



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
AGR0909

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
RON PRICE 304-558-0492

VENDOR

RFQ COPY
 TYPE NAME/ADDRESS HERE

SHIP TO

DEPARTMENT OF AGRICULTURE
 ADMINISTRATIVE SERVICES
 BUILDING 2, ROOM 106
 4720 BRENDA LANE
 CHARLESTON, WV
 25312 304-558-2221

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
02/18/2009				

BID OPENING DATE: 03/10/2009 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	LS		390-07		
USDA COMMODITY CHEDDAR CHEESE OPEN END CONTRACT CONTRACT FOR PROCESSING USDA COMMODITY CHEDDAR CHEESE INTO SAUCE AND OTHER CHEESE PRODUCTS SPECIFICATIONS ATTACHED PRICE ADJUSTMENTS WILL BE CONSIDERED AT TIME OF RENEWAL IN ACCORDANCE WITH THE FOLLOWING: PRICE ADJUSTMENT PROVISION: THE STATE OF WEST VIRGINIA WILL CONSIDER BIDS THAT CONTAIN PROVISIONS FOR PRICE ADJUSTMENTS PRIOR TO THE ORIGINAL EXPIRATION OF THE CONTRACT, PROVIDED THAT SUCH PRICE ADJUSTMENT COVERS BOTH UPWARD AND DOWNWARD MOVEMENT OF THE COMMODITY PRICE, AND THAT ADJUSTMENT IS BASED ON THE "PASS THROUGH" INCREASE OR DECREASE OF RAW MATERIALS AND/OR LABOR, WHICH MAKE UP ALL OR A SUBSTANTIAL PART OF A PRODUCT. ADJUSTMENTS ARE TO BE BASED UPON AN ACTUAL DOLLAR FIGURE, NOT A PERCENTAGE. ALL PRICE ADJUSTMENT REQUESTS MUST BE SUBSTANTIATED IN A MANNER ACCEPTABLE TO THE DIRECTOR PURCHASING, E.G. GOVERNMENTAL BENCH MARKS, GENERAL MARKET INCREASE, PUBLISHED PRICE LISTS. SUCH REQUESTS FOR AND INCREASE SHOULD BE RECEIVED IN WRITING BY THE DIRECTOR OF PURCHASING AT LEAST 30 DAYS IN ADVANCE OF THE EFFECTIVE DATE OF THE INCREASE. ANY TIME THE VENDOR REQUESTS A PRICE ADJUSTMENT, THE PURCHASING DIVISION MAY EITHER ACCEPT THE PRICE ADJUSTMENT AND AMEND THE CONTRACT						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

**GENERAL TERMS & CONDITIONS
REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)**

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. All quotations are governed by the *West Virginia Code* and the *Legislative Rules* of the Purchasing Division.
4. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
5. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
6. Payment may only be made after the delivery and acceptance of goods or services.
7. Interest may be paid for late payment in accordance with the *West Virginia Code*.
8. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
9. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
10. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
11. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
12. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this Contract may be deemed null and void, and terminated without further order.
14. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
15. **WEST VIRGINIA ALCOHOL & DRUG-FREE WORKPLACE ACT:** If this Contract constitutes a public improvement construction contract as set forth in Article 1D, Chapter 21 of the West Virginia Code ("The West Virginia Alcohol and Drug-Free Workplace Act"), then the following language shall hereby become part of this Contract: "The contractor and its subcontractors shall implement and maintain a written drug-free workplace policy in compliance with the West Virginia Alcohol and Drug-Free Workplace Act, as set forth in Article 1D, Chapter 21 of the West Virginia Code. The contractor and its subcontractors shall provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free work place policy in compliance with the West Virginia and Drug-Free Workplace Act. It is understood and agreed that this Contract shall be cancelled by the awarding authority if the Contractor: 1) Fails to implement its drug-free workplace policy; 2) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or 3) Provides to the public authority false information regarding the contractor's drug-free workplace policy."

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division.
2. **SPECIFICATIONS:** Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Complete all sections of the quotation form.
4. Unit prices shall prevail in case of discrepancy.
5. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
6. **BID SUBMISSION:** All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications: Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
AGR0909

PAGE
2

ADDRESS CORRESPONDENCE TO ATTENTION OF
RON PRICE 304-558-0492

RFQ COPY
 TYPE NAME/ADDRESS HERE

VENDOR

SHIP TO

DEPARTMENT OF AGRICULTURE
 ADMINISTRATIVE SERVICES
 BUILDING 2, ROOM 106
 4720 BRENDA LANE
 CHARLESTON, WV
 25312 304-558-2221

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
02/18/2009				

BID OPENING DATE: **03/10/2009** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>ACCORDINGLY OR REJECT THE ADJUSTMENT IN ITS ENTIRETY AND CANCEL THE CONTRACT.</p> <p style="text-align: center;">NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p style="text-align: center;">DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION BUILDING 15 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305-0130</p> <p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p> <p>BUYER: RP-41</p> <p>RFQ. NO.: AGR0909</p> <p>BID OPENING DATE: 03/10/09</p> <p>BID OPENING TIME: 1:30PM</p> <p>PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:</p> <p style="text-align: center;">-----</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
AGR0909

PAGE
3

ADDRESS CORRESPONDENCE TO ATTENTION OF:
RON PRICE 304-558-0492

RFQ COPY
 TYPE NAME/ADDRESS HERE

VENDOR

SHIP TO

DEPARTMENT OF AGRICULTURE
 ADMINISTRATIVE SERVICES
 BUILDING 2, ROOM 106
 4720 BRENDA LANE
 CHARLESTON, WV
 25312 304-558-2221

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
02/18/2009				

BID OPENING DATE: 03/10/2009 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
CONTACT PERSON (PLEASE PRINT CLEARLY):						

***** THIS IS THE END OF RFQ AGR0909 ***** TOTAL: _____						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
-----------	-----------	------

TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE
-------	------	-----------------------------------

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

To establish an agreement between the West Virginia Department of Agriculture Donated Foods Program and a processing firm to produce **cheddar cheese products** using USDA Commodity **B049 – CHEDDAR CHEESE**

SPECIAL PROVISIONS FOR THE PROCESSING OF CHEESE:

1. CONTRACT/AGREEMENT REQUIREMENTS

The processor must comply with and abide by all specifications, qualifiers, terms, and conditions as set forth in this Invitation to Bid, including all attachments (hereinafter referred to collectively as “The Bid Package”).

The Bid Package will provide the framework for the processing of cheddar cheese into processed cheddar cheese products for use and consumption by West Virginia Schools and other authorized recipient agencies in the State of West Virginia.

Any processing company submitting a completed Bid Package under this Invitation must have an approved National Processing Agreement in place with USDA for the time period covered by this Invitation and any subsequent agreement(s) with the State of West Virginia. The contractual obligations under which a Processor may utilize USDA Commodities to manufacture and deliver specified end product(s) to the WV Department of Agriculture Food Distribution Program to ensure the return of quantity, quality, and value of such commodities is set forth in the National Processing Agreement and also in the State Participation Agreement, Bid Specifications and all other attachments included in this Bid Package.

1a. CONTRACT PERIOD:

The State Participation Agreement shall be valid for a one (1) year period from July 01, 2009, through June 30, 2010.

2. PRODUCT FORMULA:

Processor is to include the raw batch formula for all processed end products under this Agreement, listing the name and quantity of each ingredient contained in the batch recipe. Flavorings and seasonings may be given as an aggregate quantity.

A NUTRITIONAL ANALYSIS OF FINISHED PRODUCTS SHOULD BE PROVIDED WITH THIS BID PACKAGE. THE ANALYSIS IS TO INCLUDE THE AMOUNTS OF SODIUM, THE AMOUNTS OF SATURATED FAT, MONOSATURATED FAT, POLYSATURATED FAT; AND THE AMOUNT OF THEIR PERCENT OF CALORIES, TOTAL FAT GRAMS AND TOTAL CALORIES PER SERVING. ALSO, INFORMATION REGARDING COOKING/PREPARATION, HANDLING AND STORAGE SHOULD BE SUBMITTED. ANY BID PACKAGE SUBMITTED WITHOUT AN ADEQUATE AND COMPLETE NUTRITIONAL ANALYSIS AND THE OTHER OUTLINED INFORMATION MAY BE CONSIDERED DISQUALIFIED AND INVALID AND, THEREFORE, NOT BE AWARDED AN AGREEMENT.

3. SAMPLES:

The WV Department of Agriculture Food Distribution Program requests bidding processors submit samples of each item for testing purposes PRIOR TO THE DAY OF THE BID OPENING.

SAMPLES SUBMITTED SHOULD BE IN SUFFICIENT QUANTITY TO PERMIT EVALUATION BY A MINIMUM OF TWENTY (20) PEOPLE. SAMPLES SHOULD BE CLEARLY MARKED WITH APPROPRIATE PRODUCT NAMES AND CODES IDENTICAL TO THOSE ON SUBMITTED END PRODUCT DATA SCHEDULES.

Samples shall be submitted without charge PRIOR TO the BID OPENING DATE to:

WV Department of Agriculture
Food Distribution Program
908 Bullitt Street
Charleston, WV 25301

4. END PRODUCT DATA SCHEDULE (EPDS):

End Product Data Schedule (EPDS) forms and/or a Summary End Product Data Schedule (SEPDS) form with all applicable columns completed must be submitted for each end product and returned as part of the completed bid package.

ALL PRICING SUBMITTED ON EPDSs and/or SEPDSs and/or OTHERWISE SUBMITTED AS PART OF THE BID PACKAGE MUST BE THE ACTUAL MAXIMUM PRICE YOU WILL CHARGE WEST VIRGINIA FOR THE DURATION OF THIS AGREEMENT, NOT NATIONAL PRICES. ADDITIONALLY, ALL PRICES MUST BE BASED ON 100% YIELD ON A FEE-FOR-SERVICE BASIS. ALL EPDSs AND SEPDSs SHOULD BE ASCRIBED WITH ORIGINAL SIGNATURES IN BLUE INK. NEITHER ELECTRONIC NOR STAMPED SIGNATURES CAN BE ACCEPTED.

5. PRICE:

In addition to the pricing requirements outlined above in Number 4, prices quoted shall be firm for the duration of the Agreement. Prices must be based on "100% Yield" and shall be calculated on a "Fee-for-Service" basis.

6. SPECIFICATIONS:

The commodities processed in conjunction with this Agreement shall adhere to the specifications marked as ATTACHMENT A.

7. PACKAGING AND LABELING:

The finished end products are to be packaged and shipped under the proper conditions recognized by the industry to ensure the return of a quality finished product free from damage and deformity upon delivery and as may otherwise be set forth in Attachment A - Specifications.

Packaging descriptions submitted and therefore agreed to by Processor (i.e. stated case sizes) shall be firm for the duration of this Agreement.

7a. CONTAINER AND MARKING SPECIFICATIONS:

Packaged end-products shall be packed in good commercial fiberboard shipping containers which are acceptable by common or other carrier for safe transportation to point of destination specified in shipping instructions and shall be of a size to accommodate the products without slack filling or bulging. The container shall be securely sealed by gluing, or closed by use of a filament reinforced freezer-type tape, or Scotch Brand No. 3523 Cold Temperature Polyester Film Packaging Tape or its equal, or nonmetallic strapping having a heat-sealed or comparable friction weld joint. Staples and/or steel or wire straps shall not be used as closure for the container.

ALL PRODUCTS MUST BE PACKED IN CONTAINERS CAPABLE OF BEING STACKED FOR PALLETIZING AND/OR WAREHOUSING.

All packing and packing materials shall be new, clean, sanitary, and shall not impart objectionable odors or flavors to the product and shall be approved for use in contact with food products. Marking material shall be water fast, non-smearing, and of a color contrasting with the color of the container.

Each shipping container shall be legibly initialed, stamped, or labeled to show:

- A. The net weight.
- B. USDA inspection marks and plant number and name, and location of processor. Each container shall bear required labeling, USDA contract compliance stamp and certificate number.
- C. Date of Manufacture-Processing.
- E. Ingredient statement by order of predominance.
- F. The appropriate CN LABEL is to be affixed to each case and a copy of same CN LABEL attached to the EPDS. The CN LABEL identification number assigned by FNS is to be clearly shown.
- G. The proper recommended storage instructions.

8. DELIVERY:

The Processor agrees to process, produce and deliver the end products in truckload lots to a warehouse located (in or near Charleston) in West Virginia; so specified upon the order of the West Virginia Department of Agriculture.

Delivery quantities will be determined by the WV Department of Agriculture Food Distribution Program. The processor will be responsible for the delivery of the end product, undamaged, unspoiled, and fit for human consumption.

9. SHIPPING TERMS:

All freight charges must be included in the bid price and all product must be shipped F.O.B. destination.

10. QUANTITY:

The quantity of cheddar cheese made available to West Virginia will vary according to commodity

availability and USDA policy. The WV Department of Agriculture Food Distribution Program shall be the final authority with regard to the total quantity of USDA commodities allocated for processing under this agreement.

11. PICK-UP:

From time to time commodities may have to be picked up for processing. In an instance of that unlikely event; the pick up point will be designated by the WV Department of Agriculture Food Distribution Program and will most usually be the Food Distribution warehouse in or near Charleston, WV. The cost of transportation to the processing plant may be added to the price of the finished end product (on a \$ per lb. processed product basis). Written permission from the WV Department of Agriculture Food Distribution Program is required for backhauling from Recipient Agencies.

12. ACCOUNTABILITY AND RECORDS:

The successful bidding processor shall be required to establish and maintain perpetual inventories and control of all commodities received for processing, performance and production records and other reporting systems as may be required by state and federal regulations.

13. PROCESSING AGREEMENT:

In addition to an approved National Processing Agreement with USDA, the successful bidding processor shall be required to execute a standard State Participation Agreement with the West Virginia Department of Agriculture, Food Distribution Program. The attached State Participation Agreement (ATTACHMENT B) must be fully executed in BLUE INK by bidding processor and returned as part of the completed bid package. Upon award, the State Participation Agreement executed by the successful bidding processor will be further executed in full by the appropriate Food Distribution Program personnel and become, at that time, in full force and effect. A copy of the fully executed State Participation Agreement will be sent to the successful bidding processor for processor's records.

13a. BASIS OF AWARD:

The West Virginia Purchasing Division shall award the contract to the lowest responsible bidder(s) who meets the requirements of the INVITATION TO BID, and who is considered best able to serve the interests of the State of West Virginia.

14. LIFE OF CONTRACT:

This contract is to become effective on July 01, 2009 and extend for a period of one year. The vendor may terminate this contract for any reason upon giving the Director of the WV Department of Agriculture Food Distribution Program and the Director of the Purchasing Division thirty (30) days written notice.

This contract may be declared immediately terminated at the option of the Director of the WV Department of Agriculture Food Distribution Program and/or the Director of the Purchasing Division if this contract and/or any of its terms, conditions, or covenants are not complied with by the Processor, or if any right thereunder in favor of the WV Department of Agriculture Food Distribution Program is threatened or jeopardized by processor or his agent.

This contract may be terminated by the agency only upon the return delivery of unencumbered and/or unobligated food and/or funds to the WV Department of Agriculture Food Distribution Program. In the event of termination due to non-compliance with the terms of this contract, or at the request of the Processor, transportation costs for the return of USDA commodities shall be borne by Processor.

Processor shall not assign and/or delegate any of the duties and/or responsibilities to process food products under this Agreement to any party, either by way of a subcontract or any other arrangement, without first having received the prior written consent of the WV Department of Agriculture Food Distribution Program.

Unless specific provisions are stipulated elsewhere in this contract-agreement document, the terms, conditions, and pricing set herein are firm for the life of the contract.

15. RENEWAL:

June 30, 2010 is to be the expiration date of the contract-agreement. The contract may be extended for two 1-year periods. Any changes to date must be updated before any contract extension is granted including, but not limited to, pricing, yield, and the signature page.

16. LETTERS OF REFERENCE:

Bidding processors should provide **three (3) business references** with the completed bid package. These references will consist of current or previous customers and should include: the name of the company/agency, the most current mailing address and telephone number, and the name of at least one contact person.

17. BILLING:

The successful bidding processor is required to "Bill as Shipped" to the ordering agency.

18. PAYMENT:

The West Virginia Department of Agriculture Food Distribution Program will authorize and process for payment each invoice within thirty (30) days after the date of receipt.

FOR CHEDDAR CHEESE PRODUCTS**1. END PRODUCT INFORMATION**

The following are the cheddar cheese products being solicited. These cheddar cheese products may contain no more than 8 g of fat per 1 oz, no more than 630 mg of sodium per serving, and 0 trans fats.

- #10 Can Cheddar Cheese Sauce (approximate 3 oz. serving)
- #10 Can Mild Jalapeno/Nacho Cheese Sauce (approximate 3 oz. serving)
- Individually Wrapped Colby Jack Cheese Portions (approximate 1 oz. serving)
- Individually Wrapped Reduced Fat Colby Jack Cheese Portions (approximate 1 oz. serving)
- Individually Wrapped Mozzarella String Cheese (approximate 1 oz. serving)
- Individually Wrapped Light Mozzarella String Cheese (approximate 1 oz. serving)

2. GENERAL REQUIREMENTS

- CN Labels are required
- No MSG, artificial flavorings, colorings and/or preservatives
- Cases should have a gross weight of no more than 30 lbs.
- Each individual item is to be packaged in such a way that will prevent sticking together when frozen
- All frozen products are to be delivered at 0° F to -10° F and must show no signs of refreezing, thawing or freezer burn.

3. PRODUCT STANDARDS

- All products covered under this Agreement shall be formulated, manufactured, handled, stored, packaged, and shipped in compliance with the regulations and guidelines of the State of West Virginia, the United States Department of Agriculture, the Federal Food, Drug and Cosmetic Act, and all pertinent sections of the Code of Federal Regulations which govern Food Distribution and the National School Lunch Program, as well as Industry standards related to products for Food Distribution and the National School Lunch Program.
- Any end product not meeting the fabrication, formulation, and/or packaging requirements will be rejected by the WV Food Distribution Program and returned to Processor at Processor's expense.

NATIONAL MASTER PROCESSING AGREEMENT
STATE PARTICIPATION AGREEMENT

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

State Distributing Agency <u>WV Department of Agriculture, Donated Foods Program</u>	Processor _____
Name <u>Darrell Carter</u>	Name _____
Title <u>Program Director</u>	Title _____
Address <u>908 Bullitt Street</u>	Address _____
City, State, Zip <u>Charleston, WV, 25301</u>	City, State, Zip _____
Contact <u>Darrell Carter</u>	Contact _____
Phone <u>304-558-0573</u>	Phone _____
Fax <u>304-558-2105</u>	Fax _____
E-mail <u>dcarter@ag.state.wv.us</u>	E-mail _____
Web Address <u>www.state.wv.us/admin/purchase/vrc</u>	Web Address _____

Signature _____ Signature _____

Date _____ Date _____

Period of Agreement: This Agreement shall become effective on JULY 1, 2009 and will terminate on JUNE 30, 2010.

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

Permitted By State	Value Pass Through System	Selected by Processor
	Direct Discount	
	Refund	
	Indirect Discount (net off invoice)*	
	Alternate Value Pass Thru System * (requires FNS approval)	
THIS IS THE ONLY VPT ALLOWED IN WV	Fee for Service – billed by processor	
	Fee for Service – billed by distributor	

*Sales Verification Required

If sales verification is required, check one:

State delegates sales verification to the processor

[According to 250.19 (2)(vi) (C) states must review the processor's findings and select a random sub-sample of at least 10% of all sales verified by the processor and reverify the sales by re-contacting the RA]

Processor should submit their Sales Verification Plan to the State Agency.

State will conduct sales verification

2. **Summary End Product Data Schedules (SEPDS).** Processor will submit SEPDS to State with the completed State Participation Agreement. The SEPDS contains summary information from approved EPDS and a master SEPDS approved by USDA. Processor may select specific EPDS for processing in a given state. The state also has the option to accept or reject individual products listed on the SEPDS, and in the case of multiple commodities available for processing, may accept or reject certain commodities for processing. Note: the case weight listed on the SEPDS **MUST** match the label on the finished case.

SUMMARY END PRODUCT DATA SCHEDULES SUBMITTED WITH THIS BID PACKAGE MUST INCLUDE MAXIMUM PRICES WHICH WILL BE CHARGED TO WEST VIRGINIA FOR THE DURATION OF THE AGREEMENT (IF AN AGREEMENT IS AWARDED)

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

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

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

Submit CN labels with SEPDS.

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

Processor must provide nutrition information to RA upon request.

Processor's nutrition information has been submitted to USDA Database

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

_____ (Provide the web address)

Processor must submit nutrition information with the SEPDS

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

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

State permits backhauling Yes No

Backhauling permitted from State Warehouse School District .

State requires attached form for requesting approval to backhaul Yes No

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

COMMODITIES IN WEST VIRGINIA ARE PURCHASED AND DISTRIBUTED DIRECTLY BY THE STATE DISTRIBUTING AGENCY.

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

ALL INSTRUCTIONS AND PROVISIONS OF THE INVITATION TO BID AND ATTACHMENT A – SPECIFICATIONS ARE BY REFERENCE INCORPORATED HEREIN

9. **Additional State Requirements.**

AS OUTLINED UNDER NUMBER 1 ABOVE, THE ONLY VALUE-PASS-THROUGH SYSTEM CURRENTLY ALLOWED BY WV IS FEE-FOR-SERVICE BILLED BY PROCESSOR

AS OUTLINED UNDER NUMBER 2 ABOVE, SUMMARY END PRODUCT DATA SCHEDULES SUBMITTED WITH THIS BID PACKAGE MUST INCLUDE MAXIMUM PRICES WHICH WILL BE CHARGED TO WEST VIRGINIA FOR THE DURATION OF THE AGREEMENT (IF AN AGREEMENT IS AWARDED)

ALL PROVISIONS OF THE INVITATION TO BID AND ATTACHMENT A – SPECIFICATIONS ARE BY REFERENCE INCORPORATED HEREIN

Subcontractor Agreement: Authority USDA FNS Title 7 CFR Part 250

Whereas _____ (primary processor) holds a Master Donated Food Processing Agreement with the _____ covering the period from July 1, 2003, to June 30, 2004(hereinafter "Agreement"), and whereas _____ (subcontractor) desires and is capable of performing part of the Agreement, namely _____ (specify function and USDA donated foods used). It is further agreed that the Subcontractor mentioned above will conform to all terms and conditions of the above named Agreement, making this addendum part of that Agreement.

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

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

An End Product Data Sheet(s) must be signed by the Processor and the Subcontractor and attached to this addendum for the end product(s) that are being processed, or any other function for which the subcontractor is performing.

ALL PARTIES APPROVED BY SIGNING BELOW:

PRIMARY PROCESSOR

Primary Processor _____ Title _____ Telephone No. _____

Name _____ Address _____

Signature _____ Date _____

SUBCONTRACTOR

Primary Processor _____ Title _____ Telephone No. _____

Name _____ Address _____

Signature _____ Date _____

FOOD DISTRIBUTION APPROVAL

Primary Processor _____ Title _____ Telephone No. _____

Name _____ Address _____

Signature _____ Date _____



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

Gus R. Douglass, Commissioner
Donated Foods Program

908 Bullitt Street

Charleston, West Virginia 25301

Telephone:(304)558-0573 Fax: (304)558-2105

Janet L. Fisher
Deputy
Commissioner

Steve Hannah
Deputy
Commissioner

MEMORANDUM

TO: State of West Virginia
Purchasing Division

CC: Gus R. Douglass, Commissioner
Jean F. Smith, Director Marketing and Development Division
Sandi Gillespie, Director Administrative Services Division
Cindy Fisher, Administrative Services Division

FROM: Darrell Carter, Director
Donated Foods Program
West Virginia Department of Agriculture
Marketing and Development Division

SUBJECT: Request for Quotations

DATE: January 16, 2009

As previously discussed and as was the case with the RFQ in 2006, the attached Request for Quotations for commodity processed food products do not require the vendor to provide a bond for our State. Each vendor responding to these requests are required to have a National Processing Agreement (NPA – Copy Attached for reference) with the United States Department of Agriculture (USDA). Under these NPAs, USDA retains full responsibility and liability for the products and therefore also holds the bonds (Copy of USDA Policy Memorandum FD-039 – Bonding in National Master Processing Agreements- attached for reference).

Please expedite these as much as possible. Thank you for your time and consideration in this matter. If you have any questions, please contact me or Melinda Scaggs at 558-0573.

DC/mds



Food Distribution National Policy Memorandum

United States
Department of
Agriculture

DATE: November 24, 2008

Food and
Nutrition
Service

POLICY NO.: FD-081: Summer Food Service Program (SFSP)

SUBJECT: Distribution of Donated Foods to Service Institutions
Participating in the Summer Food Service Program

3101 Park
Center Drive

Alexandria, VA
22302-1500

7 CFR Parts 225 and 250 provide for the distribution of donated foods to eligible service institutions (referred to as sponsors in 7 CFR Part 225) in the Summer Food Service Program (SFSP). These service institutions may include school food authorities (SFAs), residential summer camps, or other public or private nonprofit organizations that serve summer meals to children. Although the Richard B. Russell National School Lunch Act does not establish a specific per-meal value of donated food assistance in SFSP (as in the National School Lunch Program (NSLP)), Food and Nutrition Service (FNS) has traditionally provided donated food assistance in SFSP valued at 1.5 cents per meal served. Such assistance helps service institutions to provide nutritious meals to children participating in summer activities. However, the relatively small amount of donated food assistance provided presents some challenges to distributing agencies in distributing such foods in an efficient and cost-effective manner. For example, summer camps or programs sponsored by private nonprofit or public organizations may be eligible to receive only a limited quantity of donated foods, or may be located in remote areas. In this memorandum, we present several options for consideration by the distributing agency to help ensure that service institutions receive donated foods for use in the summer meals provided in SFSP in an efficient and cost-effective manner.

Distribution from Distributing Agency Storage Facilities

The distributing agency may distribute NSLP donated foods in its storage facilities to service institutions, as part of their SFSP "entitlement", if this would help to ensure that such institutions receive donated foods in a more timely and efficient manner. In such case, the distributing agency must subsequently report to FNS the types and amounts of NSLP donated foods that have been distributed in SFSP, so that FNS can make the appropriate adjustments on delivery orders and NSLP entitlements. However, the distributing agency may not distribute such NSLP donated foods to service institutions, for use in SFSP, in excess of such institutions' SFSP "entitlement", unless the distributing agency:

- 1) Determines, in consultation with SFAs, that such donated foods may not be efficiently used in NSLP; and
- 2) Receives approval from FNS to "redonate" such foods to service institutions in SFSP.

Policy Memorandum No. FD-081

Distribution through an SFA or School Co-op

The distributing agency may approve distribution of SFSP donated foods to service institutions through an SFA (or school co-op or consortium), in accordance with the distributing agency's agreement with the SFA, as required in 7 CFR 250.12(b), and in accordance with an agreement between the SFA and service institutions providing for such distribution. In accordance with its agreement with service institutions, the SFA may:

- 1) Submit orders for donated foods to the distributing agency on behalf of service institutions;
- 2) Store donated foods for service institutions together with its NSLP and SFSP donated foods;
- 3) Distribute any such donated foods requested by service institutions to meet their "entitlement", as well as any additional foods that may not be efficiently utilized by the SFA or school co-op; and
- 4) Assess a distribution charge to cover costs associated with storage and delivery of such foods to service institutions.

This means of distribution may be more cost-effective, as it would permit the distributing agency to consolidate shipments to a single distribution site, and would permit service institutions to receive foods (or to pick them up) from a distribution site closer to them. Service institutions would be responsible for making the necessary arrangements with the SFA to ensure receipt of donated foods, and must maintain a record of such receipt, in accordance with 7 CFR 250.16(a). Any question arising with respect to the distribution or control of such donated foods must be resolved by the SFA and service institutions, in accordance with their agreement.

Distribution through a Commercial Storage Facility or Other Organization

The distributing agency may arrange for the distribution of SFSP donated foods to a storage facility or other organization (such as a food bank) for subsequent distribution to service institutions. This means of distribution may be more cost-effective, as the storage facility or other organization may be located closer to service institutions, thus reducing any distribution charge. Such distribution must be made in accordance with an agreement between the distributing agency and the appropriate organization, as required in 7 CFR 250.12(b), or, for a commercial storage facility, in accordance with a contract, as required in 7 CFR 250.14(d). Procurement of such service from a commercial enterprise using Federal funds must ensure compliance with Federal procurement requirements in 7 CFR Part 3016. All entities performing such a storage and distribution function would be subject to the storage and inventory requirements in 7 CFR Part 250 applicable to storage facilities at the distributing agency level. Service institutions would be responsible for making the necessary arrangements with the storage facility or other organization to ensure receipt of donated foods, in accordance with an agreement between the parties, and must maintain a record of receipt of such foods, in accordance with 7 CFR 250.16(a).

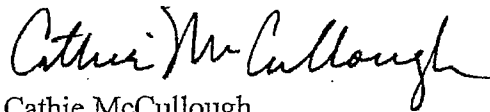
Policy Memorandum No. FD 081

Distribution through the TEFAP Network

The distributing agency may also distribute SFSP foods to service institutions using the TEFAP distribution network (i.e., food banks or other eligible recipient agencies, as defined in 7 CFR 251.3), if the distributing agency administers both SFSP and TEFAP. Such distribution must be performed in accordance with the distributing agency's agreement with the eligible recipient agency, as required in 7 CFR 251.2(c) and (d). Since service institutions serve predominantly needy persons, they are eligible to receive TEFAP foods as eligible recipient agencies, and, as emergency feeding organizations, would receive first priority in distribution of such foods, in accordance with 7 CFR 251.4(h). This means of distribution may be more cost-effective, as it would permit service institutions to receive consolidated deliveries of SFSP and TEFAP foods (or to pick up such foods at one time) from a food bank near them, which may reduce the charge assessed by the food bank for the cost of storage and distribution of such foods. Service institutions must have an agreement with such food bank or other eligible recipient agency, in accordance with 7 CFR 251.2(c) and (d), and must maintain a record of receipt of all SFSP and TEFAP foods received, in accordance with 7 CFR 250.16(a).

Processing and Purchase of End Products from a Commercial Distributor

The distributing agency may arrange for the delivery of SFSP donated foods to a processor for processing into end products that service institutions purchase through local commercial distributors for use in SFSP. Such processing must be performed in accordance with the requirements in Subpart C of 7 CFR Part 250, and in accordance with an agreement between the distributing agency and the processor. It also must ensure that service institutions receive credit for the value of donated foods in the end products, through a discount, or refund or rebate, in its purchase of the end products from the processor or distributor.



Cathie McCullough
Director
Food Distribution Division

NATIONAL PROCESSING AGREEMENT

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

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

and is made with respect to the following facts:

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

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

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

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

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

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

1. AGREEMENT INTENT

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

2. CATEGORIES OF DONATED FOODS IN PROCESSING

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

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

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

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

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

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

Substitution may occur in advance of the actual receipt of DF. Should the Processor choose to use the substitution option prior to the DF being purchased by USDA, the Processor shall assume all risks. USDA, DA, and RA cannot guarantee replacement of commercial food utilized in anticipation of replacement with a DF and assumes no liability for such replacement. The Processor enters negative inventory at his own risk.

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

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

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

- 1) Utilizing commercial food that is of U.S. origin and identical to or superior in every particular to the DF as evidenced by certification performed by or acceptable to the

applicable federal acceptance service to produce additional end product. A USDA certificate must be obtained to certify the quality of replacement meat and poultry; or

- 2) Reimbursing the RA or USDA the value of DF that would have been used to produce the end product.

3. PROCESSING ARRANGEMENTS

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

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

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

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

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

1) Direct Sales

a. Discount System

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

b. Refund System

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

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

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

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

2) Indirect Sales

a. Discount System (Hybrid System)

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

b. Refund System

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

3) Other Value Pass-Through Systems

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

B. Fee-For-Service System

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

- 1) The Processor delivers the end products directly to the RA or RA's designee and bills the RA for the agreed upon fee for service.
- 2) Delivery is made by commercial distributors. Three options for arranging payment for end products are:
 - a. A dual billing system whereby the RA is billed by the Processor for the fee for service and the distributor bills the RA for storage and delivery of end products; or
 - b. Processor arranges for the delivery with a distributor for the RA. The Processor's invoice must include both processing fee and the distributor's charges as separate identifiable charges; or
 - c. Processor arranges for delivery and billing by a distributor in accordance with FD-025: Fee-For-Service Billing Methods Through a Distributor. Processor retains financial obligations for sales to ineligible recipients. The distributor never assumes this obligation as the processing Agreement is between the Processor and USDA.

4. PROCESSOR SALES VERIFICATION

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

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

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

5. END PRODUCT DATA SCHEDULE

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

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

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

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

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

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

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

6. PACKAGING

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

7. LABELING

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

A. Nonsubstitutable DF as defined in Article 2.C. shall have clearly shown on the exterior shipping container, and where practical the individual wrappings or containers within the exterior container, of end product the legend "Contains Commodities Donated by the United States (U.S.) Department of Agriculture. This product shall be sold only to eligible Recipient Agencies." This requirement may be changed at the option of the USDA.

B. Processor shall obtain approval through procedures established by FNS in conjunction with the Food Safety Inspection Service (FSIS) and AMS of the USDA, and National Marine Fisheries Service of the U.S. Department of Commerce, or other applicable federal agency for all labels which make any claim with regard to an end product's contribution toward meal requirements of any Child Nutrition Program.

C. Processor may be required to obtain a Child Nutrition (CN) label for all end products containing meat, poultry, fish or a meat alternate such as cheese or peanut butter.

D. A nutritional analysis of finished products that contribute to the meal pattern must be provided to RA upon request.

8. QUALITY CONTROL (QC)

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

A. Processor shall transport DF picked up from DA or RA; receive, handle, store and deliver end product in a safe and sanitary manner and at the recommended temperature for the specific DF and end product covered by this Agreement.

B. Processor, with the concurrence of USDA, may refuse to accept from the carrier for the account and disposition of the vendor or USDA any delivery of DF directly to the Processor's plant or to his authorized storage agent which does not meet the federal specifications under which it was purchased and shipped. Processor shall maintain a written plan for the receipt of donated foods to ensure that only wholesome food that complies with the Federal specifications is accepted for further processing.

C. All end product produced under this Agreement shall be processed according to the health and sanitation standards for plant facilities and food processing established by the locality or state in which Processor's plant is located or by the applicable federal standards, whichever are higher.

D. At the option of USDA, samples may be pulled from delivered end product for laboratory testing. Processor shall pay costs of such tests only if product sample tested fails to meet either Agreement specifications or quality and wholesomeness standards.

E. Processor shall maintain end product batch identification in the event end product is rejected upon delivery. USDA, DA, or RA designate shall reject end product failing to meet Agreement specifications or wholesomeness standards and Processor shall be so notified. Processor shall be given fifteen days time from this notice of rejection to negotiate removal of rejected product and replacement by acceptable end product. If agreement is not reached, the USDA or purchasing RA/DA shall have the right to purchase the same or similar product on the open market at Processor's expense. If Processor is unable to arrange removal of rejected product within a reasonable time, USDA shall proceed to authorize removal and destruction at Processor's expense.

9. INSPECTION AND GRADING REQUIREMENTS FOR PROCESSING

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

A. **Continuous Wholesomeness Inspection** - When donated meat or poultry products are processed or when commercial meat or poultry products are incorporated into an end product containing one or more DF, all processing shall be performed in plants under continuous inspection by FSIS personnel, or State meat and poultry inspection personnel in those states certified to have programs at least equal to the federal inspection program.

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

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

- (c) That the documented urgency of the RA's need for the end product precludes the use of acceptance services

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

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

10. PROCESSING OF DONATED MEAT AND POULTRY

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

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

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

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

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

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

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

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

11. **DONATED FOOD CONTAINERS**

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

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

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

A. The by-product, if agreeable to the RA for which the DF was processed, shall be accumulated and returned in sanitary and wholesome manner to RA; or

B. At the option of USDA, Processor shall return to the DA or RA for which the DF was processed all funds received from the sale of salvageable by-product material minus any expenses incurred by the Processor to affect the sale. Return of such funds shall at the option of USDA be in the form of a cash payment or a reduction in the selling price of the end product based on the following:

- 1) The actual value received from the sale of the by-product by Processor;

2) The fair market value of the by-product at the time it is further processed or refined by Processor.

C. Special handling instructions and dispositions of any by-product shall be determined between the recipient and the processor

13. TRANSFERS OF USDA DONATED FOODS

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

14. INVENTORY REDUCTIONS

A. **Substitutable Donated Foods**

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

B. **Nonsubstitutable and Limited Substitutable Donated Foods**

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

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

15. PERFORMANCE REPORTING

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

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

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

A) State Monthly Performance Reports

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

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

B) National Monthly Performance Reports

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

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

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

16. ACCOUNTABILITY AND RECORDS

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

A. **Production Records** - Processor is obligated to meet DF usage in production stated on the EPDS and shall be liable for shortages and overages between that stated usage per case of end product and the actual usage per case of end product. Production records shall include:

- 1) Daily or batch production records to substantiate actual DF or substituted commercial ingredient usage per case of end product. At a minimum such records shall consist of end product formulation or batch recipes; production dates, batch identification and/or periods of production; quantity of DF or substituted commercial food placed into production for the period; and quantity of end product produced during the same period of production.
- 2) Quality control records as required by Article 8, end product labeling and any in-plant quality control records used to assure proper formulation packaging net weight, bacteriological safety and other controls to assure end product quality and wholesomeness.
- 3) Grading certificates and reports for meat and poultry issued on incoming DF or substituted commercial food; during formulation and production of the end product; and on the outgoing end product by the applicable federal acceptance service.
- 4) Authorization letters from USDA waiving federal acceptance service requirements for a specific production run.

B. **Perpetual Inventory of Donated Food** - Processor shall maintain accurate and complete records with respect to receipt, usage, disposition, inventory of DF, load out check sheets, bills of

loading, signed delivery tickets, and any other shipping and receiving documents to substantiate receipt of delivery of DF or substituted commercial food in the end product to a DA, RA, or their authorized agent.

C. Other Records

- 1) Quality of Commercial Food. Refer to Article 2.A.1.
- 2) Documentation of Value Pass-through or Fee for Service. Refer to Article 3.
- 3) Processor Sales Verification. Refer to Article 4.
- 4) Transfers of DF. Refer to Article 13.
- 5) Performance Reports. Refer to Article 15.A.

17. AUDITS

A. CPA Audits

Processor is subject to the following audit requirements.

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

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

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

B. Right of Review and Audit

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

18. LIABILITY FOR DONATED FOODS

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

A. Substitutable Donated Foods

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

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

B. Nonsubstitutable Donated Foods

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

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

19. INVENTORY PROTECTION

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

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

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

20. AGREEMENT TERMINATION

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

A. When this Agreement is terminated or not renewed, the Processor at the option of USDA, in cooperation with applicable DA, regarding nonsubstitutable DF shall:

- 1) Return the DF to appropriate DA/RA; or
- 2) Pay the appropriate DA/RA an amount equal to USDA s most recent cost information on acquiring and delivering replacement food relative to the time of termination; or
- 3) Pay the USDA current per pound value established by this Agreement; or
- 4) Pay the Commodity Credit Corporation (CCC) unrestricted sales price.

B. When this Agreement is terminated or not renewed, the Processor at the option of USDA, in cooperation with applicable DA, regarding limited and fully substitutable DF shall:

- 1) Return the DF to the appropriate DA/RA at a destination designated by USDA at Processor s expense; or,
- 2) Replace the DF with commercial foods of identical or superior to quality as certified in accordance with Article 2 of this Agreement and deliver such foods to the appropriate DA/RA at a destination designated by USDA at Processor s expense; or,
- 3) Pay the appropriate DA/RA for the DF based on USDA's most recent cost information on acquiring and delivering replacement made relative to the time of termination; or,
- 4) Pay the appropriate DA/RA for the DF based on the current per pound value established by this Agreement; or,

- 5) When feasible and with the concurrence of USDA, transfer all DF inventory of USDA to a designated account; or,
- 6) Pay the CCC unrestricted sales price.

21. **ASSIGNMENT/DELEGATION OF RESPONSIBILITIES**

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

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

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

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

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

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

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

23. **DEMURRAGE AND DETENTION**

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

24. **INDEMNITY/HOLD HARMLESS**

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

25. **INSURANCE**

Processor must maintain adequate coverage for all insurable losses.

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

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

27. **UNLAWFUL BENEFITS**

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

28. **AGREEMENT ENTIRETY**

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

29. **MODIFICATION/AMENDMENT OF AGREEMENT**

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

30. **SERVING OF NOTICES**

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

31. **LEGAL RESOLUTION**

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

32. **DISTRIBUTION OF COPIES**

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

33. **ELIGIBLE RECIPIENT AGENCIES**

Upon approval of this Agreement, the Processor shall obtain a State Participation Agreement (SPA) from the appropriate State DA or DAs where the processor plans to do business. DAs

signing a SPA will provide Processor with a listing of all eligible RAs with appropriate identification numbers, if applicable, and addresses. Processor can reduce inventory only on sales of approved end products to these eligible RAs.

34. **DEBARMENT**

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

By signing this Agreement, the prospective lower tier participant (Processor) agrees it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

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

35. **RESERVED**

36. **PERIOD OF AGREEMENT**

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

37. **AGREEMENT SPECIFIC PROCESSING ARRANGEMENTS**

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

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

Donated foods to be utilized in processing:

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

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

38. **AUTHORIZED PROCESSOR SIGNATURE**

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

Private Owned - The Owner must sign this Agreement.

Partnership - A Partner must sign this Agreement.

Corporation - A Corporate Officer must sign this Agreement.

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

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

APPROVED

DISAPPROVED

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

Name of Authorized Representative
Title
Company Name

Date

Date

Appendix 1: Processor Plant Locations

Plant Name & Number	Physical Address	Contact Person	Phone Number	Fax Number

N/A
SUBCONTRACTOR AGREEMENT

Subcontractor Agreement: Authority USDA FNS 7 CFR Part 250

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

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

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

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

ALL PARTIES APPROVE BY SIGNING BELOW:

PRIMARY PROCESSOR

Processor: _____ Address: _____

Name: _____ Title: _____

Signature: _____ Date: _____

SUBCONTRACTOR

Subcontractor: _____ Address: _____

Name: _____ Title: _____

Signature: _____ Date: _____

FNS APPROVAL

Name: Cathie McCullough Title: Director, Food Distribution Division

Signature: _____ Date: _____

STATE OF WEST VIRGINIA
Purchasing Division**PURCHASING AFFIDAVIT****VENDOR OWING A DEBT TO THE STATE:**

West Virginia Code §5A-3-10a provides that: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

PUBLIC IMPROVEMENT CONTRACTS & DRUG-FREE WORKPLACE ACT:

If this is a solicitation for a public improvement construction contract, the vendor, by its signature below, affirms that it has a written plan for a drug-free workplace policy in compliance with Article 1D, Chapter 21 of the **West Virginia Code**. The vendor **must** make said affirmation with its bid submission. Further, public improvement construction contract may not be awarded to a vendor who does not have a written plan for a drug-free workplace policy in compliance with Article 1D, Chapter 21 of the **West Virginia Code** and who has not submitted that plan to the appropriate contracting authority in timely fashion. For a vendor who is a subcontractor, compliance with Section 5, Article 1D, Chapter 21 of the **West Virginia Code** may take place before their work on the public improvement is begun.

ANTITRUST:

In submitting a bid to any agency for the state of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the state of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the state of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the state of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership or person or entity submitting a bid for the same materials, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

LICENSING:

Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agencies or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.

CONFIDENTIALITY:

The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.

Under penalty of law for false swearing (**West Virginia Code §61-5-3**), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

Vendor's Name: _____

Authorized Signature: _____ Date: _____

VENDOR PREFERENCE CERTIFICATE

Certification and application* is hereby made for Preference in accordance with West Virginia Code, §5A-3-37. (Does not apply to construction contracts). West Virginia Code, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the West Virginia Code. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

- 1. Application is made for 2.5% resident vendor preference for the reason checked: Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; or, Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or, Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; or,
2. Application is made for 2.5% resident vendor preference for the reason checked: Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,
3. Application is made for 2.5% resident vendor preference for the reason checked: Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,
4. Application is made for 5% resident vendor preference for the reason checked: Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; or,
5. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked: Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; or,
6. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked: Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: _____ Signed: _____

Date: _____ Title: _____

*Check any combination of preference consideration(s) indicated above, which you are entitled to receive.