

THE COLORADO COOPERATIVE SAVING TIME AND RESOURCES
1500 East 128th Avenue
Thornton, CO 80241-2601

REQUEST FOR SEALED PROPOSALS

NUMBER 001-2010-11
Date: November 2, 2009

FOR PROCESSING OF USDA COMMODITY FOODS
(Beef, Pork, Chicken, Turkey, Peanut Butter, Cheese, Eggs,
Fruits, Vegetables, Juices, Oil, Flour)

AND FOR PROVISION OF COMMERCIAL EQUIVALENTS WHEN USDA ENTITLEMENT IS EXHAUSTED

Proposals due Not Later than 5:00 PM, MST
Tuesday, December 1, 2009

ISSUING AND RECEIVING OFFICE
The CCSTAR CONTRACTING AGENT
ANDREWS FOOD SERVICE SYSTEMS
717 E. Industrial Blvd
Pueblo West, CO 81007
719- 543-3846

Jill Kidd, President, the CCSTAR
Trischa Tucker, the CCSTAR Account Manager



NOTICE OF RELEASE OF REQUEST FOR PROPOSALS

TO: Direct Market Manufacturers/ Brokers:

Notice is hereby given that the Andrews Foodservice Systems as the Contracting Agent for the CCSTAR Purchasing Cooperative will receive Requests for Proposals for Proposal NUMBER 01-2010-11 for the Procurement of Processed Commodity Products and their Commercial Equivalents. Estimated usages include both the commodity and commercial versions.

Proposals are due December 1, 2009, by 5 PM Mountain Standard Time via email instructions embedded on page 4.

The CCSTAR seeks to create partnerships with manufacturers and suppliers who are dedicated to the needs and concerns of school food service operators. Thank you in advance for your interest and support of this endeavor. We look forward to receiving your proposal.

The CCSTAR is a School Food Service Purchasing Cooperative in Colorado, primarily along the “Front Range from North Metro Denver to Pueblo, with one district in the Southwestern corner of Colorado. The CCSTAR is considered a single school district recipient agency by the State of Colorado, 3999Z7. As of October 1, 2008, twelve different school districts were members with an approximate ADP of 40,000, which represents one of the single largest buying groups in Colorado. The combined annual purchases approximate \$ 6.25 million. All participating member districts participate in purchases from this contract, but not all districts are required to purchase all products. New districts petition to join the CCSTAR by November 1 of each year.

The CCSTAR is committed to provide the most cost effective, high quality resources for member districts. Part of this philosophy includes purchases from the direct market. This solicitation represents a request from your firm to supply the CCSTAR for the school year 2010-11 with commodity processed items and their commercial equivalents. The CCSTAR has a separate management services, drayage, and storage and distribution contract with Andrews Foodservice Systems in Pueblo, CO for the acquisition and delivery of food and non-food supplies. Thus, Andrews Foodservice Systems shall act as the CCSTAR’s agent to solicit procurement proposals from pre-approved vendors. A strict accountability of all commodity-processed products in the care of custody of Andrews Foodservice has been established and it is reconciled monthly with the state.

The CCSTAR board will establish the award criteria, and will award contracts on a ‘best value’ approach. The award criteria are found within the terms of this solicitation. Once a contract is awarded, the products will be ordered by Andrews Foodservice systems.

POUNDS OF USDA COMMODITIES REQUESTED FOR PROCESSING IN 2009-10

Pounds (in nearest whole pounds)	Description and Commodity Food Code
220,485	NATURAL/AMERICAN CHEESE/CHEDDAR CHEESE AND MOZZARELLA CHEESE
163,627	BEEF
14,941	PORK
Small 44,252 Large 357,800	CHICKEN
76,530	TURKEY
13,468	TOMATO PASTE
33,558	PEANUT BUTTER
21,331	EGGS
193,419	RAW POTATOES
81,319	FLOUR

TIME LINES FOR VENDOR SELECTION

Date:	Event:
Nov 2, 2009	Release Request for Proposal
Dec 1, 2009	Open Proposals and begin comparative analysis of complete proposals 5 PM MST, Pueblo, Colorado
Dec 9, 2009	Pre-Award Meeting with Board Representatives
Dec 17, 2009 – Jan 4, 2010	Conduct Competitive Negotiations w/ top Ranked Proposers
Jan 11, 2010	The CCSTAR Board approve recommended vendor
Feb 27, 2010	Signed Contract and all Part 2 documents to be returned to Andrews Foodservice Systems
July 1, 2010	2010-11 Bid Year Begins
Aug 31, 2010	The CCSTAR will request extensions for 2010-11 from desired vendors
June 30, 2010	all of the 2010-11 CCSTAR products shall be drawn out by June 30, 2011.

**THE CCSTAR REQUEST FOR SEALED PROPOSALS
PROPOSAL NUMBER 01-2010-11**

SPECIFIC SUBMITTAL INSTRUCTIONS:

We prefer that you propose your lowest net net prices for the items or processing services.

Before proposing, please familiarize yourself thoroughly with the project and its requirements.

Andrews Foodservice Systems, on behalf of the CCSTAR, will accept proposals until 5:00 p.m. MST, Tuesday, December 1, 2009.

Late responses will NOT be opened or evaluated.

All parts of the proposal may be emailed to: ccstar01200910@aculink.net, mailed or overnighted as long as they are received by the closing time and date above, however, **the spreadsheet must be emailed. Faxed documents are not acceptable.** Proposals successfully submitted will generate an email confirming successful receipt from Andrews Foodservice Systems. Andrews Foodservice Systems will not have access to the lock box protected email address until after the closing date and time. After the closing date and time, President/Executive Director of the CCSTAR will open the lockbox.

This request for proposal package contains information for which you are responsible and consists of:

RETURN WITH THE PROPOSAL

Manufacturer Response Form and Questions

Manufacturer Authorization for Broker Representative Signature (if applicable)

EEO/Non-Collusion Affidavit

Import Buy American Certificate

Lobbying Certificate

Proposal Specification Spreadsheet (MUST BE EMAILED)

Product Information Form (ingredient label, nutrient analysis, purchase specification) or a copy able copy of the nutritional sheet with the mention information on it

DO NOT RETURN WITH PROPOSAL, THE CONTRACT WILL BE NEEDED IF AWARDED

Proposal Instructions, Contract Terms and Conditions

Direct to Manufacturer Award Pro Forma Contract (Provided so you can start having your legal departments review it)

NEITHER THE CCSTAR NOR ANDREWS FOODSERVICE SYSTEMS WILL ENTERTAIN TELEPHONE INQUIRES ABOUT THE SPECIFICS OF THIS REQUEST FOR PROPOSAL. If there are any questions, please **submit them in writing** to the CCSTAR's contracting agent:

Trischa Tucker
The CCSTAR Account Manager
Andrews Foodservice Systems
717 E. Industrial Blvd
Pueblo West, CO 81007
Or email: tetucker@andrewsfoodservice.com

Sincerely,
Jill Kidd, MS, RD
President, the CCSTAR

Sincerely,
Trischa Tucker
CCSTAR Account Manager
Andrews Foodservice Systems

CONTRACT TERMS AND CONDITIONS:

1. **Contract Period:** The minimum contract period will be from July 1, 2010 through June 30, 2011.
2. **Non-Appropriation:** Notwithstanding the foregoing, those portions of any contract with the successful Proposer which impose financial obligations upon the CCSTAR and/or its member districts in the 2010-2011 fiscal years and thereafter shall be contingent upon appropriation by the CCSTAR and/or its member districts of sufficient funds to meet such obligations. In the event of non-appropriation by the CCSTAR and/or its member districts, such contract shall terminate upon conclusion of the fiscal year for which sufficient appropriations have been made. In the event of cancellation for reasons of non-appropriation, neither the CCSTAR, nor Andrews Foodservice Systems on behalf of the CCSTAR, will issue purchase orders subsequent to the June 30 date. Successful Proposers will be notified no later than 30-days in advance of a pending cancellation.
3. **Temporary Extension:** The CCSTAR reserves the right to request a temporary contract extension for 90-days past its term to continue a source or sources of supply until new or replacement Proposers have been identified, and Contracts awarded. Any contract extension/renewal is contingent upon the approval of the Proposer(s).
4. **Multi-Year Annual Extension:** Two Extension options may be offered at initial contract award pricing on an annual basis through June 30, 2012. **Pricing adjustments will not be considered for contract rollovers/extensions except as prescribed in sections 5, 6, 7 and Attachment B.** Extensions shall be offered only when mutually agreeable to the CCSTAR and the contracted vendor.
5. **Fixed Firm Pricing/Ingredient Market Emergency.** Quoted prices shall remain in effect for one (1) full year after the contract award. It is acknowledged that, with unexpected market emergencies for ingredients, pricing for a twelve-month period may not be realistic. In the event of an uncustomary increase or decrease in the market price of any ingredients in an item or items covered by the Contract, the CCSTAR will consider negotiated price adjustments (increases or decreases), commensurate *with ingredient price changes* when substantiated by independent third-party market commodity bulletins over a thirty (30) day period in advance of the request, and when the resulting price change would be six-percent or greater. Allowable third market party bulletins for market adjustments are:
 - a. Urner Barry Market Reports {Price Current or National Provisioner Sheet - Urner Barry; Publications Inc, PO Box 389, Toms River, New Jersey, 08754-0389} exact indicator to be agreed upon between the CCSTAR and the successful vendor at the time of the initial award.
 - b. Current Spot Price for the specific commodity, exact location and poultry federation to be agreed upon between the CCSTAR and the successful vendor at the time of the initial award.
 - c. Agricultural Marketing Service, United States Department of Agriculture Market Reports for the Specific Commodity in question, shipping point or location to be agreed upon between the CCSTAR and the successful vendor at the time of the initial award.
 - d. Food Institute Reports
 - e. Third market bulletins proposed by the successful Proposer, exact location and federation to be agreed upon between the CCSTAR and the successful vendor at the time of the initial award.
6. **Routine Fuel and Labor Price Changes with Extensions to Contract.** Fee changes relative to labor costs for contract extensions shall be calculated by applying the standard formula to the base index (price) known as the current contract price. The manufacturer's labor fee may be subjected to annual increases or decreases based upon a comparison of the base year index (2006) consisting of the September Employers Cost Index (ECI) for the Appropriate Region where the manufacturing plant is located, and shall be based on employment index for "not seasonally adjusted, total compensation, private industry, for all private industry workers" (reference code ECU13402) and the Producer Price Index (PPI) for #2 diesel fuel Commodity Code (reference code WPU0057303). The ECI shall be measured for September and compared to the base year (2005) and shall carry a weight of sixty (60) percent. The PPI on #2 diesel fuel shall be based on September data and shall carry a weight of forty (40) percent. The manufacturer's labor fee shall be subjected to annual increases or decreases based upon a composite index consisting of the Consumer Price Index (CPI for All Urban Consumers for the region where the manufacturing plant is located. The storage fee shall be subjected to annual increases or decreases based upon a comparison of the base year ECI index for the appropriate region as above, and shall carry a weight of one hundred percent. (See attachment B)

7. **Emergency Market Condition Fuel Changes.** In the event #2 diesel fuel costs increase/decrease on an annual basis by greater than fifteen percent above the annually adjusted rate (15 %) due to uncontrolled fuel industry costs or market shortages, Proposer may notify the CCSTAR in writing of the requested emergency adjustment, and provide a copy of the notification on the same business day for review and action to be taken by the CCSTAR Board of Directors. The CCSTAR Board of Directors shall have 30-days to evaluate the request and accept or reject the rate adjustment request. During that 30-day review period, the Proposer shall maintain previous fee structures.
8. **Taxes:** Purchases made under provisions of any contract established as a result of this invitation are exempt from federal, state and local taxes, and Proposers shall quote prices that do not include such taxes. The CCSTAR and its member districts shall not be responsible for payment or reimbursement of any taxes paid by the contractor during the terms of this contract. Exemption certificates will be furnished upon request.
9. **Prompt Payment:** Prompt payment for commodity and non-commodity food items may be requested after actual delivery of the goods to the required destination.
10. **Acceptance of Conditions:** Each Proposer, by submitting a proposal, assents to each and every term and condition set forth anywhere in this Request for Proposal Documents and agrees to be bound thereby. A failure to become knowledgeable, to read materials provided or to obtain clarification about contract terms and conditions prior to submitting a proposal does not warrant release from contract acceptance.
11. **Format of Proposal:** All parts of the proposal shall be submitted in the prescribed format. This format includes electronic submission, the pricing spreadsheet must be emailed, mail or overnight courier on the forms provided on the Andrews Foodservice Systems website. Manipulation of forms or spreadsheets shall be grounds for non-consideration and dismissal of the proposal. Proposers are expected to submit proposals that are accurate, for products that meet the CCSTAR specifications and requested quality standards. Proposals shall be complete and contain all terms a Proposer believes necessary. If after submitting a Proposal, a Proposer find changes are necessary, the bidder may change or withdraw their proposal ANY TIME UP TO the time of the proposal opening. After the opening, the Proposal MAY NOT BE WITHDRAWN OR CHANGED or altered except during the process of competitive negotiations. Once negotiations are complete and terms accepted, the proposal and the complete agreement constitute a binding contract and the Proposer is expected to honor all agreed upon contractual terms. Submittals are required in a specified format. **Facsimile transmissions of any portion of a submittal will not be accepted.**
12. **Signatures:** All sheets requiring a signature shall be signed and sent by mail, overnight courier or submitted electronically with an electronic signature registration number, as follows:
 - a. In the case of an individual Proposer, by such individual Proposer,
 - b. In the case of a Partnership, the name of the partnership must appear on such proposal, and is shall be signed in the name of such partnership by at least one partner or an authorized broker when an original signed letter authorizing a broker to sign for the corporation is on file.
 - c. In the case of a Corporation, the Corporate name shall be subscribed by the president, a managing officer or an authorized broker when an original signed letter authorizing a broker to sign for the Corporation is on file, and there shall be set forth under the signature of such officer the name of the office he holds or the capacity in which he acts for such Corporation.
13. **Proposal Opening:** Proposal openings will be open to the public. The openings will serve only to open and acknowledge each Proposal. All materials submitted in response to this Request for Proposal must have been received in the form designated by the opening time and date of 5:00 PM, MST, Tuesday, December 1, 2009. No award will be made or implied at the proposal opening. Awards will be evaluated after proposal opening, and Contracts will be awarded based on criteria in Paragraph 14.
14. **Award Information:** Proposal files will be available and may be examined by Proposers during normal working hours, after award of the contracts at the CCSTAR I/C/O Andrews Foodservice Systems, 717 E. Industrial Blvd, Pueblo West, CO 81007, but not before July 1, 2010. A minimum of 72-hours notice requesting an appointment shall be required (719-543-3846 ext 316). No files are permitted to be removed from the premises. If you desire to make copies of non-proprietary information, you will be charged a minimum of \$1.00 per page for using Andrews Foodservice Systems' copy machines.

15. **Initial Orders:** Initial orders will be submitted to successful Proposer in June 2010 for delivery in July or August 2010 at contract pricing.
16. **Evaluation of Proposals:** In general, an item will be awarded to one vendor. Secondly, the CCSTAR prefers to award by product category to the maximum extent possible. The CCSTAR reserves the right to award or reject proposals on each item separately, as a group of similar items, or as a whole vendor award whichever is in the best interest of the CCSTAR; or to waive irregularities of a proposal when in the best interest to the CCSTAR. The following evaluation factors will be considered in awarding the negotiated contract to determine best overall value:
- Pricing Proposal = 55%
 - Processing and Delivery Conditions = 35%
 - Miscellaneous = 10%
 - Submittal = can lose up to minus 10%
 - Past Delivery Issues = can lose up to minus 15%
17. **Failure to Fulfill Contract:** When any Proposer fails to delivery any article or service or shall delivery any article or service which does not conform to the specifications, the CCSTAR may, at its sole discretion annul and set aside the contract entered into with said vendor or contractor, either in whole or in part, and make and enter into a new contract for the same items in such manner as seems to the CCSTAR to be to its best advantage. Any failure for furnishing such articles or services by reason of the failure of the vendor or contractor, as state above, shall be a liability against such vendor and his sureties. The CCSTAR reserves the right to cancel any articles or services which the successful Proposer may be unable to furnish because of economic conditions, governmental regulations or other similar causes beyond the control of the Proposer provided satisfactory proof is furnished to the CCSTAR if requested.
18. **Quality or Acceptability Problems in Products Discovered After Contract Award:** If after contract award, a Proposer's products do not perform as the manufacturer stated, or if student acceptability of an awarded product(s) is poor, Andrews Foodservice Systems, as the CCSTAR agent will notify the awarded contractor and report the quality issue in writing via email or fax in an attempt to resolve (Opportunity to Cure). If the problem is not resolved to the CCSTAR's satisfaction within a maximum of 30 days after company notification, the contract may be cancelled, and re-awarded to the next vendor. Furthermore, if the contract is cancelled, that product will be excluded from consideration on future contracts until the product is reformulated and proved to be satisfactory through testing by the CCSTAR member districts. In the event that the quality issue relates to a USDA processed product, the processor shall cooperate with the CCSTAR to move any unprocessed Commodity commodities to another processor.
19. **Ability to Supply/Deliver:** Offer Proposals and price quotes should only be submitted if merchandise can be obtained and delivered on specified delivery dates/schedules and in delivery amounts required by the CCSTAR as defined in the Minimum Order section. Initial orders for July and August delivery will likely be the largest ones placed and may represent as much as one fifth of total the CCSTAR requirements to meet "back to school" needs. The CCSTAR shall have the option to collect a default penalty of (a) ten percent (10%) of the bid price value of the defaulted items ordered but not delivered as specified, or (b) the difference between the contract price and the cost of an equivalent item obtained by quotation through another vendor. Strikes, Acts of God, and similar causes not under control of the vendor will be considered exempt from this default provision. This is intended only as a last recourse and not as a deterrent to bidders. Vendors should confirm their inventories, shippers and suppliers before submitting proposals. The CCSTAR reserves the right before awarding the contract to require a successful Proposer to submit evidence of its ability to meet orders of desired shipment sizes within requested delivery windows.
20. **Vendor Capability:** A successful bidder must have the capacity- physically and financially, to supply items to the CCSTAR in the quantities required, at the time requested. A successful bidder must have a proven record of service, particularly with respect to the delivery of all items on a regularly scheduled basis. A bidder may be designated as unacceptable if the requirements listed are violated and/or poor communication exists between the vendor and the purchaser.
21. **Vendor Credit Policy:** A successful bidder must be willing to treat CCSTAR as any other school district that purchases processed commodities through them even though Andrews Foodservice System orders the product through their purchase order system by extending the needed credit line to the CCSTAR to allow them to order their USDA commodities. CCSTAR will be billed for the product in care of Andrews Foodservice Systems. Andrews will collect for the processed commodities from each district and then remit the amount to the manufacturer. The successful bidder must also be willing

to extend the needed credit line to Andrews Foodservice Systems to allow them to order the needed commercial product to satisfy the needs of the CCSTAR.

22. **Net off Invoice Policy:** Should CCSTAR award a contract to a manufacturer that utilizes the Net off Invoice option, the successful bidder must be willing to process the rebates back to Andrews Foodservice Systems on a weekly basis. Andrews Foodservice has the option of whether or not to use the Net off Invoice option offered by the successful bidder. The program must be approved by the State of Colorado before it can be offered to the CCSTAR.
23. **Specifications / Pre-Approved Brands for Equality:** It is the intent of the CCSTAR to afford maximum competition and equal opportunity to any potential Proposers. Brand names and product numbers provided represent the products selected for contracts in 2001-2009 have been tested and are acceptable to our student population. **A product may be listed that has not completed the testing process. A product may be found unacceptable after the release of this RFP.** These products form the basis and standard for brand equality, quality and taste preference evaluations. It is a Proposer's responsibility to offer a product that meets or exceeds the established specifications. Taste tests are conducted throughout the year on a pre-established schedule for vendors who wish to submit products for consideration.
24. **Protest of Specifications:** *The CCSTAR expects products offered by a manufacturer to meet or exceed specifications provided.* Any protest of a specification contained herein must be in writing and must indicate in detail the reason(s) for the protest and include a suggested change in wording or specifications that would remedy the cause for protest. All specification protests must be received at Andrews Foodservice Systems, address indicated on Proposal cover by NOON, MST, ONE WEEK (November 24, 2009) BEFORE the official Proposal opening on the 1st of December 2009. All protests will be received, acknowledged and answered to all potential Proposers. Complaints deemed by the President/Executive Director of the CCSTAR to have merit will be given due consideration and, where applicable, when a change in specifications or a delay in Proposal Opening is warranted, such notice of specification change shall be granted by issuance of an Addendum issued by Andrews Foodservice Systems as the CCSTAR's agent. Complaints deemed by the President/Executive Director of the CCSTAR to not have merit will be given due consideration, and the individual or company will be notified as to the reason for non-acceptance of the protest. Any vendor believing established specifications limit competition or establish unwarranted requirements shall submit a "Protest of Specification" as outlined above.
25. **No Minimum or Maximum Quantities, Order Changes or Number of Orders:** The CCSTAR anticipates significant requirements for the food products and commodities requested, but **does not guarantee a specified purchase volume or number of orders, EXCEPT that the CCSTAR commits to take all raw USDA product as prescribed by USDA.** This is an indefinite quantity bid. Unlimited orders within the term of the contract shall be allowed to the CCSTAR and to Andrews Foodservice as the CCSTAR agent. Estimated purchase quantities are based on historical information of previous purchases by the CCSTAR participating districts. Orders will be placed as products and services are required. Inclusion on the Proposal Form does not constitute an offer to buy or a guarantee to purchase in any amount in excess of actual requirements. The CCSTAR reserves the right to modify quantities or to forego purchases altogether at its discretion.
26. **Competitive Negotiations.** Colorado State Law and USDA regulations require that the CCSTAR follow one of several prescribed bid / acquisition processes. The CCSTAR takes the proposal process seriously, and it is the CCSTAR intent to solicit Proposals that are accurate, and that Proposers intend to honor. Proposers are advised that the CCSTAR intends to use competitive negotiations in an effort to obtain best value for all desired terms of prices, commodity processing factors, delivery conditions, and miscellaneous factors. The CCSTAR intends to make awards to Proposers that best meets the CCSTAR's expectations, balancing the highest standards of quality, creativity of proposals and services and value with the lowest costs. The CCSTAR will not negotiate with all proposers within a group. The CCSTAR may negotiate prices and terms with the most highly rated proposers. The CCSTAR reserves the right to select vendors in the best interest of the Cooperative and to competitively negotiate and award the contract based on the evaluation factors of: price; commodity processing factors; delivery conditions; delivery issues; point of sale and promotional materials; and completeness of the proposal. When evaluations have been scored, there is typically a logical separation between the most highly ranked proposals, and all other proposals in terms of raw evaluation points. **The CCSTAR will negotiate with no more than three top ranked proposers for a particular product or categorical grouping, and in the event of fewer highly rated proposals; the CCSTAR may negotiate with less than three.** The CCSTAR also reserves the right to award entire product categories or groups to a single supplier if it is in the Cooperative's best interests to meet minimum load requirements, to reduce freight costs and maintain supply levels.

27. **Purchase Orders.** All purchase orders placed under this Contract shall be invoiced at the Contract price prevailing at the time the order is placed, provided orders are placed before June 30, 2011 (or 2012 or after if the contract is extended), regardless of the actual delivery date, and in particular if product is delivered to Andrews Foodservice Systems after June 30, 2011.
28. **Delivery/Lead Times: the CCSTAR's Service Provider, Andrews Foodservice Systems, will receive delivered product.** Delivery of high volume products will generally be requested on a weekly basis, and should be delivered no later than 14-work days after receipt of order (ARO). For lower volume products, delivery may be requested on a bi-monthly or monthly frequency and should be delivered no later than 14-21 work days ARO. If lead-time requirements for your organization will be different from the specified 10 or 14 days, please record the desired lead time(s) on the proposal document. It is unreasonable for order lead times to exceed 21 days except for seasonal or specialty items.

It is required that all items delivered to Andrews Foodservice Systems be delivered on 40" x 48" hardwood pallets. Pallet exchange is available. The receiving hours of Andrews Foodservice Systems for all incoming freight are: 7:00 AM – 2:00 PM. All deliveries require 48-hour advance telephonic request for a dock appointment with Andrews Foodservice Systems before delivery. Deliveries with no dock times may be refused.

Delivery/dock times can be arranged by contacting:

Andrews Foodservice Systems
717 E. Industrial Blvd
Pueblo West, CO 81007
719-543-3846 (x 329)

29. **Just in Time Processing and Delivery:** Processing of USDA Commodity or commercially processed foods shall be scheduled so as to be fresh on delivery, and to minimize loss in the event of a recall. The CCSTAR prefers to **avoid** contracts with processors using "truck in-truck out" processing systems, or that process product within a short time (two weeks or less) of commodity product delivery to the USDA. Delivery will be required on a schedule developed by Andrews Foodservice Systems and will be in response to orders by **the CCSTAR's** member districts. The quantity of product delivered shall never exceed that amount that can be used by the CCSTAR districts in a 60-day period. Deliveries will be requested generally weekly or biweekly for high-velocity products, and bi-weekly or monthly for lower velocity products.
30. **Approved State of Colorado USDA Commodity Foods/Commodity Processor:** Any manufacturer awarded a commodity-processing contract must apply for and become an approved Commodity Processor for the State of Colorado, meeting all of the state's requirements. Additionally, approved USDA End Product Data Schedules must be provided to the State of Colorado – Colorado Division of Human Resources – Commodity Food Unit and specifically to Philip Rohrs within the time specified.
31. **Commercial and USDA Processed Commodity Foods Pack and Count to be the Same:** To effect a seamless transition from commercial to commodity processed, a USDA commodity product shall have a commercial equivalent, and the processed commodity and the commercial equivalent shall be the same portion size, essentially the same formulation, and be packed in a case of equal count and weight where ever possible. Products that do not meet this requirement will have points deducted from their proposal score.
32. **USDA Processed Commodity Foods:** It is the CCSTAR's desire to fully use USDA commodity entitlement in the year earned Furthermore, the CCSTAR desires that the transition between USDA processed Commodity foods and commercial products be seamless and transparent to students and staff members. Both products shall require the same preparation methods and holding characteristics. Taste profiles shall be considered equal to the student customer. The successful Proposer shall accept the USDA Commodity foods obtained on behalf of the CCSTAR member districts under the Federal Food Distribution Program. To the extent that USDA approval has been obtained by the successful Proposer, any substitutable commodity not needed immediately for use by the CCSTAR, can be used for production for third parties, or sold outright to third parties in connection with its normal business operations provided the USDA product is replaced with an equivalent amount of commercial product to meet the CCSTAR production requirements, the procurement specification for the commercial product is equal to or superior than the USDA specification, and the transaction is recorded for accountability purposes. The successful Proposer may combine commercial and USDA commodity foods to make products selected by the CCSTAR. All products, commercial and commodity processed shall be ordered, received and subsequently supplied to schools by Andrews Foodservice Systems.

33. **USDA Commodity Product Leftover at Year-End.** It is the CCSTAR's intent to request delivery of all USDA commodity product sent to a processor within the processing year. If there is product remaining at the end of the year, Andrews Foodservice Systems shall work with the processor to negotiate shipment of those products so they may be received before June 30th.
34. **Wing Credit for Poultry:** The CCSTAR does not wish to receive wing value as a credit off the invoice, or to receive commercial product in exchange for wings. The CCSTAR prefers the wing credit to be calculated and quoted as a reduction to the desired net/net pricing per case of product offered.
35. **Product Discontinuance:** It is expected that specified products will be available throughout the entire period of the contract. In the event a successful Proposer discontinues a product, the successful Proposer will notify the CCSTAR's service provider Andrews Foodservice Systems, and propose alternative items and pricing to fulfill the contract. The CCSTAR may exercise the option to re-advertise the solicitation. If USDA Commodity Foods are in the successful Proposer's inventory, and use on behalf of the CCSTAR is no longer possible, the First Proposer is responsible to transfer the remaining USDA product to the new Proposer at no cost to the CCSTAR.
36. **Vendor Specifications, Ingredient Label, Nutrient Analysis / USDA Meal Contribution and Requested Samples:** Proposers shall with the proposal, provide ingredient labels, the nutrient analysis per serving or per 100 grams of product, the usual number of servings per case, the typical number of pieces per serving and certification of USDA meal contribution if awarded the contract. All specifications and certifications of meal contributions to USDA meal should be provided within the timeframes required. Legible electronic copies are the preferred method of transmission.
37. **Monosodium Glutamate:** The CCSTAR requests that products supplied, generally, be free of Monosodium Glutamate (MSG). Proposers must note recognition of and compliance to this requirement on the proposal submittal cover document. Products that are not MSG free must be listed by product name and brand on the "Request for Proposal Form".
38. **Nut Products:** The CCSTAR requests that products supplied that contain peanuts or other tree nuts as ingredients or that were produced in a plant or on a line that is not certified "peanut or tree nut free" be identified on the Excel spreadsheet. Proposers must note recognition of and compliance to this requirement on the proposal submittal cover document. Products that are NOT peanut or tree nut free or produced in a nut free environment must be listed by product name and brand on the "Request for Proposal Form". In the event that a proposer fails to note peanut or tree nut contamination, and a student in a peanut or tree nut controlled district suffers injury or death from consuming your product, your company assumes full legal liability for the event. Furthermore, if you certify products are peanut and nut free, and the CCSTAR later discovers they are not peanut and nut free, your company shall be charged \$250 for the CCSTAR to terminate your contract, and to negotiate a contract with a nut free manufacturer. This is intended only as a last recourse and not as a deterrent to Proposers.
39. **Definitions/Terms of Reference:**
- Cooked: The terms "cooked" and "fully cooked" all imply the product is to be fully cooked in accordance with Hazard Analysis and Critical Control Point (HACCP) standards for that product. Such products will generally be heated before service.
 - Precooked: The term "precooked" implies that additional cooking is required before service.
 - IQF/IF: The term "individually quick frozen" or IQF or "individually frozen" or IF means that the separate parts and pieces can be easily removed from packages while the product is in a frozen state. Either is acceptable.
 - IW or I/W: The abbreviation IW or I/W means "individually wrapped" products, generally a single portion.
 - SS: The abbreviation SS means "single serve" products, generally a single portion or individual unit.
40. **Delivery Temperatures:**
- Frozen:** All frozen foods are to be delivered rock hard frozen at 0 degrees Fahrenheit plus or minus 5 degrees F. Partially thawed goods or products with evidence of thawing and refreezing will be rejected at the time of deliver
 - Refrigerated:** All refrigerated products shall be delivered at a product temperature appropriate to industry guidelines for that specific product, and shall have been maintained at this temperature at all times during storage and shipment, but never at a product temperature that exceeds 40 degrees Fahrenheit.
 - Dry:** All dry products shall be above 40 degrees Fahrenheit.
41. **Age and Condition of Items:** Stocks shall be fresh and sound, prepared in properly equipped plants under modern sanitary conditions in accordance with the best commercial practice, and free from decay, discoloration or foreign matter.

Containers shall be clean, sound, compact, sturdy and sealed. Opened, damaged or leaking packages will not be accepted. Any hidden damage discovered after acceptance and delivery at Andrews Foodservice Systems will be reported to the successful Proposer or for the appropriate credit. Dated products shall meet industry standards for remaining shelf life upon delivery to Andrews Foodservice Systems. In no instance (except for yogurt and produce) shall there be less than 60 calendar days of guaranteed freshness as defined by the product expiration date on the exterior package at the time of delivery to Andrews Foodservice Systems.

- 42. Inspection/Acceptance/Rejection:** Inspection and acceptance or rejection of all items shall be at the destination. Andrews Foodservice Systems on behalf of the CCSTAR shall have the power and authority to reject any and all materials furnished which, in its opinion, are not in strict compliance and conformity with the requirements of the specification or equal in every respect to the proposal or to the sample submitted by the vendor, not at the proper temperature, not fresh, or damaged in any way, etc. All articles so rejected shall be promptly removed from the premises of Andrews Foodservice Systems, at the vendor's expense within 21 days. No brand or product substitutions will be accepted unless written prior approval is obtained from the CCSTAR or it has authorized representative. Items found to be defective or not in accordance with the contract specifications shall be replaced within ten-days by the successful Proposer at no cost to the CCSTAR participating school districts. Failure to replace items not meeting the contract specifications and/or defective items shall be considered sufficient cause for default action under the default provision of the Contract.

A second inspection/acceptance and rejection process shall occur at the end user level – either school sites or school district warehouses. Product found unacceptable at this level shall be rejected at the dock or upon opening the case (in the event of hidden damage), the reason for the refusal will be documented, and Andrews Foodservice Systems shall be informed to obtain credit or replacement at no additional charge.

- 43. Warranty:** The Proposer or his assigned agent shall guarantee the food products against all defects. The Proposer agrees that all items furnished under this Contract shall be covered by the most favorable commercial warranties the Proposer provides any customer for such items, and that the rights and remedies provided therein are in addition to any other provision of this Contract. The Proposer shall provide copies of all warranties, which shall apply to deliveries under this Contract with its proposal.
- 44. Federal Regulation Compliance:** Since the goods to be acquired under this request for proposal will be purchased in part or in whole with federal dollars, products shall be procured, packaged and inspected in accordance with all federal, state and local government standards and all applicable regulations such as Pure Food, Drug, and Cosmetic Act (Title 21 CFR), Agricultural Marketing Act, Fish and Wildlife Act, Meat Inspection Act, The Tariff Act, Poultry Products Inspection Laws, The Perishable Agricultural Commodities Act, and Anti-trust Laws. Certification of compliance with the following Acts is required: Energy Policy and Conservation Act (PL 94-163); Occupational Safety and Health Act and the standards and regulations issued there under; Fair Labor Standards Act; Department of Labor Regulations (41 CFR Part 60; Section 306 of the Clean Air Act (42 U.S.C. 1857 (h); Section 508 of the Clean Water Act (333 U.S.C.1368); Executive Order 117389 and Environmental Protection Agency Regulations (40 CFR Part 15).
- 45. Hold Harmless Clause:** The Proposer shall hold harmless and indemnify the CCSTAR, its member districts, the Lead District, Andrews Foodservice Systems, and their respective officers and employees, for every claim, demand, suit and award which may be made by reason of:
- a. Any injury or death to person or property damage or loss sustained by any person, firm, or corporation caused by any act, neglect, default, or omission of the Proposer or any person, firm or corporation, directly or indirectly employed by it upon, or in connection with its performance under the contract;
 - b. Any liability that may arise from the furnishing or use of any copyrighted or not copyrighted formula, secret process, or patented or not patented invention in the performance of the services called for under the contract;
 - c. The Proposer, at its own expense and risk, shall bear all reasonable attorney fees, costs and expenses which may be incurred in defending against any legal proceeding that may be brought against the CCSTAR, its Member Districts and the Lead District, and Andrews Foodservice Systems, as well as their officers and employees, on any such claim or demand, and satisfy any judgment that may be rendered against any of them.
- 46. Product Protection Liability / Guarantees:** The Proposer whose name and address appear on the product package is the responsible party for Product Protection Liability. Proposers shall take immediate action to correct any situation in which product integrity is violated. In the event of a mandatory or voluntary recall, Proposers shall remove or authorize disposal of all recalled product from the CCSTAR's service provider Andrews Foodservice Systems within 21-days, and shall replace the product with new product, at no cost to the CCSTAR or Andrews Foodservice Systems, as soon as possible. The Proposer shall furnish to the CCSTAR with a Certificate of Insurance within ten (10) working days after contract

award that indicates comprehensive product liability insurance coverage is in force or has been obtained and that the CCSTAR is an additional insured. This policy shall be a comprehensive policy in an amount not less than \$6,000,000 combined single limit per occurrence for bodily injury or death. Companies authorized to do business under the laws of the State of Colorado shall issue this insurance policy. The Company must be rated not less than "A-" by the latest edition of Best's Insurance Guide, which is published by A.M. Best Company, Oldwick, New Jersey.

The successful Proposer shall notify the CCSTAR, I/C/O Andrews Foodservice Systems, 717 E. Industrial Blvd, Pueblo West, CO 81007 **immediately** upon voluntary cancellation by the manufacturer or involuntary termination by the carrier of Product Protection/Liability Insurance. If replacement insurance is not obtained within 7-days, the contract will be terminated under Section 36.

- 47. Protection from Bio-Terrorism or Other Such Contamination in Manufacturing:** Manufacturers are expected to comply with all federal laws protecting the food supply. It is expected that the Proposer whose name and address appear on the product package has implemented safeguards at all points in their manufacturing and delivery process to protect against intentional and unintentional contamination. Proposers shall take immediate action to correct any situation in which product integrity is violated or product becomes contaminated. If contamination should occur, Proposers shall remove or authorize disposal of all contaminated product from the CCSTAR's service provider Andrews Foodservice Systems within 21-days, and shall replace the product with new product, at no cost to the CCSTAR or Andrews Foodservice Systems, as soon as possible.
- 48. Buy American Act / Import Products:** The 1998 reauthorization of the National School Lunch Act requires school districts participating in the National School Meals Programs in the contiguous 48 states of the United States to buy food products produced in the United States (domestic) when using federal funds. Therefore, if there is a domestic and non-domestic food product available, you must supply domestic products. You may supply non-domestic products only when domestic products are unavailable. As defined in this legislation, a domestic food commodity is an agricultural commodity (for example beef, pork, chicken, fruits, vegetables, oils or grains) that is produced in the United States. A domestic food product is processed in the United States using substantially domestic agricultural commodities. Substantially means that over 51 percent of the finished processed product comes from American produced products. Implementing federal regulations are 7 CFR 210.21 and 220.16 published on September 20, 1999. You may be required to provide certification of domestic origin and content. You must certify that the majority of food products you propose to provide and supply meet the federal requirements in the "Buy American Act" and stipulate which specific products are unavailable domestically. Exceptions to this rule would typically be: pineapple, mandarin oranges, olives, tuna fish, tea, spices and coffee. In the event the Proposer supplies or delivers products contrary to the requirements of this section or applicable laws and regulations, the CCSTAR may pursue remedies for default as provided in Section 36, and or may terminate this Agreement as provided in Section 36. The Proposer shall hold the CCSTAR its member districts, its Lead District and Andrews Foodservice Systems harmless from any fines, penalties, costs or expenses imposed upon or incurred by any of them as a result of the Proposer's non-compliance with such laws and regulations. This purchasing requirement does not apply in instances when:
- a) The CCSTAR has unusual or ethnic food preferences which can only be met through purchases of products not produced in the United States,
 - b) The product is not produced in the U.S. in sufficient and reasonable quantities of a satisfactory quality to meet general needs,
 - c) The cost of the US product is significantly higher than foreign products (the CCSTAR defines significantly higher to be when US product is twenty-five percent higher than the foreign product).
- 49. Non-Collusion Affidavit:** Each Proposer submitting a proposal shall execute and deliver a non-collusion affidavit in the form provided. Failure to submit such non-collusion affidavit shall be grounds to reject a proposal as non-responsive.
- 50. Debarment Disclosure:** If a Proposer has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, the Proposer shall disclose that information in its offer. Failure to do so shall result in rejection of its offer and shall constitute grounds for termination of the Agreement. The Proposer shall have a continuing obligation to disclose to the CCSTAR's Lead District any proceedings commenced during the term of this Agreement which might result in debarment, suspension or disqualification from participation in public procurement activities, and such proceedings shall constitute grounds for termination of this Agreement as provided in Section 48.
- 51. Final Contract:** The successful Proposer shall be required to execute a final contract incorporating these terms and conditions and such additional terms and conditions negotiated by the parties. The CCSTAR shall have no obligation to

any such Proposer until such contract has been executed. (See Sample Pro Forma Contract Enclosed with this Request for Proposal)

52. **Default:** The CCSTAR may, by written notice of default to the successful Proposer, terminate the whole or any part of their order under this Contract. Remedies for default shall include, but not be limited to failure to meet contract terms delineated above. The successful Proposer shall be liable for any difference in cost between agreed price and price paid to an alternate manufacturer, including expenses incurred to make alternate purchases. Should the CCSTAR bring suit against defaulter, and prevail in such action, defaulter shall pay all reasonable attorneys' fees and other expenses for such litigation. In the event of default, Andrews Foodservice Systems on behalf of the CCSTAR shall have the option to collect:
- (a) Ten percent (10%) of the contract price value of the defaulted items ordered but not delivered as specified or,
 - (b) The difference between the contract price value and the cost of comparable items of similar quality, if available or better quality if products of similar quality are unavailable, as obtained through another vendor.

In the event that any successful Proposer shall default, cancel or cause to have cancelled the Contract, that successful Proposer shall have forfeited the right to bid or propose for contracts originating from the CCSTAR for twenty-four (24) months or two contract periods, whichever is the longer? Nothing herein shall be construed to imply that any party shall have any right to submit a bid or proposal to the CCSTAR for any product or service.

53. **Legal Defense.** The Proposer/Successful Proposer at its own expense and risk, shall defend any legal proceeding that may be brought against the CCSTAR, the Lead District, each and every member district, Andrews Foodservice Systems, and their agents, officers and employees, on claims caused in material and substantial part by the Proposer and not caused in material and substantial part by an act, neglect, default or omission of the CCSTAR or Andrews Foodservice Systems, and shall indemnify and hold harmless all such parties against any judgment, cost or expense that may be rendered against or incurred by any of them in such proceedings. The laws of the State of Colorado shall govern this Agreement. Any litigation brought between the parties to this Contract shall be brought and maintained only in the District Court for the State of Colorado, County of Adams or the U.S. District Court for the District of Colorado.

54. **Records Retention.** The successful Proposer agrees to retain all books, records, and other documents relative to this agreement for three (3) years plus the current year after final payment. The successful Proposer will assure that subcontractors meet this same record retention requirement. The CCSTAR, its authorized agents, and/or state/federal representatives shall have full access to and the right to examine any of said materials during said period. If an investigation or audit is in progress, records shall be maintained until the stated matter is closed.

55. **Gifts, Gratuities or Kickbacks:** Acceptance of gifts, gratuities or kickbacks from Proposers and the offering of gifts by Proposers are prohibited.

56. **Miscellaneous Provisions.** The following terms and conditions shall be deemed to be included in any contract negotiated with the CCSTAR except to the extent the final contract expressly modifies such terms:

- a) **Representations and Warranties.** Proposer represents and warrants that all of the information in its proposal is true and accurate and that the CCSTAR and its member districts shall be entitled to rely upon the same as the basis for entering into this Contract. Proposer shall immediately notify the Lead District in writing throughout the term of this Contract upon discovery that any of the facts or assertions in the Proposer proposal is inaccurate.
- b) **Financial Information.** Throughout the term of this Contract, Proposer shall provide to the CCSTAR, upon request, updated financial reports and data, including but not limited to updates of any financial information in the successful Proposer's proposal and financing commitments from financial institutions.
- c) **Independent Contractor.** Proposer shall perform its duties hereunder as an independent contractor, not as an employee of the CCSTAR or any of its member districts. Neither Proposer nor any agent or employee of Proposer shall be or shall be deemed to be an agent or employee of the CCSTAR or any of its member districts. Proposer shall pay when due all required employment taxes and income tax withholding, including all federal and state income taxes and local taxes on any monies paid pursuant to this Contract. Proposer shall be solely responsible for procuring and paying for workers' compensation and unemployment compensation insurance for all employees performing services for the benefit of the CCSTAR and its member districts. Proposer shall have no authorization, express or implied, to bind the CCSTAR or its member districts to any agreements, liabilities, or commitments except as expressly set forth herein. Proposer shall be solely responsible for its own acts, as well as the acts of its employees and agents.
- d) **Notice and Representatives.** For the purposes of this Contract, the representative for each party is as follows:

Proposer/Manufacturer

[To be completed during final negotiations]

Any notice required or permitted may be delivered in person, by facsimile, by electronic mail, or by registered or certified mail, return receipt requested, to the party at the address provided herein. If sent only by registered or certified mail, the notice shall be effective three (3) days after it has been posted in a U.S. mail depository with sufficient postage attached thereto. Notice of change of address or change of representative shall be treated as any other notice.

- a) Legal Authority. Proposer warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise its authority, and lawfully authorizes its undersigned signatory to execute this Contract and bind Proposer to its terms. The person executing this Contract on behalf of Proposer warrants that he has full authority to execute this contract.
- b) Conformance of Law. Proposer and its agent(s) shall at all times during the term of this Contract strictly adhere to all applicable federal laws, state laws, executive orders, and implementing regulations as they currently exist and may hereafter be amended.
- c) Litigation. Proposer shall, within five (5) calendar days after being served with a summons, complaint, or other pleading which has been filed in any federal or state court or administrative agency, notify the CCSTAR in writing that it is a party defendant in a case which involves services provided under this Contract, and shall deliver copies of such document(s) to the CCSTAR's president. The term "litigation" includes an assignment for the benefit of creditors, and filings in bankruptcy, reorganization, and/or foreclosure.
- d) Third Party Beneficiaries. All rights of action relating to enforcement of the terms and conditions of this Contract shall be strictly reserved to the CCSTAR and Proposer. Nothing contained in the Contract shall give or allow any claim or right of action whatsoever by any other third person or entity. It is the express intention of **the CCSTAR** and Proposer that any such person or entity (other than the CCSTAR or Proposer) receiving services or benefits under the Contract shall be deemed an incidental beneficiary only.
- e) Waiver. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.
- f) Survival. The CCSTAR's and successful Proposers' obligations under the Contract Documents shall survive following termination or expiration to the extent necessary to give effect to the intent and understanding of the parties.
- g) Assignment and Subcontracting. The duties and obligations of successful Proposer arising hereunder cannot be assigned, delegated, or subcontracted except with the express prior written consent of the CCSTAR. Any subcontracts authorized by the CCSTAR shall be subject to the requirements of the Contract. Successful Proposer is responsible for all subcontracting arrangements, delivery of services, and performance of any subcontractor. Proposer warrants and agrees that any subcontract, resulting from its performance of the terms and conditions of this Contract, shall include a provision that the said subcontractor shall abide by the terms and conditions hereof. Also, Proposer warrants and agrees that all subcontracts shall include a provision that the subcontractor shall indemnify and hold harmless the CCSTAR and its member districts against any claim related to the subcontractor's performance pursuant to the Contract Documents.

Select the groups for the excel price response spreadsheet to Download for proposal submission

Group 1 – Beef Products	Group 8 – Pizza Products (multiple commodities)
Group 2 – Chicken Products	Group 9 – Peanut Butter Products
Group 3 – Pork Products	Group 10 – Egg Products
Group 4 – Turkey Products	Group 11 – Potato Products
Group 5 – Sandwiches / Hand Held Products	Group 12 – Vegetable Oil
Group 6 – Mexican Products (multiple commodities)	Group 13 – Tomato Products
Group 7 – Cheese Products	Group 14 – INDEX OF ALL GROUPS

ATTACHMENT A

CALCULATION OF PRICE INCREASE/DECREASE PROCEDURE EXAMPLE

EXAMPLE OF CALCULATION PROCEDURE

PER CASE PRICE EXAMPLE

	ECI - WEST – SEPTEMBER	PPI - #2 DIESEL FUEL - SEPTEMBER
Current period Series Value (2002)	163.8	91.9
Base Period Series Value (2001)	157.6	91.6
Divide the current period series value by the base period series value	1.03934	1.003
Multiply by 100 to yield the converted series value	103.934	100.327
Multiply by Assigned Weight (Labor 60%, Fuels 40%)	62.36	40.13
Add labor plus fuels to get current value for the special index	62.36 40.13 Total = 102.49	
Multiply by the Base Price per case (Example: \$2.57)	Equals 263.3993	
Divide by 100 to yield the adjusted allowable price per case	\$2.639 OR \$2.64	