



State of Arizona

Department of Education

Request For Proposal

Cover Page

Solicitation Number: **ED07-0024**

Solicitation Due Date / Time: **DECEMBER 15, 2006, at 3:00 p.m. Mountain Standard Time**

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

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

Pre-Proposal Conference: **November 17, 2006**
Time: **11:30 am – 12:30 pm Mountain Standard Time**
Location: **Pointe South Mountain, East Court Room 3A
7777 South Pointe Parkway West, Phoenix, AZ**

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 Contracts Management Unit 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 Contracts Management Unit 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.

***APPLICANTS ARE STRONGLY ENCOURAGED TO CAREFULLY READ
THE ENTIRE RFP.***

Kim Jennings
Procurement Officer

11.3.2006
Date

Telephone Number: (602) 364-2517
E-Mail: Kim.Jennings@azed.gov

OFFER AND AWARD



ARIZONA DEPARTMENT OF EDUCATION
Contract Management Unit – Bin # 37
1535 West Jefferson Street
Phoenix, Arizona 85007-3209



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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.

_____			_____	
Company Name			Name of Person Authorized to Sign Offer	
_____			_____	
Street Address			Title of Authorized Person	
_____	_____	_____	_____	
City	State	Zip	Signature of Authorized Person	
_____			Date of Offer	
_____			_____	
Telephone Number		Facsimile Number	E-Mail Address	
_____			_____	
Offeror's Arizona Transaction (Sales) Privilege Tax License Number:			Offeror's Federal Employer Identification Number	

Acknowledgement of Amendment(s): <i>(Offeror acknowledges receipt of amendment(s) to the Solicitation for Offers and related documents numbered and dated)</i>	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 **ED07-0024-**

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 _____, 2006.

Douglas C. Peeples, MBA, CPPB, CPCM
Chief Procurement Officer
Department of Education

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SECTION 1 SCOPE OF WORK

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1. **DEFINITION OF TERMS:** See Section 2, "Special Terms and Conditions" page 8, paragraph 1 for a listing of the terms used in this section.
2. **INTRODUCTION & 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. The Arizona Department of Education, Health and Nutrition Services (ADE) 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 October 2005, the Approximate Average Daily Participation was 585,281 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 2004 and ended in June of 2005, there were 241 school districts in Arizona, and approximately 366 charter schools with an average daily attendance of approximately 964,371 children. There were a total of 327 sponsors participating in ADE's Food Distribution Program, some operating 1 or 2 sites and some operating many additional 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. In place of the application process previously conducted by the ADE, 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.

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- 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.

3. **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, 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 established contract prices throughout the entire term of the contract.

4. **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. 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. U.S. Foodservice at 4650 West Buckeye Road, Phoenix, Arizona 85043 is the current contracted warehouse for the Arizona Food Distribution Program.
- C. **Deliveries:** All items shall be delivered FOB destination to the Arizona-designated commodity storage center, as follows:

U.S. Foodservice
4650 West Buckeye Road
Phoenix, Arizona 85043

or to a storage center selected by the ADE or to a storage facility designated by the school/sponsor who is purchasing the product. Contractor shall set up delivery schedule to the selected facility, as well as notify of changes to schedule, with school/sponsor prior to delivery of product.

- D. **Reports:** These are fully described in the National Processing Agreement (NPA). Refer to website for agreement: http://www.fns.usda.gov/fdd/programs/national/npa_agmt.doc

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5. 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.
- (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.

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) Product Number
 - (b) Detailed description of product
 - (c) Case length
 - (d) Case width
 - (e) Case height
 - (f) Case weight – Gross weight & Net weight
 - (g) TiHi
 - (h) Quantity per case
 - (i) Shelf life
 - (j) Storage temperature
 - (k) Cube

C. Summary End Product Data Schedules (Refer to NPA) SEPDS must be approved by USDA (with the approved USDA signature) and must have a column added with pricing for Arizona.

If a product is Child Nutrition (CN) labeled, include the CN number on the SEPDS.

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- 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.

- E. Donated Food Containers (Refer to NPA)

- (1) Diverted Commodities - the funds (cash versus credit) received from the sale of DF containers will be returned to the LEA.
- (2) Backhaul Commodities - the funds (cash or 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. Performance Reports (Refer to NPA)

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:

- (1) School
- (2) CTD number
- (3) Ship date
- (4) Description of product
- (5) Quantity shipped

- J. All records and contracts pertaining to the Processing of USDA Commodities shall be maintained as required by paragraph 3.C of the Uniform Terms and Conditions of this Contract.

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6. 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.
- 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 15, paragraph 24.B).

SECTION 2
SPECIAL TERMS AND CONDITIONS

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I. Arizona Requirements

1. **Definition of Terms Used in these Special Terms and Conditions.** As used in these Special Terms and Conditions and the Scope of Work, 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. **Offeror's Checklist:** The Offeror shall complete the Offeror's Checklist, Attachment 6.9, and ensure that all required information is provided as part of the proposal.
3. **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, or
 - (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.
4. **Indemnity/Hold Harmless:** Contractor will indemnify and hold ADE and LEA 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 Contractor, his/her agents or employees, or caused or resulting from any deleterious substance in any of the products produced from DF for which the Contractor is responsible.

Further, Contractor agrees to indemnify, defend, save and hold harmless the State of Arizona, any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, including reasonable attorney's fees, (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any

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person (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 Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of 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.

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.

5. **Insurance:** Contractor shall procure and maintain, until all of their obligations, 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 purchase and or use of the commodity.

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 purchase and use of the commodities sold under this Contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase such additional insurance as may be determined necessary.

- A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage at least as broad and 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
- Fire Legal Liability \$ 50,000
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Each Occurrence \$1,000,000

2. **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, 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.”***

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

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

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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 are to contain, or be endorsed to contain, 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 not be suspended, voided, cancelled, 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 **(see Paragraph 24. C)** and shall be sent by certified mail, return receipt requested.

The policy shall contain an Extended Claim Reporting Provision of not less than one year following termination of the policy.

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 Vendor from potential insurer insolvency.

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 **(see Paragraph 24. C)**. The State of Arizona project/contract number and project description are to 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. **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract must have prior approval from the State of Arizona Department of Administration, Risk Management

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Section, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

- G. **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 then none of the above shall apply.
6. **Contract Term.** The contract term is for a one year period from July 1, 2007 through June 30, 2008, subject to additional successive periods of extension, with a maximum aggregate including all extensions not to exceed five (5) 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 product provided.
8. **Non-exclusive Status.** ADE reserves the right to have the same or similar services provided by other than the Contractor.
9. **Estimated Quantities.** The Contract shall be on an as needed, if needed basis. The ADE makes no guarantee that your services will be utilized under this Contract. Furthermore, under this nonexclusive Contract the State reserves the right to obtain the goods and/or services specified in this Contract from other sources if it is determined to be in the best interest of the State to do so.
10. **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.
11. **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.
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. **Purchase Orders.** Work under this Contract will be funded and ordered through separate purchase orders issued by the participating sponsors (Local Educational Agencies).
14. **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)

- 15. **Acceptance.** Each item delivered will be subject to a complete inspection by LEA prior to acceptance. Inspection criteria shall include, but not limited to, conformity to the Scope of Work, quality, workmanship and as otherwise specified.
- 16. **Defective Products.** 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. 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.
- 17. **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.
- 18. **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.
- 19. **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.
 - 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,

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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.

20. **Disabilities Acts:** The Contractor shall comply with the Americans With Disabilities Act of 1990 (Public Law 101-336) and the Arizona Disability Act of 1992 (A.R.S. 41-1492 et. seq.), which prohibits discrimination on the basis of physical or mental disabilities in delivering contract services or in the employment, or advancement in employment of qualified individuals.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the designated Procurement Officer. Requests should be made as early as possible to allow time to arrange the accommodation.

21. **Applicable Laws and Regulations.** Through the submission of a proposal, the Contractor agrees to obey, abide by, and comply with all applicable local, state, and federal laws and regulations. This Contract shall be governed and construed and the rights and obligations of parties hereto shall be determined in accordance with the laws of the State of Arizona. This Contract is made in the State of Arizona and shall be litigated in the courts of the State of Arizona. If any term, covenant, condition or provision of this Contract 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.

22. **Assignment of Antitrust Recoveries:** *The Contractor and LEA recognize that in actual economic practice overcharges from antitrust violations are in fact not borne by the Contractor. Therefore, the Contractor assigns to the LEA any and all claims for such overcharges.*

23. **Designated Contacts & Serving of Notices and other Communication:** Any notice, demand or communication under or in connection with this Contract 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 contract. Any such notice or demand shall be deemed served at the time of personal service or within forty-eight (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 all contact persons listed below:

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

(Name and Title)

(Street Address)

(City & State) (Zip Code)

(Telephone & Facsimile Numbers)

(E-Mail Address)

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- B. The ADE representative to contact for technical 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

- C. All contract administration matters will be managed by the Procurement Officer named below. All correspondence concerning this Contract shall be directed to this individual.

Kim Jennings
Arizona Department of Education Procurement Office
1535 West Jefferson, Bin #37
Phoenix, Arizona 85007
Phone: (602) 364-2517 FAX: (602) 364-0598 E-Mail: Kim.Jennings@azed.gov

II. USDA REQUIREMENTS

24. Refer to the National Processing Agreement (NPA).

It can be located at the following website: http://www.fns.usda.gov/fdd/programs/national/npa_agmt.doc

See Exhibit 7.3 for National Processing Agreement

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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 Best and Final Offers; 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. **Contract Interpretation.**
 - A. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
 - B. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
 - C. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

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- (1) Special Terms and Conditions;
 - (2) Uniform Terms and Conditions;
 - (3) Statement or Scope of Work;
 - (4) Specifications;
 - (5) Attachments;
 - (6) Exhibits;
 - (7) Documents referenced or included in the Solicitation.
- D. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- E. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- F. No Parol Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- G. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation.

- A. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- B. Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- C. Audit. Pursuant to A.R.S. § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- D. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

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- E. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice and an amendment to the Contract shall not be necessary.
- F. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- G. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- H. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this Contract and any related subcontract (“Intellectual Property”), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract.

4. **Costs and Payments.**

- A. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- B. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destinations.
- C. Applicable Taxes.
 - (1) Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
 - (2) State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect taxes from the buyer does not relieve the seller from its obligation to remit taxes.
 - (3) Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and

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regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

- (4) IRS W9 Form. In order to receive payment, the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- (5) Availability of Funds for the Next State Fiscal Year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- (6) Availability of Funds for the Current State Fiscal Year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
 - a. Accept a decrease in price offered by the Contactor;
 - b. Cancel the Contract;
 - c. Cancel the Contract and re-solicit the requirements.

5. Contract Changes.

- A. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the Procurement Officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- B. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- C. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability.

- A. Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- B. General Indemnification. To the extent permitted by A.R.S. § 41-621 and § 35-154, the State of Arizona shall be indemnified and held harmless by the Contractor for its vicarious liability as a result of entering into this Contract. Each party to this Contract is responsible for its own negligence.

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C. Indemnification.

- (1) Contractor/Vendor Indemnification (Not Public Agency). The parties to this Contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the Contractor for the vicarious liability of the State as a result of entering into this Contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this Contract is responsible for its own negligence.
- (2) Public Agency Language Only. Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.
- (3) Indemnification – Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

D. Force Majeure.

- (1) Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- (2) Force Majeure shall not include the following occurrences:
 - a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
 - b. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
 - c. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- (3) If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so.

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The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

- (4) Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- E. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties.

- A. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- B. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
- (1) Of a quality to pass without objection in the trade under the Contract description;
 - (2) Fit for the intended purposes for which the materials are used;
 - (3) Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - (4) Adequately contained, packaged and marked as the Contract may require; and
 - (5) Conform to the written promises or affirmations of fact made by the Contractor.
- C. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- D. Inspection/Testing. The warranties set forth in subparagraphs 7A through 7C of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- E. Year 2000.
- (1) Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of *force majeure* shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.
 - (2) Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology

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utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system, or that the information technology products being acquired perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Contract. In addition, the defense of *force majeure* shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.

F. Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

G. Survival of Rights and Obligations after Contract Expiration or Termination.

(1) Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

(2) Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies.

A. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the Contract.

B. Stop Work Order.

(1) The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

(2) If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

C. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

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- D. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- E. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination.

- A. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- B. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- C. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the State.
- D. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- E. Termination for Default.
 - (1) In addition to the rights reserved in the Contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make

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satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

- (2) Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- (3) The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

F. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

- 10. Contract Claims.** All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.
- 11. Arbitration.** The parties to this Contract agree to resolve all disputes arising out of or relating to this Contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

SECTION 4
SPECIAL INSTRUCTIONS TO OFFERORS

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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 1, Paragraph 1, have the following meaning:
 - A. “*ADE*” means the Arizona Department of Education.
 - B. “*Department*” means the Arizona Department of Education.
2. **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.
3. **Award of Contract.** Award of multiple contracts will be made to qualified Offerors whose offers are determined to be the advantageous to the State based on the evaluation criteria set forth in the Solicitation.
4. **Contract Type.** Fixed price, requirements, indefinite quantities.
5. **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 Kim Jennings at (602) 364-2517 or by e-mail to Kim.Jennings@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.
6. **Proposal Opening:** Proposals 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.
7. **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.
 - A. Certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants Responsibilities. The regulations were published as Part IV of the January 30, 1989, **Federal Register** (pages 4722-4733).
 - B. The prospective lower tier participant (Contractor) agrees by signing the form (refer to Attachment 6.3), 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. This signed attached form shall become part of the contract.
8. **Authorized Signature:** 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 the ADE, disclosure of ownership information shall be submitted.

Private Owned - The Owner must sign this contract.
Partnership - A Partner must sign this contract.

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Corporation - A Corporate Officer must sign this contract.

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 SEPDS could be signed by his/her authorized designee.

9. Proposal Format and Content.

A. One clearly marked original and four (4) copies of offer(s) shall be submitted. **Additionally, the 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."** SEPDS must have USDA's signature:

- (1) One copy of the Completed and signed Offer and Acceptance Form;
- (2) Signed Solicitation Amendments (if any).
- (3) Summary End Product Data Schedules (under separate cover) with prices.
- (4) and all Attachments.

B. **Binding and Labeling.** Each copy of the Offer should be presented in three ring binders with the cover indicating the Solicitation number, the Offeror's name and address and copy number (i.e. Original or Copy 2 of 4).

C. **Indexing.** The sections of each copy of the Offer's proposal should be indexed to indicate the applicable parts and elements. Orderliness of the Offer, readability and similar factors should be considered in offer preparation.

10. **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.**

11. **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 15th 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.

12. **Evaluation and Selection.** The evaluation criteria, listed in descending order of importance, shall include the following:

- A. 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.
- B. 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.

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- C. Price structure and yield schedule data.
 - D. Offeror's experience/expertise/reliability: Demonstrated experience in processing donated USDA food commodities into end products. This can be Arizona experience, or another State Food Distribution Program.
13. **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.
14. **Best and Final Offers.**
- 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. 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. Any technical revisions or non-concurrence to negotiated Contract terms and conditions submitted in the best and final offer shall not be subject to further discussion or negotiation, and may render the Offer unacceptable to the State.
 - 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 best and final offer.
 - D. The Offeror must propose the same plan(s), including all terms and conditions, as mutually agreed upon at the time negotiations are concluded. The Offeror may only change quantitative pricing data. Any other change or revision from the previously negotiated understanding may render an Offer unacceptable for an award. The Best and Final Offer must be returned, signed and dated by the Offeror within the time and date specified to be eligible for award.
 - E. This provision is not intended to restrict the Offeror's opportunity to revise figures (e.g. prices, discounts, percentage rates, etc.). Rather, it is intended to preclude any misunderstanding by ADE which could result if new or revised terms and conditions are submitted in the best and final offer that have not been fully disclosed, discussed, and understood during negotiations. Therefore, such new or revised terms and conditions are not solicited and, if submitted in the best and final offer, may render the offer unacceptable to ADE.
15. **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.

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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 of Scope of Work; the Offer and any Best and Final Offers; 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. **Inquiries.**
 - A. Duty to Examine. It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its Offer for accuracy before submitting the Offer. Lack of care in preparing an Offer shall not be a grounds for modifying or withdrawing the Offer after the Offer due date and time, nor shall it give rise to any Contract claim.
 - B. Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation, shall be directed solely to the Solicitation contact person. The Offeror shall not contact or direct inquiries concerning this Solicitation to any other State employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.
 - C. Submission of Inquiries. The Procurement Officer or the person identified in the Solicitation as the contact for inquiries may, except at the Pre-Offer Conference, require that an inquiry be submitted in writing. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page and paragraph. Do

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not place the Solicitation number on the outside of the envelope containing that inquiry, since it may then be identified as an Offer and not be opened until after the Offer due date and time. The State shall consider the relevancy of the inquiry but is not required to respond in writing.

- D. Timeliness. Any inquiry or exception to the Solicitation shall be submitted as soon as possible and at least seven days before the Offer due date and time for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.
- E. No Right to Rely on Verbal Responses. An Offeror shall not rely on verbal responses to inquiries. A verbal reply to an inquiry does not constitute a modification of the Solicitation.
- F. Solicitation Amendments. The Solicitation shall only be modified by a Solicitation Amendment.
- G. Pre-Offer Conference. If a pre-Offer Conference has been scheduled under this Solicitation, the date, time and location shall appear on the Solicitation cover sheet or elsewhere in the Solicitation. Offerors should raise any questions about the Solicitation or the procurement at that time. An Offeror may not rely on any verbal responses to questions at the Conference. Material issues raised at the Conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment.
- H. Persons With Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation contact person. Requests shall be made as early as possible to allow time to arrange the accommodation.

3. Offer Preparation.

- A. Forms: No Facsimile or Telegraphic Offers. An Offer shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document for the forms provided in this Solicitation must be legible and contain the same information requested on the forms unless the Solicitation indicates otherwise. A facsimile, telegraphic, mailgram or electronic mail Offer shall be rejected if submitted in response to requests for proposals or invitations for bids.
- B. Typed or Ink; Corrections. The Offer shall be typed or in ink. Erasures, interlineations or other modifications in the Offer shall be initialed in ink by the person signing the Offer. Modifications shall not be permitted after Offers have been opened except as otherwise provided under applicable law.
- C. Evidence of Intent to be Bound. The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature (or acknowledgement for electronic submissions, when authorized) by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as an original signature, shall result in rejection of the Offer.
- D. Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.
 - (1) Invitation for Bids: An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.

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- (2) Request for Proposals: All exceptions that are contained in the Offer may negatively affect the State's proposal evaluation based on the evaluation criteria as stated in the Solicitation, or result in rejection of the Offer. An Offer that takes exception to any material requirement of the Solicitation may be rejected.
- E. Subcontracts. Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
- F. Cost of Offer Preparation. The State will not reimburse any Offeror the cost of responding to a Solicitation.
- G. Solicitation Amendments. Each Solicitation Amendment shall be signed with an original signature by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed copy of a Solicitation Amendment may result in rejection of the Offer.
- H. Federal Excise Tax. The State of Arizona is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.
- I. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number in the space provided on the Offer and Acceptance Form.
- (1) Employee Identification. Offeror agrees to provide an employee identification number or social security number to the Department for the purposes of reporting to appropriate taxing authorities, monies paid by the Department under this Contract. If the federal identifier of the Offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.
- J. Identification of Taxes in Offer. The State of Arizona is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be included in the pricing offered in the Solicitation. At all times, payment of taxes and the determination of applicable taxes are the sole responsibility of the Contractor.
- K. Disclosure. If the firm, business or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any Federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.
- L. Solicitation Order of Precedence. In the event of a conflict in the provisions of this Solicitation, the following shall prevail in the order set forth below:
- (1) Special Terms and Conditions;
 - (2) Uniform Terms and Conditions;
 - (3) Statement or Scope of Work;
 - (4) Specifications;

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- (5) Attachments;
- (6) Exhibits;
- (7) Special Instructions to Offerors;
- (8) Uniform Instructions to Offerors;
- (9) Other documents referenced or included in the Solicitation.

M. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all delivery and unloading at the destination(s).

4. Submission of Offer.

- A. Sealed Envelope or Package. Each Offer shall be submitted to the submittal location identified in this Solicitation. Offers should be submitted in a sealed envelope or container. The envelope or container should be clearly identified with name of the Offeror and Solicitation number. The State may open envelopes or containers to identify contents if the envelope or container is not clearly identified.
- B. Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
- C. Public Record. All Offers submitted and opened are public records and must be retained by the State. Offers shall be open to public inspection after Contract award, except for such Offers deemed to be confidential by the State. If an Offeror believes that information in its Offer should remain confidential, it shall indicate as confidential, the specific information and submit a statement with its Offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise. The State shall determine whether the identified information is confidential pursuant to the Arizona Procurement Code.
- D. Non-collusion, Employment, and Services. By signing the Offer and Acceptance Form or other official contract form, the Offeror certifies that:
 - (1) The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
 - (2) The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable Federal, state and local laws and executive orders regarding employment.

5. Evaluation.

- A. Unit Price Prevails. Where applicable, in the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
- B. Prompt Payment Discount. Prompt payment discounts of thirty (30) days or more set forth in an Offer shall be deducted from the Offer for the purposes of evaluating that price.
- C. Late Offers. An Offer submitted after the exact Offer due date and time shall be rejected.

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- D. Disqualification. An Offer (including each of its principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its Offer rejected.
- E. Offer Acceptance Period. An Offeror submitting an Offer under this Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be one hundred-twenty (120). If a Best and Final Offer is requested pursuant to a Request for Proposals, an Offeror shall hold its Offer open for one hundred-twenty (120) days from the Best and Final Offer due date.
- F. Waiver and Rejection Rights. Notwithstanding any other provision of the Solicitation, the State reserves the right to:
 - (1) Waive any minor informality;
 - (2) Reject any and all Offers or portions thereof; or
 - (3) Cancel a Solicitation.

6. Award.

- A. Number or Types of Awards. The State reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is most advantageous to the State. If the Procurement Officer determines that an aggregate award to one Offeror is not in the State's best interest, "all or none" Offers shall be rejected.
- B. Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer's signature on the Offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
- C. Effective Date. The effective date of this Contract shall be the date that the Procurement Officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

7. Protests. A protest shall comply with and be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9 and rules adopted thereunder. Protests shall be in writing and be filed with both the Procurement Officer of the purchasing agency and with the State Procurement Administrator. A protest of a Solicitation shall be received by the Procurement Officer before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:

- A. The name, address and telephone number of the protester;
- B. The signature of the protester or its representative;
- C. Identification of the purchasing agency and the Solicitation or Contract number;
- D. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- E. The form of relief requested.

8. Comments Welcome. The State Procurement Office periodically reviews the Uniform Instructions to Offerors and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 104, Phoenix, Arizona, 85007.

ATTACHMENT 6.1

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

SOLICITATION NO. ED07-0024

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:	<u>Arizona Department of Education</u>	Processor	_____
		Federal EIN:	_____
Name	<u>Tina Herzog</u>	Name	_____
Title	<u>Food Distribution Program Director</u>	Title	_____
Address	<u>1535 W. Jefferson St. Bin#7</u>	Address	_____
City, State, Zip	<u>Phoenix, AZ 85007</u>	City, State, Zip	_____
Contact	<u>Leona Benally</u>	Contact	_____
Phone	<u>(602) 364-1965</u>	Phone	_____
Fax	<u>(602) 542-6978</u>	Fax	_____
E-mail	<u>Leona.Benally@azed.gov</u>	E-mail	_____
Web Address	<u>http://www.ade.az.gov/health-safety/cnp/fdp</u>	Web Address	_____
Signature	_____	Signature	_____
Date	_____	Date	_____

Period of Agreement: This Agreement shall become effective on July 1, 2007 and will terminate on or before June 30, 2008 pursuant to USDA Policy Memorandum FD-048 (Maximum of 5 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	

*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 should submit their Sales Verification Plan 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) 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.

ATTACHMENT 6.1

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.

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

ATTACHMENT 6.1

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

- c. If you have weight restriction 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:

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 Please register prior to submitting SPA.
- Processor will complete "Receive Shipments," under Shipment Notification promptly in ECOS. (Within 5 days of receipt)

ATTACHMENT 6.2

REQUIRED INFORMATION SOLICITATION No. ED07-0024

- (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 each end product, 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. 15, number 24) portion of this solicitation and in the USDA National Processing Agreement. **Please pay special attention to the instruction concerning submittal of these documents.**

ATTACHMENT 6.4

OFFEROR'S CERTIFICATION

SOLICITATION No. ED07-0024

U.S. DEPARTMENT OF AGRICULTURE

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, **Federal Register** (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(DO NOT COMPLETE THIS PAGE BEFORE READING THE INSTRUCTIONS)

- 1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

ATTACHMENT 6.4

OFFEROR'S CERTIFICATION SOLICITATION No. ED07-0024

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representative of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspension," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded" as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ATTACHMENT 6.5



**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 6.6

CONTACT SHEET
SOLICITATION No. ED07-0024

Processor Name: _____

Performance Report Contact

Name: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

End Product Data Schedule Contact

Name: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

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

Name: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

Broker

Co. Name: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

ATTACHMENT 6.7

U.S. DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE DESTINATION DATA FOR DELIVERY OF DONATED FOODS FNS Instr. 709-5		FORM APPROVED OMB NO. 0584-0293 TYPE OF ACTION <input type="checkbox"/> NEW <input type="checkbox"/> CHANGE <input type="checkbox"/> DELETE	
SEE INSTRUCTIONS ON REVERSE			
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: (Street address, team track, warehouse, etc.)			
A. FOR RAIL DELIVERY		LIMITATIONS	
B. FOR TRUCK DELIVERY		LIMITATIONS	
7. SHIP BY (Shipment may be made by rail or truck unless one of the following is checked) <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 (Specify)			
IF DESTINATION IS A WAREHOUSE, COMPLETE ITEMS 11 THROUGH 14			
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 (Check one) <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	
The above information is true and correct to the best of my knowledge and belief.			
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 6.7

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 Distribution 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 6.8

Summary End Product Data Schedules SOLICITATION No. ED07-0024

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 6.8

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

This form can be used for both substitutable and non-substitutable donated food (DF) 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 and donated foods that can be used in the formulation of each end product. If there are multiple donated foods possible in a single product, copy a check mark box from another part of the schedule, so that states may indicate which DF will be available for processing in their state.
- Column F This is the amount of DF 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 DF as established in accordance with USDA stipulated pricing (November 15th Price File see: <http://www.fns.usda.gov/fdd/programs/state/>).
- Column I Indicate the Percentage of Yield (Column 9 of EPDS 1, Column 10 of EPDS 3 and Column 10 of EPDS 4).
- Column J Discount or refund value per case of finished product is calculated by multiplying the per pound value in Column H by the pounds of DF Column F.

ATTACHMENT 6.8

- 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 date 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.

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. After Nov. 15, processors may complete columns H and J before submitting to USDA (and column K for the initial schedule with the July 1 effective date). Submit the form to USDA for approval without 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 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-L are completed by the processor and the state agency should verify that contract value (Column H) and the calculation in column J is correct. State should also review the effective date and state agency approval, if completed by the processor, or complete those columns themselves. 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.

ATTACHMENT 6.8

Submit all SEPDS to:

npa@fns.usda.gov

Fax 703-305-2430

Mail: USDA/FNS Headquarter

Food Distribution Division

Attn: Processing Initiative Team

3101 Park Center Drive, Room 500

Alexandria, VA 22302-1500

Questions: Call USDA FNS at 703-306-2680

ATTACHMENT 6.8

INSTRUCTIONS AND EXPLANATIONS SUMMARY END PRODUCT DATA SCHEDULE SEPDS B -- For Meat and Poultry Processed Under Guaranteed Minimum Return

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.

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 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  date 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 donated foods that can be used in the formulation of each end product. If there are multiple donated foods possible in a single product, copy a check mark box from another part of the schedule, so that states may indicate which DF 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).
- Column I Show the percent Guaranteed Minimum Return (Box 11 of EPDS 1 or column 9 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.

ATTACHMENT 6.8

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 top of the schedule, show the Contract value per pound for the DF as established in accordance with USDA stipulated pricing (November 15th Price File see: <http://www.fns.usda.gov/fdd/programs/state/>). 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.

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 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.

Processors may want to automate the calculation by entering formula in certain cells. Because there several ways processors may choose to automate calculations, ACDA did not attempt to program calculations into any of the worksheets. Therefore each processor is encouraged to modify their own EPDS and SEPDS to best accommodate their needs.

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:

ATTACHMENT 6.8

State DA should complete Column K and L, the effective date and state agency approval blocks for each product listed. It is possible that the processor will complete these columns, in which case the state DA should review them. Any questions about the accuracy of the SEPDS data can be verified on the USDA FDD website NPA page. The DA should verify that contract value (at the top of the page) is correct.

Submit all SEPDS to:

npa@fns.usda.gov

Fax 703-305-2430

Mail: USDA/FNS Headquarter

Food Distribution Division

Attn: Processign Initiative Team

3101 Park Center Drive, Room 500

Alexandria, VA 22302-1500

Questions

:

Call USDA FNS at 703-306-2680

ATTACHMENT 6.9

OFFEROR'S CHECKLIST SOLICITATION No. ED07-0024

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	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. Submit USDA Offeror's Certification for all Lower Tier Participants (if applicable)	Attachment 6.4	
6. Sole Proprietor Certificate Waiver (if applicable)	Attachment 6.5	
7. Contact Sheet	Attachment 6.6	
8. Data Destination Form (For each delivery location)	Attachment 6.7	
9. Provide an original and one (1) copy of the Summary End Product Data Schedule (as appropriate)	Attachment 6.8	
10. Offeror's Checklist	Attachment 6.9	
11. W-9	Attachment 6.10	

ATTACHMENT 6.10

DO NOT SEND TO IRS

Vendor MUST Print or Type information

STATE OF ARIZONA
SUBSTITUTE W-9 & VENDOR AUTHORIZATION FORM

DO NOT SEND TO IRS

Vendor MUST Print or Type information

Taxpayer Identification Number (TIN) [] TIN Type [] Employer Identification Number (EIN) [] Social Security Number (SSN) [] State of Arizona HRIS EIN [] State of Arizona Employees ONLY

Legal Name [] Must match TIN above

- Entity Type Select one of the following
[] Corporation (NOT providing health care, medical or legal services) (5A)
[] Corporation (providing health care, medical or legal services) (5M)
[] Partnership, LLP (5T)
[] PLLC, LLC (5C)
[] Individual/Sole Proprietor (6I)
[] The US or any of its political subdivisions or instrumentalities (2G)
[] A state, a possession of the US, or any of their political subdivisions or instrumentalities (4G)
[] Tax-exempt organization under IRC §501 (5O)
[] An international organization or any of its agencies or instrumentalities (5U)
[] State of Arizona employee (1E)
[] Other, Tax reportable entity (5P)

- Minority Business Indicator Select one of the following
[] Small Business (01)
[] Small Business- African American (23)
[] Small Business- Asian (24)
[] Small Business- Hispanic (25)
[] Small Business- Native American (27)
[] Small Business- Other Minority (05)
[] Small, Woman Owned Business (06)
[] Small, Woman Owned Business- African American (29)
[] Small, Woman Owned Business- Asian (30)
[] Small, Woman Owned Business- Hispanic (31)
[] Small, Woman Owned Business- Native American (33)
[] Small, Woman Owned Business- Other Minority (11)
[] Woman Owned Business (03)
[] Woman Owned Business- African American (17)
[] Woman Owned Business- Asian (18)
[] Woman Owned Business- Hispanic (19)
[] Woman Owned Business- Native American (21)
[] Woman Owned Business- Other Minority (08)
[] Minority Owned Business- African American (04)
[] Minority Owned Business- Asian (32)
[] Minority Owned Business- Hispanic (74)
[] Minority Owned Business- Native American (15)
[] Minority Owned Business- Other Minority (02)
[] Non-Profit, IRC §501(c) (88)
[] Non-Small, Non-Minority or Non-Woman Owned Business (00)

Main Address Where tax information and general correspondence is to be mailed
DBA/Branch/Location []
Address []
Address continued []
City [] State [] Zip code []

Remit to Address [] Same as Main []
DBA/Branch/Location []
Address []
Address continued []
City [] State [] Zip code []

Contact Information
Name []
Phone # [] EXT []
Fax []
email []

Certification
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 VENDOR: DO NOT WRITE BELOW THIS LINE

AGY [] Agency Authorization [] Phone # [] Date []

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

[] IRS TIN Matching [] Corporation Commission [] HRIS [] Other [] Other []

Vendor Number [] MC [] Processed by [] Date Processed []

EXHIBITS 7.1



CERTIFICATE OF INSURANCE

CONTRACT NO. ED07-0024

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:
	A	
	B	
Name and Address of Insured:	C	
	D	

LIMITS OF LIABILITY MINIMUM - EACH OCCURRENCE	COMPANY LETTER	TYPE OF INSURANCE	POLICY NUMBER	DATE POLICY EXPIRES
Bodily Injury Per Person Each Occurrence Property Damage OR 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: _____ _____ Authorized Representative
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EXHIBIT 7.2

Process Time Line

November 6, 2006	Arizona donated commodity food RFP advertised and available to interested processor/offerors for review.
November 15, 2006	USDA releases commodity price file. Interested processors/offerors must use this information in preparing their EPDS (prices)
November 17, 2006	Pre-proposal conference held for interested processors/offerors to answer their questions regarding this solicitation.
Post November 17, 2006	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.
December 15, 2006 @ 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.
December 29, 2006	ADE will complete its review/evaluation of proposals and award contracts to successful processors/offerors.
January 19, 2007	ADE will issue commodity catalogs based on new contracts and EPDS to sponsors for use in determining where to divert donated commodities.
February 12, 2007	Cheese survey due.
March 1, 2007	ADE will issue commodity cheese diversion orders to USDA.
March 19, 2007	Remaining commodities survey due.
April 15, 2007	ADE will issue remaining commodity diversion orders to USDA.
July 1, 2007	The new contracts become effective for sponsors to use in buying end products containing donated commodities.

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 for school years 2005-2006 and 2006-2007 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 7.3

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.

EXHIBIT 7.3

- 4) If a processor chooses not to adopt the limited substitution option for poultry, the processor shall meet all provisions stipulated for nonsubstitutable 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, 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. Nonsubstitutable 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 nonsubstitutable 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:

EXHIBIT 7.3

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 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
 - 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.

EXHIBIT 7.3

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.

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. Nonsubstitutable 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.

EXHIBIT 7.3

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 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 nonsubstitution and nondiversion. 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 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.

B. Nonsubstitutable and Limited Substitutable Donated Foods

For all end products utilizing nonsubstitutable 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

EXHIBIT 7.3

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 nonsubstitutable foods;
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.

EXHIBIT 7.3

- 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.

- 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. Nonsubstitutable 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 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.

EXHIBIT 7.3

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 nonsubstitutable 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:

- 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.

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**

36. PERIOD OF AGREEMENT

This Agreement shall become effective on July 1, 2005 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"/> Nonsubstitution | <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.

EXHIBIT 7.3

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 and Title
Processor

Date

Date

EXHIBIT 7.3

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:

PRIMARY PROCESSOR

Processor: _____ Address: _____

Name: _____ Title: _____

Signature: _____ Date: _____

SUBCONTRACTOR

Subcontractor: _____ Address: _____

Name: _____ Title: _____

Signature: _____ Date: _____

FNS APPROVAL

Name: Cathie McCullough Title: Director, Food Distribution Division

Signature: _____ Date: _____

END OF SOLICITATION NO. ED07-0024

