



# State of Arizona

Department of Education

## Request For Proposal

### Cover Page

Solicitation Number: **ED05-0028**

Solicitation Due Date / Time: **DECEMBER 17, 2004, at 3:00 p.m. Mountain Standard Time**

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

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

Pre-Proposal Conference: **November 19, 2004**  
Time: **9:00 am to 11:00 am Mountain Standard Time**  
Location: **Pointe South Mountain, West Court Room 3C/3D  
Phoenix, AZ**

**You may download a copy of this RFP at [www.ade.az.gov/procurement/Opps](http://www.ade.az.gov/procurement/Opps).**

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.***

Richard Adickes  
Procurement Officer

\_\_\_\_\_  
Date

Telephone Number: (602) 364-2517

**OFFER AND AWARD**



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

**SOLICITATION NO. ED05-0028**

**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 Code \_\_\_\_\_

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

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

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

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

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

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

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

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

**ACCEPTANCE OF OFFER AND CONTRACT AWARD**

*(For State of Arizona Use Only)*

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

This Contract shall henceforth be referred to as Contract Number ED05-0028-.

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 \_\_\_\_\_

\_\_\_\_\_  
Douglas C. Peebles, MBA, CPPB, CPCM  
Procurement Officer

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# SECTION 1 SCOPE OF WORK

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**SOLICITATION NO. ED05-0028**

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) administers 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 2003, the Approximate Average Daily Participation was 443,741(?) 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 2003 and ended in June of 2004, there were 253 school districts in Arizona, and approximately 244 charter schools with an average daily attendance of approximately 840,000 children. There were a total of 322 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

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result in an increase in the amount of donated commodities that are received and processed into end products.

- I. These contracts will ease the workload of the sponsors making it easier for them to write purchase orders to Contractors to process the commodities into end products.
- J. While the schools and sponsors may use these contracts for their purchases, unique requirements (e.g., delivery or volume issues) may require a discussion of their situation with the Contractor to determine if their needs can be met under this contract. Should an impasse arrive, sponsors may choose to make their purchases under existing cooperative purchasing agreements or other means available to them.

### 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 public 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. This Contract was established July 1, 2004 and is effective through June 30, 2005. The contract may be extended for additional periods, not to exceed five (5) years from the initial effective date.
- 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

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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 paragraph 37 in the Special Terms and Conditions.

## 5. **SPECIFIC REQUIREMENTS:**

In addition to the USDA requirements contained in paragraphs 25 through 47 of the special terms and conditions, the Contractor agrees to the following requirements as required by the ADE, local or State laws:

A. Categories of Donated Foods in Processing (Paragraph 25 of the Special Terms and Conditions)

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

B. Processing Arrangements (Paragraph 26 of the Special Terms and Conditions)

- (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
  - (g) TiHi
  - (h) Quantity per case

C. End Product Data Schedules (Paragraph 28 of the Special Terms and Conditions) shall be submitted to ADE in a separate envelope by the solicitation due date.

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

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(2) For commodities that will be approved by USDA, NFD, Poultry, cheese and fruits & vegetables, prior to submitting to ADE, Contractor must have USDA sign off.

D. Inspection and Grading Requirements for Processing (Paragraph 32.A of the Special Terms and Conditions) Acceptance Service Grading (Paragraph 32.B of the Special Terms and Conditions)

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 (Paragraph 33 of the Special Terms and Conditions)

- (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 to FNS and also shall be attached to each End Product Data Schedule. The analysis shall include at a minimum, the following information per serving:

**\* Calories, Protein, Fat, Carbohydrate, Cholesterol, Sodium, Vitamin A and Vitamin C.**

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 (Paragraph 34 of the Special Terms and Conditions)

All by-products produced during processing shall be handled in the following manner:

- (1) Return the fair market value of the by-product by use of credit line on the appropriate invoice or by check.
- (2) Method of payment indicated on the End Product Data Schedule.

I. Performance Reports (Paragraph 37 of the Special Terms and Conditions)

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

- (1) School

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- (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.

**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 food processing, 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. Section 2, Paragraphs 25 through 47, Special Terms and Conditions, 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).

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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, 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. “*Department*” means the Arizona Department of Education.
  - F. “*DA*” means Distributing Agency (ADE for this contract).
  - G. “*DF*” means Donated Food.
  - H. “*EPDS*” means End Product Data Schedule.
  - I. “*FOB*” means Freight on Board.
  - J. “*FNS*” means Food Nutrition Services.
  - K. “*FNSRO*” means the appropriate Food and Nutrition Services Regional Office.
  - L. “*FSIS*” means Food Safety Inspection Service.
  - M. “*LEA*” means Local Educational Agency
  - N. “*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.
  - O. “*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.
2. **Offeror’s Checklist:** The Offeror shall complete the Offeror’s Checklist, Attachment 6.10, 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;

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- (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.
- F. If written agreement is obtained for changes in end product formulation, return of DF, or net case cost, Contractor shall not implement changes until written approval is received from the Procurement Officer.
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 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

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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
Disease – Policy Limit	\$1,000,000

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- 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.**

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- 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 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. **Performance Surety (also see paragraph 40).** The Contractor shall provide the required performance surety to the ADE within the time frame specified in the Contract award notification letter. Failure to submit performance surety within the required timeframe may result in the immediate termination of the contract.
- A. The Contractor shall furnish to ADE 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 ADE. The bond shall guarantee that the processor shall faithfully account for, return, or pay for all of the DF received or carried forward, in accordance with this Agreement.
- B. Inventory protection is required by the ADE prior to the delivery of DF to the processor. The minimum amount of the bond, letter or credit or escrow account, 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 as specified under this contract.
7. **Contract Term.** The contract term is for a one year period from July 1, 2005 through June 30, 2006, subject to additional successive periods of extension, with a maximum aggregate including all extensions not to exceed five (5) years.
8. **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.
9. **Non-exclusive Status.** ADE reserves the right to have the same or similar services provided by other than the Contractor.
10. **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.
11. **Eligible Local Educational Agencies:** This Contract shall be for the use of ADE, other state agencies, political subdivisions and sponsors that participate at their own discretion. Upon Contract award, the ADE will provide the Contractor with a complete listing of all eligible Local Educational Agencies with their appropriate identification numbers and addresses. The Contractor can only reduce inventory on sales of approved end products to these Local Educational Agencies.
12. **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.

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13. **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.
14. **Purchase Orders.** Work under this Contract will be funded and ordered through separate purchase orders issued by the participating sponsors (Local Educational Agencies).
15. **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.
- 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)

16. **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.
17. **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.
18. **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

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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.

19. **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.
20. **Subcontracts:** The Contractor may, with the approval of the ADE, enter into written subcontract(s) for performance of certain of its functions under the Contract. Subcontractors must be approved in writing by the Distributing Agency 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, without the prior written consent of the ADE. Prior to utilizing the services of any subcontractor under this Contract the Contractor shall complete and submit to the ADE a Subcontractor Agreement (Attachment 6.4) 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.
21. **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.

22. **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.

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23. **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.*
24. **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)

- 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.)

Tristine Bogle, Program Director  
Food Distribution Program  
Health and Nutrition Services  
1535 West Jefferson Street, Bin 7  
Phoenix, Arizona 85007  
Phone: (602) 542-8781 FAX: (602) 542-1531 E-Mail: [tbogle@ade.az.gov](mailto:tbogle@ade.az.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.

Richard Adickes  
Arizona Department of Education Procurement Office  
1535 West Jefferson, Bin #37  
Phoenix, Arizona 85007  
Phone: (602) 364-2517 FAX: (602) 542-3099 E-Mail: [radicke@ade.az.gov](mailto:radicke@ade.az.gov)

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**II. USDA REQUIREMENTS**

25. **Categories of Donated Foods In Processing:** Contractor shall adhere to the processing and handling procedures applicable to the category of DF to be processed under this Contract as defined below:

A. **Substitutable** – All commodities except for beef and pork are substitutable without prior approval from FNS. 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 as detailed in the EPDS. Poultry shall be eligible for limited substitution. Processors that wish to substitute poultry must have a plan approved by both FNS and AMS.

(1) Contractor 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.

c. Records must be maintained to allow independent verification that the substituted food meets the above conditions..

(2) Contractor 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 Contractor elect to utilize a commercial food in anticipation of replacement with a DF, the LEA or ADE cannot guarantee such replacement and assumes no liability for such replacement.

(3) Contractor 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 ADE, the Contractor must comply with provisions in 7 CFR Part 250.30. (f)(3).

B. **Non-substitutable** - Donated foods (DF) other than those listed in Item 25.A. shall not be interchanged, commingled or substituted with a commercial food that could be used in place of the DF in the product formulation. Other non-substitutable DF may be substituted with commercial product as described above in 25.A with an approval from the FNS.

Contractor shall store such DF apart from all commercial foods and process them apart from regular commercial production. Contractor shall return all product produced above guaranteed minimum return on the EPDS. If actual yield falls below the guaranteed return, the Contractor shall make up the difference between actual and guaranteed 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. A USDA certificate must be obtained to certify the quality of replacement meat and poultry; or

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- (2) Reimbursing the LEA or ADE the value of DF that would have been used to produce the end product.

26. **Processing Arrangements**

A. Contractor 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.

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

- (1) **Donated Food Value Pass-Through System**: The processing of DF is incorporated into the Contractor's normal manner of business, including production, pricing, and delivery of the end product. The specific value of the DF shall be established based on the designated USDA value. The Contractor shall ensure that the full value of the DF contained in the end product shall be passed on to the eligible purchasing LEA. The dollar pass-through value of DF contained in the end product shall be provided to the LEA either by the ADE or the Contractor at the option of the ADE. With the concurrence of the ADE, the Contractor shall select one of the following value pass-through systems. The ADE reserves the right to disallow continued use of a value pass-through system if poor performance is indicated.

(a) **Direct Sales**

(i) **Discount System**: The Contractor shall invoice the LEA at net case price which shall reflect a discount for the value of the DF established in this Contract. Only when end product has been delivered to the LEA or the LEA's designee may DF inventory be reduced.

(ii) **Refund System**: The Contractor shall invoice the LEA 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 LEA upon proof of purchase. Refund payments shall be initiated or paid as follows:

a. LEA shall submit a refund application to the Contractor within 30 days from the end of the month of the date of delivery. LEAs may submit refund applications to the Contractor on a quarterly basis if the total refund due is \$25 or less during the quarter.

b. Within 30 days of the receipt of the refund application, Contractor shall compute the amount and issue payment of refund directly to LEA. Contractors may issue payment of refunds on a quarterly basis if the total payment due to the LEA is \$25 or less during the quarter. Sales cannot be reported and the inventory cannot be reduced until refunds are actually issued.

c. Copies of refund application and payment to LEAs shall be forwarded to appropriate ADE by the Contractor with the monthly performance report.

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(b) **Indirect Sales**

- (i) Discount System (Hybrid System): The Contractor shall sell to a distributor at the commercial/gross price. The distributor will invoice the LEA at the net case price plus the distributor's markup. The net case price shall reflect a discount equal to the full value of the DF established in this Contract. The distributor shall apply for a refund or credit from the Contractor for the full value of the DF. Sales verification is required for this pass-through system. (See Paragraph 27)
- (ii) Refund System: The Contractor shall sell to the distributor at the commercial/gross price. The distributor will invoice the LEA this price plus the distributor's markup. Refunds shall be made to the LEA by the Contractor that reflect 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 (a) (ii) a. through c.

- (c) **Other Value Pass-Through Systems:** Contractors are permitted to use alternate value pass-through systems if approved by ADE and 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 ADE and FNS.

- (d) **Fee-For-Service System:** A "fee-for-service" system is a price by pound or by case representing a Contractor'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 not a 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 Contracts may be delivered and invoiced to LEA in one of the following ways:

- (i) The Contractor delivers the end products directly to the LEA or LEA's designee and bills the LEA for the agreed upon fee for service.
- (ii) Delivery is made by commercial distributors. Contractor shall not sell end products directly to distributor. Two options for arranging payment for end products are:
  - a. A dual billing system whereby the LEA is billed by the Contractor for the fee for service and the distributor bills the LEA for storage and delivery of end products; or
  - b. Contractor arranges for the delivery with a distributor for the LEA. The Contractor's invoice must include both processing fee and the distributor's charges as separate, identifiable charges.

27. **Contractor Sales Verification:** If delegated by ADE for discount sales made by distributors, the Contractor shall verify sales conducted under the terms of Paragraphs 26.B(1)(b) and (c) above. Verification shall include a statistically valid sample of reported sales in a manner, which ensures a 95 percent confidence level. All sales reported during a specific period shall be verified at least semiannually. The Contractor shall verify that sales were made only to eligible LEAs and that the value of DF was passed

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through to those LEAs. Sales verification findings shall be reported as an attachment to the December and June performance reports in a format approved by the ADE. At the same time this report is submitted, the Contractor shall submit to ADE a corrective action plan designed to correct problems identified in the verification effort. This plan will be subject to ADE approval. ADE may assess a claim against the Contractor if, after review, it is determined that the value of DF has not been passed on to the LEAs or if the end products were improperly distributed.

28. **End Product Data Schedule**

A. The End Product Data Schedule (EPDS) and instructions are incorporated into this contract. The Contractor agrees to the **effective date established** by the ADE on the EPDS for the item(s) listed thereon and the Contractor **shall not** be permitted to reduce inventory for any end products which were sold prior to the effective date so established. EPDS must be complete and free of computational errors. **Supporting nutritional and other documentation must exactly match the information indicated on the EPDS.**

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

- (1) **End Product Description**
- (2) **Product Formulation**
- (3) **End Product Return**
- (4) **Pricing Structure of End Product**
- (5) **USDA Signature if commodity is NFDM, Cheese, Poultry or Fruits**

C. **Case prices shown on the attached EPDS shall not be exceeded, but may be quoted lower for special promotions, bids, volume discount, etc. provided the discount or refund, if applicable, remains the same as established in this Contract.** Any credits (i.e., buyback parts and by-products such as bones, broth, etc.) must be listed separately on the EPDS.

29. **Packaging:** Contractor shall package all end products in accordance with acceptable standards within Contractor's industry and in conformity with federal and State requirements, which may be applicable during the period of this Contract. Damaged cases may be rejected at no cost to the ADE or LEA.

30. **Labeling:** Contractor shall label the end product container in accordance with applicable federal label requirements. In addition, Contractor shall adhere to the following label requirements:

A. The exterior shipping container, and where practical the individual wrappings or containers within the exterior container, of end product containing non-substitutable DF as defined in Paragraph 25.B shall have clearly shown on the label the legend "Contains Commodities Donated by the United States (U.S.) Department of Agriculture." This product shall be sold only to eligible Recipient Agencies. Processors are permitted to abbreviate only the "United States" portion of the statement on the label.

B. Contractor shall obtain approval through procedures established by the FNS in conjunction with the Food Safety Inspection Service (FSIS) and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture, 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. The Contractor 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. If a CN label is

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required and requested (Paragraph 5.C of the Scope of Work), the Contractor must: (1) submit a copy of the approved CN labels to the ADE prior to requesting the ADE to order DF or picking up DF from LEA and (2) affix the CN label to each case of end product to be sold to eligible LEA's.

31. **Quality Control (QC):** As an Attachment to the solicitation and incorporated into this Contract, the Contractor should provide a written description of the Contractor's quality control program to the ADE. By signing this Attachment, the Contractor assures that an effective QC System will be maintained for the duration of this contract.
- A. Contractor shall transport DF picked up from ADE or LEA; 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 Contract.
  - B. Contractor, with the concurrence of ADE and USDA, may refuse the carrier for the account and disposition of the vendor or USDA any delivery of DF directly to the Contractor's plant or to his authorized storage agent which does not meet the federal specifications under which it was purchased and shipped.
  - C. All end product produced under this Contract shall be processed according to the health and sanitation standards for plant facilities and food processing established by the locality or state in which Contractor's plant is located or by the applicable federal standards, whichever are higher.
  - D. At the option of ADE samples may be pulled from delivered end product for laboratory testing. Costs of such tests shall be paid by Contractor only if product sample tested fails to meet either Contract specifications or quality and wholesomeness standards.
  - E. Contractor shall maintain end product batch identification in the event end product is rejected upon delivery. End product failing to meet Contract specifications or wholesomeness standards shall be rejected by ADE and Contractor so notified. Contractor 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 ADE or purchasing LEA shall have the right to purchase the same or similar product on the open market at Contractor's expense. If Contractor is unable to arrange removal of rejected product within a reasonable time, ADE shall proceed to authorize removal and destruction at Contractor's expense.
32. **Inspection & Grading Requirements for Processing:** The Contractor 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. Option 1 complies with FNS minimum requirements for verifying non-substitution and non-diversion. Additional certification requirements may be requested under Option 2 as specified in the EPDS. Under no circumstances shall Contractor set up production runs for the purpose of circumventing this requirement.
    - (1) The cost of this service shall be borne by the Contractor.

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- (2) Exemptions in the use of acceptance service graders will be authorized on the basis of each order to the processor, provided the Contractor can demonstrate:
    - a. that even with ample notification the Contractor cannot secure the services of a grader.
    - b. that the cost for a grader is unduly excessive, as determined per order by ADE, 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 LEA's need for the end product precludes the use of acceptance services.
  - (3) ADE reserves the right to verify Contractor's claim for exemption.
  - (4) Copies of all certification forms issued by AMS graders for donated meat or poultry processing shall be provided to ADE with the monthly performance report.
  - (5) At the option of ADE, and as detailed in Paragraph 4 of the Scope of Work, 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.
33. **Donated Food Containers:** Contractor shall return to the ADE, or LEA for which the DF was processed, all funds received from the sale of DF containers. Refund of such funds shall, at the option of ADE, 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 Contractor prior to resale.
34. **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 ADE, be handled as follows:
- A. The by-product, if agreeable to the LEA for which the DF was processed, shall be accumulated and returned in a sanitary and wholesome manner to LEA; or
  - B. At the option of the ADE, Contractor shall return to the ADE, or LEA for which the DF was processed, all funds received from the sale of salvageable by-product material. Return of such funds shall, at the option of ADE, 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 Contractor;
    - (2) The fair market value of the by-product at the time it is further processed or refined by Contractor.
  - C. Special handling instructions and disposition of any by-product shall be detailed in the EPDS.

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35. **Transfers of USDA Donated Foods: Donated Foods (DF)** may be transferred only between Distributing Agencies (DAs) or LEAs with the concurrence of the ADE and FNS if applicable. All transfers of DF shall be documented. Such documentation shall be maintained in accordance with Paragraph 38.C.
36. **Inventory Reductions:** For all end products utilizing a substitutable DF, the amount of DF actually contained in the end product, as identified in the EPDS shall be the only basis for inventory reduction on the monthly performance report. The reduction in inventory can be shown only after there has been pass through to LEA of the value of the DF.
- A. Substitutable foods: For all end products utilizing substitutable DF, inventory reductions to monthly performance reports shall be made based on the actual amount of DF used to produce the end product. The finished goods inventory may be reduced only upon delivery to eligible LEA or LEA designee
- B. Non-substitutable Donated Foods: For all end products utilizing non-substitutable DF, inventory reductions to monthly performance reports shall be made based on the actual amount of DF used to produce the end product. The finished goods inventory may be reduced only upon delivery to eligible LEA or LEA designee.
37. **Performance Reporting:** The Contractor shall submit monthly reports pertaining to performance under this Contract to ADE postmarked or transmitted electronically no later than the last day of the month following the close of the reporting period. For the June Y-T-D report, transmission shall be no later than 90 days after June 30. 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 Paragraph 25.A. If sales are made using a refund system, the sales cannot be reported and inventory cannot be reduced, until a refund is actually issued.
- A. The ADE will monitor Contractors to ensure that the quantity of DF on hand does not exceed a six-month supply based on the Contractor's average monthly usage.
- B. If sales verification on discount sales is delegated to the Contractor, findings shall be reported as an attachment to the December and June performance reports in a format approved by the ADE.
- C. **Monthly performance reports shall be submitted only in an ADE approved format, which shall include:**
- (1) A list of LEAs by name and CTD number purchasing end products under the Contract;
  - (2) DF inventory at the beginning of the reporting period by Recipient Agency;
  - (3) Total quantity of DF received during the reporting period specifying the sources of such DF, such as backhaul from ADE or LEA, direct shipments arranged by ADE, and/or transfers into ADE's or LEA's account and year-to-date totals by Recipient Agency;
  - (4) Total number of units/cases of approved end products by product identification code and brand name delivered to each eligible LEA during the reporting period for which the LEA has received a discount or refund;
  - (5) Total number of pounds of DF reduced from inventory and year-to-date totals;

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- (6) DF inventory at the end of the reporting period;
  - (7) A certification statement that sufficient DF is in inventory or on order to account for quantities needed for production of end products for ADE processing contracts and that the Contractor has on hand or on order adequate quantities of foods purchased commercially to meet the Contractor's production requirements for commercial sales.
- D. **Contractors failing to submit monthly performance reports within the established time limits will be considered in noncompliance with this Contract and this may result in Contract termination by the ADE.**
38. **Accountability And Records:** Contractor shall fully account for all DF delivered or carried forward from previous contract year into its possession by the production and delivery of an appropriate number of end products specified in this Contract to eligible LEAs. Donated Food (DF) or the value thereof not so accounted for shall be the liability of the Contractor. 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 State law. Accountability records shall include, but not be limited to, the following:
- A. **Production Records** - Contractor 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 Paragraph 31, end product labeling and any in-plant quality control records used to assure proper formulation, packing net weight, bacteriological safety, and other controls to assure end product quality and wholesomeness.
    - (3) Grading certificates and reports for meat and poultry issued on incoming DF or substituted commercial food; during formulation and production of the end product; and on the outgoing end product by the applicable federal acceptance service.
    - (4) Authorization letters from ADE waiving federal acceptance service requirements for a specific production run.
  - B. **Perpetual Inventory of Donated Food** - Contractor shall maintain accurate and completed 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 delivery of DF or substituted commercial food in the end product to eligible LEA, ADE or their authorized agent.
  - C. **Other Records**
    - (1) Quality of Commercial Food. Refer to Paragraph 25.

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- (2) Documentation of Value pass-through or fee for service. Refer to Paragraph 26.
  - (3) Contractor Sales Verification. Refer to Paragraph 27.
  - (4) Transfers of DF. Refer to Paragraph 35.
  - (5) Performance Reports. Refer to Paragraph 37.
- D. All records and documents to substantiate information provided on reports shall be maintained as required by paragraph 3.C of the Uniform Terms and Conditions of this Contract unless longer retention is required for resolution of an audit, litigation, or State law.
39. **Liability For Donated Foods:** Contractor 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 Paragraphs 26, 35, 36 and 38.
- A. **Substitutable Donated Foods:** Contractor shall replace any unaccounted for, loss of, damage to, or improper use of, DF while in possession of the Contractor with commercial food in compliance with Paragraph 25.A. Contractor shall be liable for replacement or payment for any DF, whether it be book or physical, in the event a claim is placed by the ADE.
  - B. **Non-substitutable Donated Foods:** The Contractor shall be responsible for loss of, damage to, or improper use of DF prior to delivery to LEA or LEA's designee. Losses shall be promptly reported to ADE with a complete explanation of the circumstances. Any claim action for the DF shall be determined by ADE. If a claim is required, the Contractor shall, at option of ADE:
    - (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 Paragraph 25.A; or
    - (2) Pay the ADE 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 Contract.
40. **Inventory Protection:** Prior to Contract start date, the Contractor shall furnish to ADE 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 ADE. The bond shall guarantee that the Contractor shall faithfully account for, return, or pay for all of the DF received or carried forward, in accordance with this Contract as determined by ADE.
- Inventory protection is required by the ADE prior to the delivery of DF to the Contractor. The minimum amount of the bond, letter or credit or escrow account shall be determined by: value of the DF on hand and on order minus anticipated usage rate during the Contract period. The bond shall remain in effect until all donated food is properly accounted for, paid for or returned in accordance with this contract. Liability for loss is provided in Special Terms and Conditions, Paragraph 39, of this Contract.
41. **Disposition Of Inventory Upon Contract Termination:** Disposition of DF inventory with Contractor payment of value thereof shall be based on the following:

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- A. When this Contract is terminated, the Contractor shall, at the option of ADE and FNSRO regarding non-substitutable DF:
- (1) Return the DF to LEA; or
  - (2) Pay the LEA 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 ADE current per pound value established by this Contract; or
  - (4) Pay the Commodity Credit Corporation (CCC) unrestricted sales price.
- B. When this Contract is terminated, the Contractor shall, at the option of ADE and FNSRO regarding substitutable DF:
- (1) Return the DF to ADE to a destination designated by ADE at Contractor's expense; or
  - (2) Replace the DF with commercial foods of identical or superior to quality as certified in accordance with Paragraph 25.A and deliver such foods to the ADE to a destination designated by ADE at Contractor's expense; or
  - (3) Pay the LEA for the DF based on USDA's most recent cost information on acquiring and delivering replacement foods relative to the time of termination; or
  - (4) Pay the ADE for the DF based on the current per pound value established by this Contract; or
  - (5) When feasible and with the concurrence of any affected distributing agency with which the Contractor has an agreement, transfer all DF inventory of ADE to the account of the affected distributing agency; or
  - (6) Pay the CCC unrestricted sales price.
42. **Sources Of Donated Food For Processing:** Contractor may acquire DF for processing under this Contract from one or more of the following sources:
- A. Direct shipment of DF to Contractor's plant as ordered by ADE. Such orders should be mutually agreed upon between the Contractor and ADE in consideration of inventory status and estimated deliveries of end product.
  - B. Transfer from other States with which Contractor has an Agreement and as authorized by both states.
  - C. Backhaul from LEA's and/or ADE's inventory.

All quantities of DF and sources must be entered as DF received on the monthly Performance Report required in Paragraph 37. Approval of this Contract by the State shall not obligate the ADE or USDA to deliver DF for processing.

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43. **Audits:**

A. **CPA Audits**

- (1) Any Processor, which meets the definition of a multi-State Processor as defined in 7 CFR Part 250, is subject to the following audit requirements.
- (2) Multi-State Processors which receive more than \$250,000 each year in DF, shall obtain an independent CPA audit for that year. Multi-State Processors which receive \$75,000 to \$250,000 in DF each year shall obtain an independent CPA audit every two years. 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 State Commodity Processing Programs.
- (3) 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:** Representatives of ADE, USDA and General Accounting Office shall have the right to inspect the DF and substituted commercial food in the possession of Contractor; the facilities used in handling, storing, processing, and transporting; methods and procedures used by Contractor and/or his agent in carrying out the requirements of this Contract; and all records and substantiating documentation required by this Contract, during Contractor's normal working hours. When requested, Contractor shall furnish such representatives with samples of end product taken from a production run for testing.

44. **Assurance of Civil Rights Compliance and Employment:**

- A. The Contractor 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 Contractor agrees not to discriminate on the basis of race, color, national origin, sex, age or handicap among eligible LEA's 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 Contractor, its successors, transferees and assignees as long as it receives assistance or retains possession of any assistance from FNS.
- B. Contractor shall comply with all applicable federal, State and local laws and regulations pertaining to wages, hours and conditions of employment.

45. **Unlawful Benefits:** No employees and/or agent(s) of any party to this Contract, ADE's office or any LEA for which processing under this Contract has been approved, shall be admitted to or may accept any share or part of this Contract or to any benefit that may arise therefrom.

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46. **Disputes:** The Contract is not subject to arbitration. The ADE and the Contractor shall meet to discuss and attempt to resolve any dispute. However, should the dispute go unresolved to the satisfaction of both parties, the Contractor shall have the right to pursue the Arizona Procurement Code/Administrative Appeal Process for Claims, prior to an appeal to the judicial system.
47. **Termination & Disposition of Inventory:** The ADE reserves the right to terminate the Contract at any time, for the convenience of the State of Arizona, without penalty or recourse, by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such termination. In the event of termination pursuant to this paragraph, all documents, data, and reports prepared by the Contractor under the Contract shall, at the option of the ADE, become property of the State of Arizona. The Contractor shall be entitled to receive just and equitable compensation for that work completed prior to the effective date of termination. Disposition of DF inventory with Processor payment of value thereof shall be pursuant to Paragraph 41.

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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 or 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 labelled 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.

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- 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:
- (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,

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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.

- 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

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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 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.

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**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.
- 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:

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- 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. 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.

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- 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 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

## SECTION 3 UNIFORM TERMS AND CONDITIONS

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

**SOLICITATION NO. ED05-0028**

*Version 7.0*

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.

**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.

**SECTION 3**  
**UNIFORM TERMS AND CONDITIONS**

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- 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 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).

**ATTACHMENT 6.1**

**PRICES/DELIVERY SCHEDULE**

**SOLICITATION No. ED05-0028**

Contractor shall designate arrangements to be used during the term of the Contract (Refer to Special Terms and Conditions, Paragraph 26). Check the following selected system.

- \_\_\_\_1. Direct Sale Discount
- \_\_\_\_2. Direct Sale Refund
- \_\_\_\_3. Indirect Sale Discount\* Name of Distributor \_\_\_\_\_
- \_\_\_\_4. Indirect Sale Refund Name of Distributor \_\_\_\_\_
- \_\_\_\_5. Fee for Service
- \_\_\_\_6. Other (with prior approval)

**Submit End Product Data Schedules as your prices for each end product you wish to include in this RFP, which shall be in a separate envelope. The envelope shall be clearly marked "End Product Data Schedules."**

- 1. Discount from end product schedule price for full truckloads delivered to a Local Education Authority's Warehouse. \_\_\_\_\_
  
- 2. Discount from end product schedule 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.)

**Notice: If the transaction privilege (sales) taxes are not described and itemized on the offer, the State will assume that the price(s) offered includes all applicable taxes.**

\* If an indirect Sale Discount is selected, the contractor must have demonstrated successful implementation of the system to ADE.



## ATTACHMENT 6.3

### OFFEROR'S CERTIFICATION SOLICITATION No. ED05-0028

#### 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 6.3**

**OFFEROR'S CERTIFICATION**

**SOLICITATION No. ED05-0028**

**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**

**SUBCONTRACTOR AGREEMENT**  
SOLICITATION No. ED05-0028

**Authority USDA FNS**  
**Title 7; Part 250**

Whereas \_\_\_\_\_ holds a Master Food Processing Agreement with the  
\_\_\_\_\_ covering the period from July 1, 20\_\_ to June 30, 20\_\_ (hereinafter called  
“Agreement”) and whereas \_\_\_\_\_ desires and is capable of performing part of the  
(Subcontractor)

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 above named Agreement, making this addendum part of that Agreement.

Subcontractor shall maintain records for five (5) 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 record 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 product delivered to LEA or back to the Primary Processor.

The subcontractor will attach a signed End Product Data Schedule to this addendum for the end products that are being processed, or any function for which the Subcontractor is performing.

**ALL PARTIES APPROVE BY SIGNING BELOW**

\_\_\_\_\_  
Primary Processor: Title: Telephone:

\_\_\_\_\_  
Name: Address:

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

\_\_\_\_\_  
Subcontractor: Title: Telephone:

\_\_\_\_\_  
Name: Address:

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

**OFFICE OF FOOD DISTRIBUTION APPROVAL**

State Distributing Agency: \_\_\_\_\_

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

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

**ATTACHMENT 6.5**

**PERFORMANCE BOND**  
**SOLICITATION No. ED05-0028**

**KNOW ALL MEN BY THESE PRESENTS:**

THAT, \_\_\_\_\_  
(hereinafter called Principal), as Principal, and \_\_\_\_\_  
\_\_\_\_\_, a corporation organized and existing under the  
laws of the  
State of \_\_\_\_\_, with its principal office in  
the City of \_\_\_\_\_  
(hereinafter called the Surety), as Surety, are held and firmly bound unto the State of Arizona, (hereinafter called the Obligee) in the  
amount of \_\_\_\_\_ (Dollars) (\$ \_\_\_\_\_), for the  
payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successor assigns, jointly  
and severally firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for the material, service or construction  
described as \_\_\_\_\_

which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said Contract and any extension thereof, with or without notice to the Surety and during the life of any guaranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligations shall be void, otherwise to remain in full force and effect.

The prevailing party in a suit on this bond shall recover as part of his judgment such reasonable attorneys' fees as may be fixed by a judge of the Court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
Principal Seal

By \_\_\_\_\_

\_\_\_\_\_  
Surety Seal

By \_\_\_\_\_

\_\_\_\_\_  
Agency of Record

**ATTACHMENT 6.6**



**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 6.7**

**CONTACT SHEET**  
**SOLICITATION No. ED05-0028**

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

**Performance Report Contact**

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

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

\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**End Product Data Schedule Contact**

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

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

\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

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

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

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

\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**Broker**

Co. Name: \_\_\_\_\_

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

\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

## ATTACHMENT 6.8

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

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

## ATTACHMENT 6.8

### 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 6.9

### End Product Data Schedule

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

- A. All Donated Foods Excluding Bone-In Poultry
- B. Instructions and Explanations All Donated Foods Excluding Bone-In Poultry
- C. End Product Data Schedule Donated Bone-In Poultry
- D. Standard Yield (StdYd) End Product Data Schedule Donated Bone-In Poultry
- E. Instructions and Explanations All Donated Bone-In Poultry



## INSTRUCTIONS AND EXPLANATIONS ALL DONATED FOODS

### EXCLUDING BONE-IN POULTRY

This form can be used for both substitutable and non-substitutable donated food (DF) end products. All end products to be processed and sold under a Master Agreement must be submitted on an End Product Data Schedule (EPDS) and approved by the applicable DA.

Indicate the short title and commodity code for the DF to be processed. If two forms of the same DF, such as coarse and fine grind beef, are to be processed, submit a separate EPDS for each DF when the percent guaranteed return is different.

Basis of Price: Indicate basis of the price for the finished products shown in Columns 13 and 14 on the EPDS. If delivered is checked, destination and limitations must be specified. For all calculations, use normal round-off procedures to two (2) decimal places except Column 12, which should reflect the actual commodity value, which will be expressed in four (4) decimal places.

- COLUMN 1** List finished end product item code and description.
- COLUMN 2** Net weight of one case of finished product as shown on the label.
- COLUMN 3** If a pre-portioned product, indicate the number of portions or individual units packed within the case.
- COLUMN 4** Indicate the net weight of each portion within the case. Attach CN label if available.
- COLUMN 5** Using one line per ingredient, name each ingredient contained in end product. If APP is added, include name and type of APP. Spices and seasonings may be aggregate. Specifically identify each DF with this symbol (DF). A label or list maybe attached to show ingredients other than DF.
- COLUMN 6** Across from each named DF indicate the quantity in pounds of that ingredient which goes into the raw batch formula. Enter total batch weight. It is recommended that actual batch weight can be used where possible, but a hypothetical batch weight can be used if the proportion of ingredients remains the same regardless of batch size (100 lb. batch weight basis is recommended).
- COLUMN 7** The number of cases of finished product produced per the size batch given in Column 6. This figure should represent average batch production for substitutable DF verified by production records. This column represents the guaranteed minimum return for non-substitutable DF. Cases produced above the guarantee must be returned.
- COLUMN 8** The amount of raw DF required to produce one case of finished product is calculated by dividing the weight of DF (Column 6) by the number of cases of end product (Column 7).
- COLUMN 9** This is the average percentage of manufacturing yield for all processing of each finished product. For cooked product, this also represents the cooking loss of the DF.
- COLUMN 10** This is the amount of DF contained per case of finished product. This is calculated by the following methods: (Column 8 x Column 9). This column shall be used for inventory reduction of substitutable DF and is the basis for calculating discount or refund for substitutable DF.
- COLUMN 11** Commercial prices charged without the DF on the delivery basis indicated in the heading. (Not applicable to fee-for-service).
- COLUMN 12** Value per pound for the DF as established in accordance with USDA stipulated pricing. (Not applicable to fee-for-service).
- COLUMN 13** Discount or refund value per case of finished product is calculated by multiplying the per pound value in Column 12 by pounds of DF to make one case of end product in Column 8 for non-substitutable DF. For substitutable DF, use Column 10 for this calculation. For fee-for-service, indicate fee per pound of finished weight which processor will charge for conversion of DF into usable end products; this includes all costs for other ingredients, etc.
- COLUMN 14** For discount/refund: The net case price represents the cost of the finished product minus the value of the DF credited per case. This is calculated by Column 11 minus Column 13 equals Column 14. For fee-for-service, multiply Column 13 by Column 2 to obtain fee-for-service per case of finished product and enter this figure in Column 14. Processors fee for service or discount shall not exceed that shown in the schedule, but may be quoted lower for special promotions bids, volume discounts, etc., provided the discount or refund, fee for service, if applicable remains the same as shown in column 13.

Guaranteed minimum return (GMR) is calculated by dividing Column 2 by Column 8.

# END PRODUCT DATA SCHEDULE DONATED BONE-IN POULTRY

THIS IS AN ORIGINAL SCHEDULE UNLESS CHECKED BELOW  
 \_\_\_\_\_ Additional Schedule (Submitted after Agreement Approval)  
 \_\_\_\_\_ Revised Schedule

Basis of Price (check)   
 FOB Plant:   
 Delivered:

Short Title: \_\_\_\_\_ Commodity Code: \_\_\_\_\_

IDENTIFICATION FOR COMBINATION OF END PRODUCTS:

END PRODUCT DESCRIPTION				PRODUCT FORMULATION		END PRODUCT RETURN		FEE FOR SERVICE	
End Product Item Code & Description	NET WEIGHT PER CASE	NO. OF SERVINGS PER CASE	NET WEIGHT PER SERVING	PERCENT OF DONATED FOOD FOR EACH END PRODUCT & LIST OF OTHER INGREDIENTS	When Applicable MAXIMUM PERCENT BREADING	ESTIMATED CASES OF FINISHED PRODUCT	GUARANTEED PERCENT FOR FINISHED PRODUCT	PER POUND FINISHED PRODUCT	PER CASE FINISHED PRODUCT
1	2	3	4	5	6	7	8	9	10
<b>Total Portions</b>				<b>Total Batch Wt.</b>	<b>Lbs.</b>				

By-products other than rework will be produced: YES \_\_\_\_\_ NO \_\_\_\_\_  
 If yes refer to Articles 12 and 35 for further requirements.

If yes, provide product value credit and method credit is applied:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Poultry Certification:** Full coverage detailed in Poultry Program's current memorandum. Formulation and fabrication procedures must be attached and signed by the Processor and the DA.

**PLEASE PRINT OR TYPE**

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

\_\_\_\_\_  
Name and Title of Authorized Representative

Signature \_\_\_\_\_ Date Signed \_\_\_\_\_

.....

\_\_\_\_\_  
State Agency Approval Signature

State \_\_\_\_\_ Effective Date \_\_\_\_\_

\_\_\_\_\_  
USDA Signature

\_\_\_\_\_  
Renewal Date

\_\_\_\_\_  
DA Signature

\_\_\_\_\_  
Renewal Date

**Formulation, return, and pricing structure cannot be changed during the agreement period without prior approval of DA.**

**STANDARD YIELD (StdYd)  
END PRODUCT DATA SCHEDULE  
DONATED BONE-IN POULTRY**

\_\_\_\_\_ **Schedule (Submitted/ Agreement No Change)**  
 \_\_\_\_\_ **Additional Schedule (Submitted after Agreement Approval)**  
 \_\_\_\_\_ **Revised Schedule**

**Basis of Price (check)**

**FOB Plant:** \_\_\_\_\_  
**Delivered:** \_\_\_\_\_

**Short Title:** \_\_\_\_\_ **Commodity Code:** \_\_\_\_\_

**IDENTIFICATION FOR COMBINATION OF END PRODUCTS:** \_\_\_\_\_

END PRODUCT DESCRIPTION				PRODUCT FORMULATION		END PRODUCT RETURN		FEE FOR SERVICE	
END PRODUCT ITEM CODE & DESCRIPTION 1	NET WEIGHT PER CASE 2	NO. OF SERVINGS PER CASE 3	NET WEIGHT PER SERVING 4	PERCENT DONATED FOOD FOR EACH END PRODUCT & LIST OF OTHER INGREDIENTS 5	When Applicable	GUARANTEED CASES FINISHED PRODUCT PER TRUCK 7	RAW LBS. OF POULTRY NEEDED TO PRODUCE 1 STD YD CASE 8	PER POUND FINISHED PRODUCT 9	PER CASE FINISHED PRODUCT 10
					MAXIMUM PERCENT BREADING 6				
Total Portions:				<b>Total Batch Weight</b>	Lbs.				

**POULTRY CERTIFICATION:**  
 Full coverage detailed in Poultry Program's current memorandum.  
 Formulation and fabrication procedures must be attached and signed  
 by Processor and DA.

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AMS Approval Signature

---

Effective Date

PLEASE PRINT OR TYPE

---

Name of Company

---

Name and Title of Authorized Representative

---

Signature Date Signed

---

State Agency Approval Signature

---

State Effective Date

\_\_\_\_\_  
DA Signature

\_\_\_\_\_  
Renewal Date

\_\_\_\_\_  
DA Signature

\_\_\_\_\_  
Renewal Date

Formulation, return, and pricing structure cannot be changed during the agreement period without prior approval of DA.

**Instructions and Explanations  
Donated Bone-in Poultry**

All end products to be produced under this Agreement must be submitted on an End Product Data Schedule (EPDS). If more than one poultry end product is to be produced from the Donated Food (DF), each of the end products must be listed on a separate line on the same EPDS. Each poultry EPDS will have a specific combination of end products, therefore, the identification of the combination must be shown at the top of the EPDS.

**Indicate the short title and/or commodity code for the DF to be used. If two of the same DF, such as chilled and or cut-up chicken are to be processed, submit separate EPDS if the percent of guaranteed minimum return is different.**

Using normal round-off procedures, all calculations or quantities should be shown to two (2) decimal places.

In the blank provided in the heading titled "Basis of Price", indicate the basis of the price for the finished products shown in Columns 9 and 10 of the EPDS. If delivered is checked, destination and limitations must be specified.

Processor's fee for service shall not exceed that shown on the schedule, but it may be quoted lower for special promotions, bids, or volume discounts.

For processing and fabrication procedures verification by AMS, Processor must send to the DA a copy of the procedures to be used that include listing of all ingredients and quantities. The DA will sign and date the procedures and return to the Processor for the Grader's use. If the same procedures apply to more than one end product, the product identification codes and /or CN label number must be shown on the procedures.

**If fee-for-service is being reduced by value of by-products, method for calculating credit and value attributed to each by-product must be detailed on the EPDS in the space provided.**

- COLUMN 1** List finished end product item code and product description.
- COLUMN 2** Show net weight per finished case of product as the applicable federal requirements for labeling.
- COLUMN 3** If pre-portioned product, indicate number of portions per case.
- COLUMN 4** State net weight of individual serving. Attach CN label to schedule if required by state or DA.
- COLUMN 5** List the percent DF in the approved formulation and all other ingredients for each end product. List the name and percentage of each APP contained in the formula. A label or list may be attached to show the non-donated ingredients in the formula.
- COLUMN 6** If the end product is breaded, indicate the percent for each product listed. Subtract the unbreaded weight from the breaded weight (prior to frying), divide this figure by breaded weights, and multiply by 100 to determine the maximum percent of breading permitted.
- COLUMN 7** Indicate numbers of cases of each finished product estimated to be returned from the processing of one truckload of DF.
- COLUMN 8** Using one truckload of donated poultry as a basis, show percent of guaranteed minimum return for each end product listed on the EPDS.
- COLUMN 9** The fee-for-service per pound of finished product, which the Processor will charge for conversion of DF into other usable, end products. This fee should include the cost of all other ingredients added to the product.
- COLUMN 10** The fee-for-service per case of finished product, which the Processor will charge for conversion of DF into other usable, end products. This fee should include cost of all other ingredients added to the product.

## ATTACHMENT 6.10

### OFFEROR'S CHECKLIST SOLICITATION No. ED05-0028

*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 the Prices/Delivery Schedule attachment (Ensure all appropriate End Product Data Schedules (EPDS) are included)	Special Terms and Conditions, page 12, Section 8; Attachment 6.1	
3. Provide the required number of References	Special Instructions to Offerors, page 39, section 9.D(3)(a); Attachment 6.2	
4. Submit USDA Offeror's Certification for all Lower Tier Participants (if applicable)	Special Instructions to Offerors, page 37, Section 7.B; Attachment 6.3	
5. Provide Completed Subcontractor Agreement (if needed)	Special Terms and Conditions, page 14, Section 20; Attachment 6.4	
6. Provide Required Performance Bond	Special Terms and Conditions, page 24, Section 40; Attachment 6.5	
7. Sole Proprietor Certificate Waiver (if applicable)	Special Terms and Conditions, page 11, Section 5.A.3.b; Attachment 6.6	
8. Contact Sheet	Attachment 6.7	
9. Data Destination Form	Attachment 6.8	
10. Provide an original and one (1) copy of each of the End Product Data Schedules (as appropriate)	Special Terms and Conditions, page 19, Section 28; Attachment 6.9	
11. Provide an Executive Summary (maximum two pages)	Special Instructions to Offerors, page 38, Section 9.D(1)	
12. Provide a Method of Approach/Implementation Plan (maximum three pages)	Special Instructions to Offerors, page 38, Section 9.D(2)	
13. Provide a Summary Narrative of your Firm's Experience & Expertise Relative to the Scope of Work Requirements (maximum two pages)	Special Instructions to Offerors, page 39, Section 9.D(3)(b)	
14. Offeror's Checklist	Attachment 6.10	

**EXHIBIT 7.1**



**CERTIFICATE OF INSURANCE**

**CONTRACT NO. ED05-0028**

**VENDOR:**

**ARIZONA DEPARTMENT  
OF EDUCATION**

**PROCUREMENT SECTION  
1535 WEST JEFFERSON, Bin 37  
PHOENIX, ARIZONA 85007  
(602) 542-6537**

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.

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

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

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

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

<b>Name and Address of Certificate Holder:</b>	Date Issued: _____  _____ Authorized Representative
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## EXHIBIT 7.2

### Process Time Line

November 3, 2004	Arizona donated commodity food RFP advertised and available to interested processor/offerors for review.
November 19, 2004	Pre-proposal conference held for interested processors/offerors to answer their questions regarding this solicitation.
Post November 19, 2004	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.
November 15, 2004	USDA releases commodity price file. Interested processors/offerors must use this information in preparing their EPDS (prices)
December 17, 2004 @ 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, 2004	ADE will complete its review/evaluation of proposals and award contracts to successful processors/offerors.
January 15, 2005	ADE will issue commodity catalogs based on new contracts and EPDS to sponsors for use in determining where to divert donated commodities.
March 1, 2005	ADE will issue commodity cheese diversions directions to USDA.
July 1, 2005	The new contracts become effective for sponsors to use in buying end products containing donated commodities.

END OF SOLICITATION NO. ED05-0028