sample of reported sales in a manner which ensures a 95 percent confidence level. All sales reported during a specific period shall be verified at least semiannually.

The Processor shall verify that sales were made only to eligible RAs and that the value of DF was passed through to those RAs. Sales verification findings shall be reported as an attachment to the December and June State performance reports.

At the same time the sales verification report is submitted, the Processor shall submit to DA a corrective action plan designed to correct problems identified in the verification effort. If, after review, it is determined that the value of DF has not been passed on to the RAs or if the end products were improperly distributed Processor may be subject to a claim.

#### 5. **END PRODUCT DATA SCHEDULE**

The USDA approved End Product Data Schedule (EPDS), Summary End Product Data Schedule (SEPDS), and instructions are an integral part of this Agreement. The Processor agrees to the effective date established by the USDA on the EPDS for the item(s) listed thereon. Once approved, EPDS are permanently approved until such time that the product is discontinued by the Processor, the formulation of the end product changes, or the Processor is advised to update a formulation based on CPA Audit results. By entering into this Agreement, the Processor agrees that all previous versions of EPDS are no longer valid and shall not be permitted to reduce inventory for any end products which were sold prior to the effective date so established.

If a CN label is obtained, the information on the EPDS must be based on the product formulation used by the Processor to obtain the label. For each end product on the approved EPDS the same formulation must be used to obtain the label, prepare the EPDS and manufacture the end products.

EPDS contain proprietary product formulations and shall not be distributed to DA's or RA's. In place of the EPDS, Processor will provide SEPDS to individual DAs with the SPA. The DA will designate specific commodities and end products that can be processed and sold to eligible recipients, and the effective date.

Specific details are contained in the EPDS instructions. The following information will be included:

- A. End product description
- B. Product formulation
- C. End product return

Specific details are contained in the SEPDS instructions. The following information will be included:

- A. End product description
- B. Pounds of DF contained in finished case
- C. Where applicable, the value of DF contained in each case

#### 6. **PACKAGING**

Processor shall package all end products in accordance with acceptable standards within Processor's industry and in conformity with federal requirements which may be applicable during the period of this agreement. Damaged cases may be rejected at no cost to the USDA, DA, or RA.

## EXHIBIT 7.5

### 7. LABELING

Processor shall label the end product container in accordance with applicable federal labeling requirements. In addition, Processor shall adhere to the following label requirements:

- A. Non-substitutable DF as defined in Article 2.C. shall have clearly shown on the exterior shipping container, and where practical the individual wrappings or containers within the exterior container, of end product the legend "Contains Commodities Donated by the United States (U.S.) Department of Agriculture. This product shall be sold only to eligible Recipient Agencies." This requirement may be changed at the option of the USDA.
- B. Processor shall obtain approval through procedures established by FNS in conjunction with the Food Safety Inspection Service (FSIS) and AMS of the USDA, and National Marine Fisheries Service of the U.S. Department of Commerce, or other applicable federal agency for all labels which make any claim with regard to an end product's contribution toward meal requirements of any Child Nutrition Program.
- C. Processor may be required to obtain a Child Nutrition (CN) label for all end products containing meat, poultry, fish or a meat alternate such as cheese or peanut butter.
- D. A nutritional analysis of finished products that contribute to the meal pattern must be provided to RA upon request.

### 8. QUALITY CONTROL (QC)

As an attachment to this Agreement, the Processor shall provide a written description of the Processor's QC system to the USDA. By signing this Agreement, the Processor assures that an effective QC system will be maintained for the duration of this Agreement.

- A. Processor shall transport DF picked up from DA or RA; receive, handle, store and deliver end product in a safe and sanitary manner and at the recommended temperature for the specific DF and end product covered by this Agreement.
- B. Processor, with the concurrence of USDA, may refuse to accept from the carrier for the account and disposition of the vendor or USDA any delivery of DF directly to the Processor's plant or to his authorized storage agent which does not meet the federal specifications under which it was purchased and shipped. Processor shall maintain a written plan for the receipt of donated foods to ensure that only wholesome food that complies with the Federal specifications is accepted for further processing.
- C. All end product produced under this Agreement shall be processed according to the health and sanitation standards for plant facilities and food processing established by the locality or state in which Processor's plant is located or by the applicable federal standards, whichever are higher.
- D. At the option of USDA, samples may be pulled from delivered end product for laboratory testing. Processor shall pay costs of such tests only if product sample tested fails to meet either Agreement specifications or quality and wholesomeness standards.
- E. Processor shall maintain end product batch identification in the event end product is rejected upon delivery. USDA, DA, or RA designate shall reject end product failing to meet Agreement specifications or wholesomeness standards and Processor shall be so notified. Processor shall be given fifteen days time from this notice of rejection to negotiate removal of rejected product and replacement by acceptable end product. If agreement is not reached, the USDA or purchasing RA/DA shall have the right to purchase the same or similar product on the open market at Processor's expense. If Processor is unable to arrange removal of rejected product within a reasonable time, USDA shall proceed to authorize removal and destruction at Processor's expense.

### 9. INSPECTION AND GRADING REQUIREMENTS FOR PROCESSING

The Processor shall be required to provide inspection and/or acceptance and certification as follows:

- A. **Continuous Wholesomeness Inspection** - When donated meat or poultry products are processed or when commercial meat or poultry products are incorporated into an end product containing one or more DF, all

## **EXHIBIT 7.5**

processing shall be performed in plants under continuous inspection by FSIS personnel, or State meat and poultry inspection personnel in those states certified to have programs at least equal to the federal inspection program.

**B. Acceptance Service Grading** - All donated meat and poultry processing shall be performed under AMS acceptance service grading. FNS' minimum requirement is to verify non-substitution and non-diversion. Additional certification requirements may be requested as part of the EPDS. Under no circumstances shall Processor set up production runs for the purpose of circumventing this requirement.

- 1) The cost of this service shall be borne by the processor.
- 2) Exemptions in the use of acceptance service graders will be authorized by FNS on the basis of each order to be processed provided the Processor can demonstrate:
  - (a) That even with ample notification the Processor cannot secure the services of a grader;
  - (b) That the cost for a grader is unduly excessive, as determined per order by USDA, relative to the value of food being processed and that production runs cannot be combined or scheduled to enable prorating of the cost of services among the purchasers of end products; or
  - (c) That the documented urgency of the RA's need for the end product precludes the use of acceptance services

USDA reserves the right to verify Processor's claim for exemption.

- 3) Copies of all certification forms issued by AMS graders for donated meat or poultry processing shall be provided to DA with the monthly performance report.
- 4) At the option of USDA other DF may be required to be processed under the applicable federal acceptance service including the certification that a commercial food authorized to be substituted for a DF is identical or superior to the DF specifications.

### 10. **PROCESSING OF DONATED MEAT AND POULTRY**

Fabrication procedures, including quantities of all ingredients must be fully detailed and attached to the EPDS for all poultry end products. The procedures must be signed and dated by the Processor and USDA and provided to the AMS Grader.

**A. Bone Credit**- When providing a bone credit allowance for donated poultry, Processor must show in the procurement document between the processor and the recipient, the allowance as a percent of the total raw product provided. Also, the price per pound must be shown. Processor shall not salvage any edible portion of the bone credit product as mechanically deboned meat for Processor's own use or profit.

**B. Rework** - If rework from a batch of donated ground meat or poultry keeps a batch from yielding the guaranteed minimum yield, commercial meat or poultry of equal or better quality may replace that amount of domestic meat or poultry set aside as rework. Rework of that batch and each successive batch will then be included in the next batch sequence until such time as regular runs of donated meat or poultry ceases. Rework from that final batch will then be used by Processor in its own inventory as replacement for that commercial meat or poultry used in the first run. Records will be maintained verifying amount of rework in each batch, and rework of DF in last batch must not exceed the amount of commercial meat or poultry in first batch. Rework can be substituted in runs of similar products. Rework can be blended into the production run in accordance with requirements of FSIS. The AMS grader will record only the remaining rework. Processor may use one of the three Options listed below.

- 1) The rework may be returned to the RA for production in a frozen wholesome condition. The cartons must specify legible exterior markings identifying it as rework, the date processed, and the amount contained in each carton. Processor will pay shipping charges.
- 2) Rework may be incorporated into a future production lot for an identically formulated end product, provided that the rework derived from backhauled commodities is only commingled in the processing of other commodities obtained from backhauling. Any rework whether obtained from

## **EXHIBIT 7.5**

processing of direct shipments or backhauled commodities, must be recorded on the grading certificate in such a manner that it is traceable to the production lot from which it was derived.

- 3) The rework may be paid for by the Processor based on the contract value of the commodity contained in the rework. Payment must be pro-rated and paid to RA.

- C. **Guaranteed Minimum Return** – At the option of the USDA in cooperation with DA, for any shortage on end products using donated meat or poultry, Processor may pay for the value of the donated meat or poultry that would be needed to produce the number of cases of end product to meet the guaranteed minimum return. The payment is to be made to RA. A copy of the invoice substantiating the payment must be attached to the state monthly performance report. Condemned product cannot be considered part of the guaranteed yield and must be replaced with certified product or paid for.

Processor is permitted to credit the value of any remaining parts of poultry such as wings or other non-primal cuts against the cost of processing. However, the unused parts cannot be considered a part of the guaranteed minimum yield. The credit must be indicated on the EPDS and itemized on the invoice.

### 11. **DONATED FOOD CONTAINERS**

Processor shall return to the RA or DA for which the DF was processed, all funds received from the sale of DF containers minus any expenses incurred by the processor to effect the sale. Refund of such funds shall, at the option of USDA, be in the form of a cash payment or applied as credit. If credit is selected, it must be clearly identified on the invoice. If the containers are sold for commercial reuse, all USDA restrictive legends or markings shall be completely and permanently obliterated or removed by Processor prior to resale.

### 12. **BY-PRODUCTS OF DONATED FOOD PROCESSING**

Salvageable material, not utilized in the end products, that is produced or derived from manufacturing processes employed in the processing of DF, shall be disposed of in such a manner as to realize the greatest value possible for the material. Such material shall, with the concurrence of USDA, be handled as follows:

- A. The by-product, if agreeable to the RA for which the DF was processed, shall be accumulated and returned in sanitary and wholesome manner to RA; or
- B. At the option of USDA, Processor shall return to the DA or RA for which the DF was processed all funds received from the sale of salvageable by-product material minus any expenses incurred by the Processor to affect the sale. Return of such funds shall at the option of USDA be in the form of a cash payment or a reduction in the selling price of the end product based on the following:
  - 1) The actual value received from the sale of the by-product by Processor;
  - 2) The fair market value of the by-product at the time it is further processed or refined by Processor.
- C. Special handling instructions and dispositions of any by-product shall be determined between the recipient and the processor

### 13. **TRANSFERS OF USDA DONATED FOODS**

Donated Foods (DF) may be transferred only between DAs or RAs with the concurrence of FNS if applicable. All transfers of DF shall be documented. Such documentation shall be maintained in accordance with Article 16.

### 14. **INVENTORY REDUCTIONS**

- A. **Substitutable Donated Foods**

For all end products utilizing a substitutable DF the amount of DF actually contained in the end product as identified in the EPDS and SEPDS shall be the only basis for inventory reduction on the monthly performance report. The reduction in inventory can be shown only after the value of the DF has been passed through to RA/DA.

## EXHIBIT 7.5

### B. **Non-substitutable and Limited Substitutable Donated Foods**

For all end products utilizing Non-substitutable DF inventory reductions to monthly performance reports shall be made based on the actual amount of DF used to produce the end product. The finished goods inventory may be reduced only upon delivery to eligible RA/DA or RA/DA designee.

Batch records, AMS grading certificates, and delivery documents shall be maintained as proof of the correct inventory reduction.

### 15. **PERFORMANCE REPORTING**

Processor shall submit monthly reports pertaining to performance under this Agreement to the appropriate DA and to FNS, postmarked or transmitted electronically no later than 30 days after the close of the reporting period. If no activity took place during the reporting month a performance report shall be submitted to reflect no activity. Negative inventory shall be reported on monthly reports i.e. negative inventory resulting from sales of end products containing substituted commercially purchased foods meeting the standards specified in Article 2. If sales are made using a refund system the sales cannot be reported and inventory cannot be reduced until a refund is actually issued.

Processors failing to submit monthly performance reports within the established time limits will be considered in noncompliance with this Agreement and this may result in Agreement termination by the USDA.

The USDA will monitor Processors to ensure that the quantity of DF on hand does not exceed a six-month supply based on the Processor's average monthly usage.

#### A) **State Monthly Performance Reports**

State Monthly Performance Reports shall be submitted to each State with which the Processors has a State Participation Agreement and in a form acceptable to the State. The State MPR shall include the following information:

1. DF inventory at the beginning of the reporting period;
2. Total quantity of DF received during the reporting period specifying the sources of such DF such as backhaul from a DA or RA, direct shipments arranged by a DA, and/or transfers into DAs or RAs account and year to date totals;
3. A list of RAs by name and code number (if applicable) and the quantity of each end product delivered to or purchased by the RA for the month being reported and for which the RA has received a discount or refund.
4. Total number of units/cases of approved end products by product code or brand name;
5. Total number of pounds of DF reduced from inventory and year to date totals;
6. DF inventory at the end of the reporting period; and
7. If sales verification on discount sales is delegated to the Processor findings shall be reported as an attachment the December and June performance reports.

#### B) **National Monthly Performance Reports**

The processor shall submit a summary of State Monthly Performance Reports to FNS which shows:

1. The total DF inventory by state and the national total at the beginning of the reporting period;
2. Total quantity of DF received by state during the reporting period and year to date totals; and the national total of DF received.
3. Total number of pounds of DF reduced from inventory and year to date totals, by state and national totals;
4. Total number of pounds finished inventory for Non-substitutable foods;

## EXHIBIT 7.5

5. DF inventory by state and national total at the end of the reporting period; and
6. A certification statement that sufficient DF is in inventory or on order to account for quantities needed for production of end products for this processing contract and that the Processor has on hand or on order adequate quantities of foods purchased commercially to meet the Processor's production requirements for commercial sales.

### 16. **ACCOUNTABILITY AND RECORDS**

Processor shall fully account for all DF delivered or carried forward from previous school year into its possession by the production and delivery of an appropriate number of end products specified in this Agreement to eligible RAs. Donated Food (DF) or the value thereof not so accounted for shall be the liability of the Processor. All records and documents to substantiate information provided on reports shall be maintained on file for a period of three years from the close of the federal fiscal year to which they pertain unless longer retention is required for resolution of an audit, litigation, or claim. Accountability records shall include but not be limited to the following:

- A. **Production Records** - Processor is obligated to meet DF usage in production stated on the EPDS and shall be liable for shortages and overages between that stated usage per case of end product and the actual usage per case of end product. Production records shall include:
  - 1) Daily or batch production records to substantiate actual DF or substituted commercial ingredient usage per case of end product. At a minimum such records shall consist of end product formulation or batch recipes; production dates, batch identification and/or periods of production; quantity of DF or substituted commercial food placed into production for the period; and quantity of end product produced during the same period of production.
  - 2) Quality control records as required by Article 8, end product labeling and any in-plant quality control records used to assure proper formulation packaging net weight, bacteriological safety and other controls to assure end product quality and wholesomeness.
  - 3) Grading certificates and reports for meat and poultry issued on incoming DF or substituted commercial food; during formulation and production of the end product; and on the outgoing end product by the applicable federal acceptance service.
  - 4) Authorization letters from USDA waiving federal acceptance service requirements for a specific production run.
- B. **Perpetual Inventory of Donated Food** - Processor shall maintain accurate and complete records with respect to receipt, usage, disposition, inventory of DF, load out check sheets, bills of lading, signed delivery tickets, and any other shipping and receiving documents to substantiate receipt of delivery of DF or substituted commercial food in the end product to a DA, RA, or their authorized agent.
- C. **Other Records**
  - 1) Quality of Commercial Food. Refer to Article 2.A.1.
  - 2) Documentation of Value Pass-through or Fee for Service. Refer to Article 3.
  - 3) Processor Sales Verification. Refer to Article 4.
  - 4) Transfers of DF. Refer to Article 13.
  - 5) Performance Reports. Refer to Article 15.A.

### 17. **AUDITS**

#### A. **CPA Audits**

Processor is subject to the following audit requirements:

## **EXHIBIT 7.5**

- 1) Processors which receive more than \$250,000 each year in DF, shall obtain an independent CPA audit for that year.
- 2) Processors which receive \$75,000 to \$250,000 in DF each year shall obtain an independent CPA audit every two years.
- 3) Those which receive less than \$75,000 in DF each year shall obtain an independent CPA audit every three years.

The costs of the audits including those costs associated with training shall be borne by the processors. All audit requirements are to be met as stipulated in Section 7 CFR Part 250.18. For audit purposes, the total value of the DF received shall be computed by adding the value of food received under all states commodity processing programs.

Noncompliance with this audit requirement shall render the Processor ineligible to renew or enter into another Agreement with any contracting agency until the required audit has been conducted and deficiencies corrected.

### **B. Right of Review and Audit**

Representative of USDA and General Accounting Office shall have the right to inspect the DF and substituted commercial food in the possession of Processor; the facilities used in handling, storing, processing, and transporting; methods and procedures used by Processor and/or his agent in carrying out the requirements of this Agreement; and all records and substantiating documentation required by this Agreement, during Processor's normal working hours. When requested, Processor shall furnish such representatives with samples of end product taken from a production run for testing.

## **18. LIABILITY FOR DONATED FOODS**

Processor shall be financially liable for the value of all DF in inventory. Any reduction in financial liability can only be accomplished by inventory reductions as permitted and documented under Articles 3, 13, 14, and 16.

### **A. Substitutable Donated Foods**

Processor shall replace any unaccounted for, loss of, damage to, or improper use of, DF while in possession of the Processor with commercial food in compliance with Article 2.A.1.

Processor shall be liable for replacement or payment for any DF, whether it be book or physical inventory, in the event a claim is placed by the USDA.

### **B. Non-substitutable Donated Foods**

The Processor shall be responsible for loss of, damage to, or improper use of DF prior to delivery to RA or RA's designee. Losses shall be promptly reported to USDA with a complete explanation of the circumstances. Any claim action for the DF shall be determined by USDA in cooperation with DA, if applicable. If claim is required, Processor shall, at option of USDA:

- 1) Replace the DF with an equal quantity of like in kind commercial food that is identical or superior to the DF specifications as required under Article 2.C.1.; or
- 2) Pay the DA or RA an amount equal to USDA's most recent per pound cost information on acquiring and delivering replacement food, relative to the time of the inability to account for loss of, damage to, or improper use of the DF, or the current per pound value established by this Agreement.

## **19. INVENTORY PROTECTION**

Processor shall furnish to USDA a surety bond obtained only from a surety company listed in the Department of Treasury Circular 570, Surety Companies Acceptable on Federal Bonds, an irrevocable letter of credit, or an escrow account. Such bond, letter of credit, or escrow account shall be made payable to the USDA, Food and Nutrition

## **EXHIBIT 7.5**

Service. The bond shall guarantee that the Processor shall faithfully account for, return, or pay for all of the DF received or carried forward, either as physical or book inventory, in accordance with this Agreement.

Inventory protection is required by the USDA prior to the delivery of DF to the processor. The minimum amount of the bond, letter of credit or escrow account (See Article 37), shall be determined by: value of the DF on hand and on order minus anticipated usage rate during the Agreement period. The bond shall remain in effect until all donated food is properly accounted for, paid for or returned in accordance with this Agreement. Liability for loss is provided in Article 18 of this Agreement.

### 20. **AGREEMENT TERMINATION**

This Agreement may be terminated immediately at the option of USDA for noncompliance of its terms and conditions by Processor or if any right in favor of USDA is threatened or jeopardized by Processor and/or his agent. This Agreement may be terminated by either party upon 30 days written notice to the other. Disposition of DF inventory, either physical or book, with Processor or payment of value thereof shall be based on the following:

- A. When this Agreement is terminated or not renewed, the Processor at the option of USDA, in cooperation with applicable DA, regarding Non-substitutable DF shall:
  - 1) Return the DF to appropriate DA/RA; or
  - 2) Pay the appropriate DA/RA an amount equal to USDA's most recent cost information on acquiring and delivering replacement food relative to the time of termination; or
  - 3) Pay the USDA current per pound value established by this Agreement; or
  - 4) Pay the Commodity Credit Corporation (CCC) unrestricted sales price.
  
- B. When this Agreement is terminated or not renewed, the Processor at the option of USDA, in cooperation with applicable DA, regarding limited and fully substitutable DF shall:
  - 1) Return the DF to the appropriate DA/RA at a destination designated by USDA at Processor's expense; or,
  - 2) Replace the DF with commercial foods of identical or superior to quality as certified in accordance with Article 2 of this Agreement and deliver such foods to the appropriate DA/RA at a destination designated by USDA at Processor's expense; or,
  - 3) Pay the appropriate DA/RA for the DF based on USDA's most recent cost information on acquiring and delivering replacement made relative to the time of termination; or,
  - 4) Pay the appropriate DA/RA for the DF based on the current per pound value established by this Agreement; or,
  - 5) When feasible and with the concurrence of USDA, transfer all DF inventory of USDA to a designated account; or,
  - 6) Pay the CCC unrestricted sales price.

### 21. **ASSIGNMENT/DELEGATION OF RESPONSIBILITIES**

Processor shall not assign and/or delegate any of the duties and/or responsibilities to process DF under this Agreement to any party either by way of subcontract or any other arrangement without the prior written consent of USDA. If a subcontract is approved Processor remains responsible as prime contractor to ensure that DF is accounted for and processed according to the terms and conditions contained in this Agreement and is obligated to inform the subcontractor of these requirements. A subcontractor Agreement (Addendum No. 1) must be filled out for each contractor and included with this Agreement when submitted for approval.

### 22. **SOURCES OF DONATED FOOD FOR PROCESSING**

Processor may acquire DF for processing under this Agreement from one or more of the following sources:

## **EXHIBIT 7.5**

- A. Direct shipment of DF to Processor's plant as ordered by USDA. Such orders should be mutually agreed upon between the Processor and USDA in consideration of inventory status and estimated deliveries of end product.
- B. Transfer from other States with which Processor has a SPA and as authorized by both the State and USDA.
- C. Backhaul from RA's and/or DA's inventory.

All quantities of DF and sources must be entered as DF received on the monthly performance report required in Article 15.A. of this Agreement. Approval of this Agreement by the USDA shall not obligate the USDA or DA to deliver DF for processing.

Processor must return, to the applicable DA, a warehouse and consignee receipt for each direct shipment of DF with the Monthly Performance Report. The FNS-57, O. S. & D report, if applicable, must also be filed at this time.

DAs will consult with Processor concerning the number of trucks to be shipped to Processor before any orders are placed with USDA.

### 23. **DEMURRAGE AND DETENTION**

Processor shall be responsible for all demurrage and detention charges on shipments of DF placed for unloading at Processor's plant that have been ordered for delivery as mutually agreed unless other payment arrangements have been mutually agreed upon between Processor and USDA. USDA should make every effort to ensure that Processor is notified of shipment of DF destined for Processor's plant as soon as possible to assist Processor in coordination of receiving purchasing production and unloading.

### 24. **INDEMNITY/HOLD HARMLESS**

Processor will indemnify and hold USDA and RA/DA free and harmless from any claims, damages, judgments, expenses, attorney's fees and compensations arising out of physical injury death and/or property damage sustained or alleged to have been sustained in whole or in part by any and all persons whatsoever as a result of or arising out of any act or omission of Processor his/her agents or employees or caused or resulting from any deleterious substance in any of the products produced from DF for which the Processor is responsible.

### 25. **INSURANCE**

Processor must maintain adequate coverage for all insurable losses.

### 26. **ASSURANCE OF CIVIL RIGHTS COMPLIANCE AND EMPLOYMENT**

Processor agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 d et seq.) all provisions required by the implementing regulations of Department of Agriculture, Department of Justice Enforcement Guidelines, FNS directives and guidelines to the effect that no person on the grounds of race color national origin sex age or handicap shall be excluded from participation in be denied the benefits of or otherwise be subject to discrimination under any activity carried out under this Agreement. In addition the Processor agrees not to discriminate on the basis of race color national origin sex age or handicap among eligible RAs in the merchandising and sale of end products containing DF. This assurance is given in consideration of and for the purposes of obtaining permission to use federal property or interest in such property without consideration or at a nominal consideration. This assurance is binding on the Processor its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from FNS. Processor shall comply with all applicable federal State and local laws and regulations pertaining to wages, hours, and conditions of employment.

### 27. **UNLAWFUL BENEFITS**

No employees and/or agent(s) of any party to this Agreement, USDA's office or any RA for which processing under this Agreement has been approved, shall be admitted to or may accept any share or part of this Agreement or to any benefit that may arise therefrom.

## **EXHIBIT 7.5**

28. **AGREEMENT ENTIRETY**

This document including the attachments contains the entire Agreement between the parties hereto relating to the matters covered hereunder. All prior negotiations, representations, understandings and/or stipulations are conclusively superseded hereby and no other agreement or promise made by any party hereto, or by any of their agent(s) that is not contained in this Agreement shall be binding or valid.

29. **MODIFICATION/AMENDMENT OF AGREEMENT**

This Agreement and the Subcontractor Agreement shall not be modified, amended, altered, or changed except by a written agreement signed by the parties hereto. If written agreement is obtained for changes in end product formulation, return of DF, or net case cost, Processor shall not implement changes until written approval is received from USDA.

30. **SERVING OF NOTICES**

Any notice, demand or communication under or in connection with this Agreement may be served upon the other party by personal service, or by mailing the same by registered or certified mail, postage prepaid and addressed to the designated representative of such party at the address set out in this Agreement. Any such notice or demand shall be deemed served at the time of personal service or within 48 hours after the posting of the notice in the United States mail. Either party may change such designated representatives or mailing address by written notification to the other party.

31. **LEGAL RESOLUTION**

Processor agrees that in performance of this Agreement to obey, abide, and comply with all applicable local, state, and federal laws and regulations. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

32. **DISTRIBUTION OF COPIES**

USDA and Processor shall retain a copy of the signed Agreement and Addendum for their records. Copies of the signed Agreement may be provided to any person upon request as public records under the applicable federal Freedom of Information laws. USDA will make the basic Agreement available on the FNS website for DAs to access and general information for interested parties.

33. **ELIGIBLE RECIPIENT AGENCIES**

Upon approval of this Agreement, the Processor shall obtain a State Participation Agreement (SPA) from the appropriate State DA or DAs where the processor plans to do business. DAs signing a SPA will provide Processor with a listing of all eligible RAs with appropriate identification numbers, if applicable, and addresses. Processor can reduce inventory only on sales of approved end products to these eligible RAs.

34. **DEBARMENT**

Certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Subpart C. The regulations were published in the *Federal Register* November 26, 2003 at 6 FR 3266.

By signing this Agreement, the prospective lower tier participant (Processor) agrees 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.

The Processor shall notify FNS immediately of the certification status changes.

35. **RESERVED**

**EXHIBIT 7.5**

36. **PERIOD OF AGREEMENT**

This Agreement shall become effective on the date signed by FNS and will remain in effect until terminated with written notice by either party.

37. **AGREEMENT SPECIFIC PROCESSING ARRANGEMENTS**

Processor shall designate the processing arrangements and generic donated foods to be used during the term of the Agreement (Refer to Articles 3 and 10). Check the following selected system. (More than one is allowable.)

- |   |  |
|---|--|
| <input type="checkbox"/> Full Substitution    | <input type="checkbox"/> 100% Yield                      |
| <input type="checkbox"/> Limited Substitution | <input type="checkbox"/> Standard Yield Option           |
| <input type="checkbox"/> Non-substitution     | <input type="checkbox"/> Guaranteed Minimum Return       |
|   | <input type="checkbox"/> Guaranteed Return Demonstration |

Donated foods to be utilized in processing:

- |                                  |  |
|----------------------------------|--|
| <input type="checkbox"/> Beef    | <input type="checkbox"/> Cheese            |
| <input type="checkbox"/> Pork    | <input type="checkbox"/> Nonfat Dry Milk   |
| <input type="checkbox"/> Chicken | <input type="checkbox"/> Fruits: _____     |
| <input type="checkbox"/> Turkey  | <input type="checkbox"/> Vegetables: _____ |
| <input type="checkbox"/> Eggs    | <input type="checkbox"/> Oil               |
| <input type="checkbox"/> Peanut  | <input type="checkbox"/> Grain             |

Processor shall furnish a performance and surety bond, Irrevocable Letter or Credit, or escrow account in the amount of \$ \_\_\_\_\_. If processor elects to supply an Irrevocable Letter of Credit, it must be a confirmed Irrevocable Letter of Credit in a United States Bank, the terms of which must be agreed to in advance by the USDA. Changes in the amount of inventory protection required during the duration of this Agreement will be attached as an Addendum.

38. **AUTHORIZED PROCESSOR SIGNATURE**

Agreement must be signed by Owner, Partner, or Corporate Officer duly authorized to sign contractual agreements. Disclosure of ownership of Processor shall be submitted if requested by USDA.

- Private Owned - The Owner must sign this Agreement.
- Partnership - A Partner must sign this Agreement.
- Corporation - A Corporate Officer must sign this Agreement.

If an employee other than these specified individuals signs this Agreement, a Power of Attorney indicating employee's authority must accompany this Agreement. All addenda to this Agreement shall be signed by the authorized individual who signed this Agreement except that the EPDS could be signed by his/her authorized designee.

In witness whereof, the Parties hereto have caused this Agreement to be signed by their respective agent.

APPROVED

DISAPPROVED

\_\_\_\_\_  
Cathie McCullough, Director  
Food Distribution Division  
Food and Nutrition Service, USDA

\_\_\_\_\_  
Name of Authorized Representative  
Title  
Company Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT 7.5**

Revised

April

2007



**EXHIBIT 7.5**

**N/A**  
**SUBCONTRACTOR AGREEMENT**

Subcontractor Agreement: Authority USDA FNS 7 CFR Part 250

Whereas \_\_\_\_\_ (Primary Processor) holds a National Processing Agreement (hereinafter "Agreement") with the U.S. Department of Agriculture Food and Nutrition Service and whereas \_\_\_\_\_ (Subcontractor) desires and is capable of performing part of the Agreement, namely \_\_\_\_\_ (Specify function and USDA donated foods used). It is further agreed that the Subcontractor mentioned above will conform to all terms and conditions of the above named Agreement, making this addendum part of that Agreement.

Subcontractor shall maintain records for three (3) years from the close of the federal fiscal year to which they pertain and shall make them available for inspection by either State, federal or local representatives at any time, without prior notice, during normal office hours. Processor records shall include the following:

- A. Quantity of raw DF received from Primary Processor for each month.
- B. Quantities of raw DF and end products remaining on hand for each month.
- C. Quantities of end products delivered to RA or back to the Primary Processor.

Subcontractor will attach a signed End Product data Schedule to this Addendum for the end products that are being processed, or any other function for which the Subcontractor is performing.

ALL PARTIES APPROVE BY SIGNING BELOW:

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**PRIMARY PROCESSOR**

Processor: \_\_\_\_\_ Address: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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**SUBCONTRACTOR**

Subcontractor: \_\_\_\_\_ Address: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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**FNS APPROVAL**

Name: Cathie McCullough Title: Director, Food Distribution Division

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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**END OF SOLICITATION NO. ED09-0018**