

INVITATION FOR BID

TITLE	WIC Infant Formula Rebate System
IFB NUMBER	FAU # 1003030348
BID DUE DATE	August 5, 2010
CONTRACT PERIOD	April 1, 2011 – June 30, 2016

Schedule of Key Events

Issue Date:	June 1, 2010
Deadline for Submission of Questions:	June 22, 2010
Written Questions and Answers Release Date:	July 13, 2010
Bid Due Date (by 2:00 PM):	August 5, 2010
Public Bid Opening (at 2:15 PM):	August 5, 2010
Estimated Award Selection Date:	November 1, 2010
Anticipated Contract Start Date:	April 1, 2011

Contacts Pursuant to State Finance Law § 139-j and 139-k

DESIGNATED CONTACTS:

Pursuant to State Finance Law §§ 139-j and 139-k, the Department of Health identifies the following designated contacts to whom all communications attempting to influence this procurement must be made:

*Bonnie DeGennaro
Grants and Procurement Unit
New York State Department of Health
Room 1325 Corning Tower, Empire State Plaza
Albany, NY 12237*

Permissible Subject Matter Contacts:

Pursuant to State Finance Law § 139-j(3)(a), the Department of Health also identifies the following allowable contacts for communications related to the following subjects:

IFB Release Date: May 3, 2010

Submission of written bids:

*Timothy Mooney
Bureau of Supplemental Food Programs
Division of Nutrition
New York State Department of Health
Riverview Center
150 Broadway, 6FL West
Albany, NY 12204*

Debriefings

*James Featherstone
Bureau of Supplemental Food Programs
Division of Nutrition
New York State Department of Health
Riverview Center
150 Broadway, 6FL West
Albany, NY 12204*

Submission of Written Questions:

*Timothy Mooney
Bureau of Supplemental Food Programs
Division of Nutrition
New York State Department of Health
Riverview Center
150 Broadway, 6FL West
Albany, NY 12204*

Negotiation of Contract Terms after Award:

*James Featherstone
Bureau of Supplemental Food Programs
Division of Nutrition
New York State Department of Health
Riverview Center
150 Broadway, 6FL West
Albany, NY 12204*

For further information regarding these statutory provisions, see the Lobbying Statute summary in Section E, 10 of this solicitation.

TABLE OF CONTENTS

A. INTRODUCTION.....	4
B. BACKGROUND.....	4
C. DETAILED SPECIFICATIONS.....	6
1. TERMINOLOGY.....	6
2. USE OF WIC SERVICE MARKS.....	7
3. BIDDER QUALIFICATIONS/CERTIFICATIONS.....	7
4. COMPETITIVE BID REBATE SYSTEM – CONTRACTOR.....	9
5. COMPETITIVE BID REBATE SYSTEM – NEW YORK STATE.....	13
6. COMPETITIVE BID REBATE SYSTEM – CONTRACTOR AND NEW YORK STATE.....	15
D. BID REQUIREMENTS.....	15
1. CERTIFICATIONS FORM.....	15
2. NATIONAL WHOLESALE PRICE LIST.....	15
3. BID SHEETS.....	15
4. METHOD OF AWARD.....	17
E. ADMINISTRATIVE.....	18
1. ISSUING AGENCY.....	18
2. INQUIRIES/UPDATES.....	18
3. SUBMISSION OF BIDS.....	18
4. BID PREPARATION.....	20
5. THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO.....	22
6. PAYMENT.....	22
7. CONTRACT PERIOD AND RENEWALS.....	23
8. DEBRIEFING.....	23
9. NEW YORK STATE STANDARD VENDOR RESPONSIBILITY ATTESTATION.....	23
10. LOBBYING STATUTE.....	23
11. ACCESSIBILITY OF STATE AGENCY WEB-BASED INTRANET AND INTERNET INFORMATION AND APPLICATIONS.....	25
12. INFORMATION SECURITY BREACH AND NOTIFICATION ACT.....	25
13. NEW YORK STATE TAX LAW SECTION 5-A.....	26
14. PIGGYBACKING.....	26
15. M/WBE UTILIZATION PLAN FOR SUBCONTRACTING AND PURCHASING.....	26
16. NON-COLLUSIVE BIDDING CERTIFICATION (STATE FINANCE LAW SECTION 139-D AND APPENDIX A, CLAUSE 7).....	27
17. APPENDIX A, STANDARD CLAUSES FOR ALL NYS CONTRACTS.....	27
18. CONFIDENTIALITY/FREEDOM OF INFORMATION LAW.....	27
19. SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING.....	28
F. APPENDICES.....	28
G. CONFLICT OF TERMS/CONDITIONS.....	29
H. ATTACHMENTS.....	29
ATTACHMENT 1 – BID FORM.....	34
ATTACHMENT 2 – NO BID FORM.....	38
ATTACHMENT 3 – VENDOR INFORMATION FORM.....	40
ATTACHMENT 4 – VENDOR RESPONSIBILITY ATTESTATION.....	43
ATTACHMENT 5 – VENDOR RESPONSIBILITY QUESTIONNAIRE.....	45
ATTACHMENT 6 – CERTIFICATIONS FORM.....	51
ATTACHMENT 7 – WIC INFANT FORMULA REBATE SYSTEM IFB CHECKLIST.....	54
ATTACHMENT 8 – FORM ST-220-CA CONTRACTOR CERTIFICATION TO COVERED AGENCY.....	56
ATTACHMENT 9 – FORM ST-220-TD CONTRACTOR CERTIFICATION.....	59
ATTACHMENT 10 – INSTRUCTIONS FOR COMPLETING BID SHEETS.....	64
ATTACHMENT 11 – BID SHEET – MILK-BASED INFANT FORMULA.....	66
ATTACHMENT 12 – BID SHEET – SOY-BASED INFANT FORMULA.....	68
ATTACHMENT 13 – M/WBE PROCUREMENT FORMS.....	70
ATTACHMENT 14 – SAMPLE CONTRACT COVER SHEETS AND AGREEMENT LANGUAGE.....	80
ATTACHMENT 15 – APPENDIX A – STANDARD CLAUSES FOR ALL NYS CONTRACTS.....	87
ATTACHMENT 16 – APPENDIX D – GENERAL SPECIFICATIONS.....	92
ATTACHMENT 17 – APPENDIX G – NOTICES.....	107
ATTACHMENT 18 – APPENDIX X – MODIFICATION AGREEMENT FORM.....	109
ATTACHMENT 19 – NYS WIC PROGRAM REGIONS.....	111
ATTACHMENT 20 – SAMPLE INFANT FORMULA REBATE INVOICES.....	113

NEW YORK STATE DEPARTMENT OF HEALTH
Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

Invitation for Bids
WIC Infant Formula Rebate System

A. INTRODUCTION

New York State (NYS) is seeking to maximize the number of WIC participants served with available federal and state funds. New York State will continue to distribute non-exempt infant formula(s) through the retail purchase system and is thereby requesting rebates on non-exempt infant formulas offered to WIC participants to reduce program costs.

The purpose of this Invitation for Bids (IFB) is to implement a system that lowers the cost of retail infant formula purchases by NYS WIC participants. It is planned that one contract will be awarded for milk-based non-exempt infant formulas, and another contract will be awarded for soy-based non-exempt infant formulas. The two contracts may be with two different manufacturers or both may be with the same manufacturer, depending on the bids that are submitted. As required by federal law, the milk-based formula specified by the bidder awarded the contract for milk-based formula will be the first choice of issuance to infants utilizing milk-based formula and the soy-based formula specified by the bidder awarded the contract for soy-based formula will be the first choice of issuance to infants utilizing soy-based formula.

B. BACKGROUND

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is a federally- and state-funded program carried out pursuant to provisions of the Child Nutrition Act and to federal and New York State laws, regulations and policies. The program is funded through the Food and Nutrition Service (FNS) of the United States Department of Agriculture and the Division of Nutrition of the New York State Department of Health.

The New York State WIC program provides infant formula to eligible participants through a retail purchase system. This uniform delivery system is utilized statewide through contracts with approximately 4500 retail grocery stores and pharmacies that agree to accept WIC checks issued for specified authorized foods. All contractors must comply with federal requirements set forth in 7 CFR, Part 246.12 and state regulations in 10 NYCRR Part 60-1. The contract with the vendor specifies the responsibilities of both the state program and vendors and outlines sanctions for violations. Vendors are reviewed for compliance on a continual basis.

WIC checks are issued by local WIC agencies at clinic sites throughout the state to certified eligible participants or participants' caregivers. While infant formula is primarily issued to infants, it may also be issued to children with qualifying medical conditions if it is prescribed by the health care provider. Checks may be issued for up to a three-month period, and may be issued up to 30 days before the first "not good before" date on the checks. Formula checks specify the quantity, can size, form and brand name of the infant formula which may be purchased at an authorized retail vendor within the 30-day timeframe noted on the check. After a vendor accepts a WIC check, it is processed through the Federal Reserve System to a contract bank for payment. A series of pre-payment edits are performed by the contract bank on each

check to ensure that specific requirements are met. Checks failing these edits are not paid by the NYS WIC program.

The table below depicts the NYS WIC program's caseload over a recent six-month period, with detail provided on the number of formula-fed infants. More details on subcategories of formula-fed infants are provided in section D.3. of this IFB.

TABLE I – NYS WIC Caseload Statistics

MONTH	TOTAL CASELOAD	ALL INFANTS	FULLY BREASTFED INFANTS	INFANTS RECEIVING FORMULA
May 2009	521,734	124,306	7,574	116,732
June 2009	523,206	124,766	7,716	117,050
July 2009	522,660	124,816	7,696	117,120
August 2009	523,545	125,093	7,792	117,301
September 2009	520,902	124,608	7,774	116,834
October 2009	520,463	124,783	7,847	116,936
Six-Month Average	522,085	124,729	7,733	116,996

NYS WIC issues infant formula in accordance with §246.10(e)(1) through (e)(3) and (e)(9), of the WIC Program regulations. In addition, NYS WIC does, if necessary to provide the full nutritional benefit (FNB), use the methodology outlined in §246.10(h) in the WIC Program regulations when issuing infant formula. These policies are expected to continue throughout the term of the contracts awarded as a result of this IFB.

The average monthly number of containers of milk- and soy-based contract infant formula redeemed and invoiced during May 2009 through October 2009 is shown in Table II below. These numbers include containers redeemed for children with qualifying medical diagnoses as well as those redeemed for infants. The infant formula rebate invoices compiled in this table are included with this IFB as Attachment 20.

TABLE II - Infant Formula Distribution – Number of Cans

INFANT FORMULA TYPE	13-OUNCE CONCENTRATE	12-, 12.9- OR 14.3-OUNCE POWDERED	32-OUNCE READY-TO-FEED	8-OUNCE READY-TO-FEED	TOTAL
Milk-Based:	523,528	519,651	1,767	804	1,045,750
Soy-Based:	55,921	58,950	306	0	115,177
TOTAL	579,499	578,601	2,073	804	1,160,927

No assurance is given that the types, forms, container sizes and amounts of formula in the table above are predictive of future utilization patterns.

Formula-fed infants are issued contract formula unless their health care provider determines that an exempt formula is needed. Non-contract non-exempt formulas are not currently among the choices available to be prescribed for infants or for children or women with qualifying medical conditions. No assurance is given that this policy regarding non-contract non-exempt formula will remain unchanged during the term of the contract established as a result of this IFB.

The contracts expected to be awarded as a result of this IFB will cover WIC checks for non-exempt infant formulas with “not good before” dates beginning July 1, 2011. The new contracts will provide for three years of formula issuance (through June 30, 2014), plus two one-year extensions beyond the initial three-year period and a final three-month extension at the sole discretion of New York State. The contract start dates will be three months prior so that contractual relationship will be established by the time that July 1, 2011 contract formula checks begin to be printed (April 1, 2011).

The NYS WIC program is currently evaluating WIC management information systems, and will be transitioning to a new system during the term of the contracts to be awarded as a result of this IFB. The new system will affect many processes relevant to the infant formula rebate system, such as participant certification, food/formula issuance, and reconciliation of redeemed food/formula instruments. It will meet all USDA functional requirements, and will be the precursor for a transition from a check-based system to an electronic benefits transfer (EBT) system. The EBT transition may also occur during the term of the contracts to be awarded as a result of this IFB.

To the extent that these system changes affect the language of the contracts to be awarded (which will incorporate this IFB), NYS WIC will communicate these effects to the infant formula contractor(s) and discuss how they can be aligned with the contract language. For example, this IFB contains many references to printed food instruments or checks; with a transition to EBT, the State may indicate to the contractor(s) that encoding contractor UPC codes on plastic debit cards is considered to be the equivalent of printing contract brand formulas on WIC food instruments. NYS WIC and the contractor will defer to USDA guidance if there are instances where NYS WIC and the contractor(s) disagree on how “new system” features equate to “old system” contract language.

C. DETAILED SPECIFICATIONS

1. Terminology

The term “bidder” refers to all potential respondents to this Invitation for Bids. The term “contractor” refers to the successful bidder who is subsequently awarded a contract and to any subcontractor(s) if applicable. The term “state” refers to New York State as represented by the New York State Department of Health WIC program.

“Contract start date” refers to the date on which the state and contractor enter into an agreement regarding the issuance of WIC formula checks printed with specific future “not good before” dates. This date may be up to six months prior to the earliest “not good before” date on the printed checks. The desired contract start date is April 1, 2011.

“Contract effective date” refers to the earliest “not good before” date on checks printed under

the terms of the awarded contract. The desired contract effective date is July 1, 2011. WIC checks with July 1, 2011 “not good before” dates may be printed and distributed to WIC participants as early as April 1, 2011.

“Issued during the contract period” refers to WIC checks with “not good before” dates falling between contract effective date and the end date of the contract.

For all other terms related to infant formula and infant formula rebates, please see the Child Nutrition Act and Federal Regulations.

2. Use of WIC Service Marks

By submitting a bid in response to this IFB, the bidder, who must be an infant formula manufacturer, indicates that:

Manufacturer acknowledges that the WIC Acronym and Logo are service marks owned by the Department of Agriculture (USDA), and that all rights therein and goodwill pertaining thereto belong exclusively to USDA.

Manufacturer shall not use these service marks in any manner on its goods or their containers or packaging or on tags or labels affixed thereto. Manufacturer shall also not use the WIC Logo in advertising or other promotional materials (collectively: “advertising”).

Manufacturer shall not use the WIC Acronym in advertising in any manner that is likely to cause confusion, mistake or deception as the affiliation, connection, or association of the Manufacturer with the WIC Program, or as to the sponsorship or approval of Manufacturers goods, services, advertising, or commercial activities, including nutritional message(s), by the WIC Program, USDA, or the State agency.

Manufacturer shall include the following statement with any use of the WIC Acronym in advertising: “WIC is a registered service mark of the U.S. Department of Agriculture for USDA’s Special Supplemental Nutrition Program for Women, Infants and Children.”

Within New York State, infant formula manufacturers, regardless of whether they provide formula to the NYS WIC program, are not permitted to use the WIC acronym in reference to the NYS WIC program for promoting their products. Organizations wishing to use the “WIC” acronym or logo in New York State for informational/educational purposes must first obtain the written permission of the NYS WIC program.

3. Bidder Qualifications/Certifications

A winning bidder must be an infant formula manufacturer registered with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act and producing infant formula products that are in compliance with Federal regulations issued pursuant to P.L. 100-137. The bidder winning the milk-based formula contract award shall enter into a contract to provide a rebate on all non-exempt milk-based infant formulas manufactured by the bidder. The bidder winning the soy-based formula contract award shall enter into a contract to provide

a rebate on all non-exempt soy-based infant formulas manufactured by the bidder. The contract for milk-based formula and the contract for soy-based formula will contain the documents referenced in sections F. and G. of this IFB.

All formulas are to be complete formulas not requiring the addition of any ingredients other than water prior to being served in a liquid state. All formulas, excluding low iron varieties, will contain at least 10 milligrams of iron per liter of formula at standard dilution, which supplies 67 kilocalories per 100 milliliters (i.e., approximately 20 kilocalories per fluid ounce of formula at standard dilution). The primary contract infant formula must be suitable for issuance to generally healthy full-term infants.

Only those companies that can produce and distribute infant formula products in sufficient quantity to serve 100 percent of potential WIC infant participants' milk-based infant formula needs in New York State can bid for the milk-based formula contract. Only those companies that can produce and distribute infant formula products in sufficient quantity to serve 100 percent of potential WIC infant participants' soy-based infant formula needs in New York State can bid for the soy-based formula contract. The majority (~92%) of the NYS WIC program's infants who receive non-exempt infant formula receive milk-based formula. The balance - approximately 8% - utilize soy-based formula. This capacity must be maintained for the duration of the contracts.

In 2008, there were an estimated 248,840 infants potentially eligible for WIC program services in New York State. This estimate is based on 2003-2007 New York State birth records, 2000 Census Summary File 3 data, 2008 March Supplement of the Current Population Survey, and recommendations outlined in the Final Report of the Panel to Evaluate the USDA's Methodology for Estimating Eligibility and Participation for the WIC Program. For the same time period, approximately 53% of eligible infants were participating in the NYS WIC program.

Each successful bidder will be responsible for making contract infant formula available to all of the program's authorized retailers (vendors) through currently used channels or for making any distribution changes needed to ensure availability.

The distribution of eligible infants and WIC-approved vendors across the state is shown in the table below.

TABLE III – Regional* Distribution of Eligible Infants and WIC Vendors

Category	Capital/ Central (#)	Capital/ Central (%)	Western (#)	Western (%)	Metropolitan (#)	Metropolitan (%)
Infants Eligible for WIC Participation	39,586	16%	30,139	12%	179,115	72%
Number of Vendors per Region	531	13%	392	9%	3,415	78%

*See Attachment 19 - New York State WIC Program Regions

4. Competitive Bid Rebate System - Contractor

Relative to non-exempt infant milk-based formulas, the contractor for milk-based formula shall, and relative to non-exempt infant soy-based formulas, the contractor for soy-based formulas shall:

- a. Produce infant formula in the following forms: 13-ounce can concentrate, 12-to-16-ounce can powdered, and 32-ounce can ready-to-feed in sufficient amounts to meet WIC requirements, as described in section C.3., “Bidder Qualifications/ Certifications,” for purchase with food instruments issued during the contract period. The contractor will not be required to provide clinic samples to WIC local agencies. (Comparably-sized containers may also be acceptable; prospective bidders producing such sizes should submit an inquiry about the acceptability of their container sizes via the inquiry process described in section E.2. of this IFB. The formula specified on the Infant Formula Bid Sheets (Attachments 11 and 12) must be in production and listed on the bidder’s national wholesale price list as of the date of the bid submission. All these products shall be packaged in containers which are not different from the containers distributed by the contractor to retail vendors for sale to the general public.

If an existing non-exempt formula produced by the contractor is approved by the NYS WIC program during the term of the contract, any changes to container size, container label, or product formulation occurring during the contract period or the subsequent redemption period of checks issued during the contract period must be communicated to the state at least 90 days before the change becomes effective. Discontinuation of any such non-exempt formulas occurring during the contract period or the subsequent redemption period of checks issued during the contract period must be communicated to the state at least 90 days before the cessation of production. If information about a planned change is considered by the contractor to potentially cause substantial injury to the contractor’s competitive position if it became public, the contractor should designate which information is confidential and the state will maintain the information in a confidential manner.

If the contractor introduces a new non-exempt formula during the contract period, an announcement of such must be communicated to the state as soon as is practical for the contractor prior to inviting orders for the product.

- b. Guarantee availability of NYS WIC-approved contract non-exempt infant formula to all of the program's authorized vendors through currently used marketing channels or practices or make such distribution changes as are needed to guarantee availability. WIC retail vendors are responsible for ordering and stocking adequate levels of contract formula made available by the contractor through its marketing channels and practices. WIC retail vendors are responsible for paying the contractor or wholesale supplier of the contractor’s formula according to the payment terms agreed upon by the WIC retail vendor and the contractor or wholesale supplier.

The contractor is responsible for ensuring that a purchasing system with prices at or near the contractor’s national wholesale prices is available to vendors who must buy small amounts of formula. Note that these vendors may be located in remote, rural areas of New York State.

- c. Remit to the state a rebate per can for all non-exempt formulas produced by the

contractor prior to or during the contract period and offered by the New York State WIC program. The state is entitled to a rebate payment for all WIC food instruments for such formulas issued to WIC program participants (women, infants and children) during the term of the contract and redeemed before or after the expiration date of the food instrument as the redemption period is defined within WIC program procedures. The initial rebate for each such formula approved for issuance by the New York State WIC program prior to the contract effective date will be computed as follows:

- i. Identify the discount percentage for each form (concentrate, powder and ready-to-feed bid) using Column C from the relevant Bid Sheet (Attachment 11 or 12 to this IFB).
- ii. Multiply the lowest national wholesale price per unit for a full truckload of each of the contractor's non-exempt formulas at the time of bid submission by the appropriate per-form percentage. The results will be the initial rebates for each formula. If no wholesale price is provided for a formula at the time of bid submission because of planned discontinuation, the initial rebate for that formula will be computed using the most recently published lowest national wholesale price per unit for a full truckload of the formula. No rebates are due for formulas whose production ceased more than six months prior to the bid submission date.

Once established, the rebates will increase or change as described below in section C.4.e. of this IFB.

- d. Remit to the state a rebate per can for all non-exempt formulas newly approved for issuance by the NYS WIC program on or after the contract effective date. With the exception of the primary contract infant formula specified on the relevant Bid Sheet (see Attachment 11 or 12 to this IFB), which will be approved by NYS WIC, the Department reserves the right to determine whether any infant formula produced by the contractor at the time of bid submission or any new infant formula introduced by the contractor during the term of the contract will be approved for use in the New York State WIC program. In the event that an existing or new non-exempt infant formula is approved by the New York State WIC program during the contract term, the rebate for the added product will be computed as follows:
 - i. Identify the three discount percentages (one for concentrate, one for powder and one for ready-to-feed) calculated under section C.4.c. of this IFB.
 - ii. Apply these per-form percentages to the lowest truckload wholesale prices of all the forms and container sizes of the newly-approved product. The wholesale prices must be those in effect at the time that the Department approves the formula. The results will be the rebates for the newly-approved infant formula.

This rebate amount will subsequently increase or change with wholesale price changes as discussed below in section C.4.e. of this IFB.

- e. Remit to the state a revised rebate per can when the contractor changes its lowest national wholesale price for a full truckload of a rebateable NYS WIC-approved formula. When the contractor increases its lowest national wholesale price for a full

truckload of a rebateable formula, the rebate will automatically increase for each affected formula product on a cent-for-cent basis. When the contractor decreases its lowest national wholesale price for a full truckload of a rebateable formula, the rebate will automatically decrease for each affected formula product on a cent-for-cent basis. Cent-for-cent increases or decreases in rebate amounts will take effect on the first day of the month in which the price increase or decrease occurs. Any increase or decrease in the lowest national wholesale price for a full truckload of a rebateable formula between the date of bid submission and the effective date of the contract will be added to or subtracted from the initial rebate amount for that formula according to the calculations described above in this section.

- f. Remit to the state a revised rebate per container if any form/size of the primary contract infant formula undergoes a container size change or if it is replaced by another product. Rebates for container sizes or products replacing any form/size of the primary contract infant formula must be calculated to yield the same net wholesale cost per ounce as the primary contract infant formula product in the old container size or the discontinued primary contract infant formula product. These rebate amounts will subsequently increase or change automatically with wholesale price changes as discussed above in section C.4.e. of this IFB.
- g. Notify the state of any wholesale price changes by telephone or facsimile (fax) or electronic mail on the day the price adjustment is released to the contractor's regular customers, or another earlier date, as agreed to by the contractor and the state.
- h. Rebate the state for the non-exempt infant formula products on each redeemed food instrument used to purchase another company's infant formula product when the primary contract infant formula is unavailable to WIC vendors and another company's infant formula must be substituted to provide the participant(s) with his/her monthly prescription. The rebate shall be calculated to yield the same net wholesale cost per ounce to the state as the product which is unavailable. If only one form – concentrate or powder - of the primary contract infant formula is unavailable, the state will issue the available form (concentrate or powder) of the primary contract infant formula prior to issuing another company's infant formula.

Neither party shall be liable for delays or performance failures resulting from and caused by acts beyond the control of such party. Such acts shall include, but are not limited to, acts of God, acts of terrorism or war, epidemics, communication line failures, power failures, shortage of supplies, earthquakes and other disasters or events. In every case the delays must be beyond the control and without the fault of negligence of the non-performing party. However, notwithstanding the above, if the contractor fails to deliver the specified services on the delivery date designated herein, then the state may procure the usage of other parties' services and may cancel the contract.

- i. Make rebate payments to the state, based on the documented purchases submitted by the state, i.e., food instrument redemptions supported by electronic data files subject to audit, as indicated on the state's invoice. Invoices shall reflect, for each rebateable formula, the formula name, form, container size and applicable per-container rebate amount as well as the total number of containers redeemed within a calendar month, with a breakdown for each redemption month of the months in which the formula was issued. The total number of containers redeemed within a calendar month will be

adjusted downward to reflect checks redeemed for unusually low amounts, as detailed in section C.5.d. of this IFB.

Payments will be forwarded to the state by the contractor via wire transfer within thirty (30) days of postmark, fax marked or electronically transmitted date of the invoice according to specifications that will be provided by the state. If payment is not forwarded to the state within 30 days of the postmark or fax marked date of the invoice, the contractor shall pay the state, in addition to the amount due, interest at a rate of one (1) percent per month, or portion thereof, on the unpaid balance from the expiration of such 30-day period until such time as payment is received by the state.

- j. Notify the state, in writing, of any intent to dispute or investigate a potential error in the rebate invoice within 30 days of receipt of the invoice. After this 30-day period, any requirement to return funds to the contractor as a result of a dispute or over billing error is waived. Payments cannot be withheld by the contractor in the event of a dispute or billing error. The contractor may not withhold rebate payments based on rebate invoices issued by the state under any circumstances.
- k. Be totally and exclusively responsible for all costs related to the contractor's request for audits, inspections, and reviews of WIC program records created solely for this purpose, outside of the usual documents required to support invoices reflecting redeemed instruments. Access to actual or microfilmed food instruments or other confidential records shall be subject to federal and state confidentiality requirements.
- l. Meet with the state biennially or more frequently as determined by either party. The location shall be in the offices of the Division of Nutrition or, at the discretion of the state, by conference call.
- m. Address correspondence and communications to the New York State Department of Health, Division of Nutrition, Director, Bureau of Supplemental Food Programs, Riverview Center, 150 Broadway 6th Floor West, Albany, New York 12204-2719. All communications regarding wholesale price increases, can size changes, reformulations, new products, or cessations in the production of any formula must be in writing and the contractor must telephone or use electronic mail to confirm the state's receipt of the communication. The state will provide the contractor with the telephone number of the director of the Bureau of Supplemental Food Programs and email addresses for bureau staff able to confirm receipt of communications from the contractor.
- n. Agree to fully indemnify and save harmless the State, as well as its officers, agents and employees without limitation from suits, actions, damages and costs of every name and description arising out of the acts or omissions of Contractor, its officers, employees, subcontractors, partners, or agents, in any performance under this contract, including but not limited to personal injury caused by use of contractor's formula furnished pursuant to this contract, provided that the State shall give Contractor written notice of any action, claim, or other suit within 30 days of receiving notice of such action, claim, or other suit. Further, the Contractor shall be given the opportunity to take over, settle or defend itself in such action, claim or suit at Contractor's sole expense, together with reasonable cooperation from the State in the defense of any such action, also at the Contractor's expense.

Notwithstanding any indemnification clause, the state shall have full authority to conduct its own defense, negotiations, and settlements, which settlements shall have the prior written approval of contractor, but the contractor's indemnification nevertheless remains in full force and effect.

- o. Assist the state with providing contract brand infant formula to WIC participants on an emergency basis if normal distribution channels are disrupted by such events as acts of God, acts of terrorism or war, epidemics, communication line failures, power failures, earthquakes, contamination of water supplies or other disasters or events. The forms such assistance may take include, but are not limited to, sales of infant formula to the state for direct distribution to WIC participants or efforts to increase the supply of ready-to-feed formula available to WIC vendors. In the event of formula purchases by the state, the cost to the state will be the national wholesale price in effect on the purchase date for the weight tier of formula purchased, less the rebate in effect on the purchase date.

5. Competitive Bid Rebate System – New York State

Relative to non-exempt infant milk-based formulas for the milk-based infant formula contractor, and relative to non-exempt infant soy-based formulas for the soy-based formula contractor, New York State shall:

- a. Supply each successful bidder with a list of currently authorized WIC vendors. The list will include the store name and address of each authorized vendor; no other information regarding WIC vendors will be provided for this list or for any other purpose. The program will also notify all authorized WIC retail outlets to inform them of the change to any single source brand of formula by category and type.
- b. Print contract brand formulas on the WIC food instruments unless another formula has been prescribed for a participant, the participant requires a package type not produced by the manufacturer (e.g. eight-ounce containers of ready-to-feed formula due to a participant's unsafe water supply and lack of access to reliable refrigeration), or the contractor is unable to make enough formula available for purchase by WIC vendors. As required by federal law, the milk-based formula specified by the bidder awarded the contract for milk-based formula will be the first choice of issuance to infants utilizing milk-based formula and the soy-based formula specified by the bidder awarded the contract for soy-based formula will be the first choice of issuance to infants utilizing soy-based formula.
- c. Prepare invoices for each contractor's rebate payment; each invoice shall contain the formula names, forms, container sizes, quantities and rebate amounts used to calculate the monthly rebate payment. The state shall mail the invoice to the contractor via Certified Mail, return receipt requested, or transmit via FAX. Invoices will be prepared on an approximately monthly basis for the prior month's redemptions. Supplemental invoices will be prepared if ongoing state data system maintenance activities identify additional or corrected amounts.
- d. Adjust invoices to account for instances where a WIC check for a rebateable formula is redeemed for an unusually low dollar amount as detailed below.

Checks that list a single formula product (with any number of containers) rather than two or more products (such as a combination of the concentrated and powdered forms of the primary contract infant formula) will be analyzed. The NYS WIC program will calculate, on a monthly basis, two-sided 95% percentile confidence intervals for per-container redemption prices for each frequently-issued product (100 or more checks redeemed within a vendor management area and month) for each of four major vendor management areas in New York. Per-container redemption prices falling below the lower limit of the two-sided 95% confidence interval for the product, vendor group and month will be compared to the average price for that product, group and month.

Checks with per-container redemption prices falling below the lower limit will have their total redemption amount divided by the average redemption price for the product, vendor group, month and number of containers listed on the check. The dividend will be rounded to the nearest whole number using normal rounding rules, and subtracted from the number of containers listed on the check. The result will be the number of containers to remove from the rebate invoice for that check.

The number of containers to be removed from each check statewide will be summed for each formula product, then divided into the total number of containers of that product listed on single-product checks, to arrive at an adjustment rate. The adjustment rate will then be applied to the total number of containers listed on all checks – single-product checks and multiple-product checks - to arrive at the number of cans to exclude from the rebate invoice.

The results of applying this methodology is shown on the sample invoices attached to this IFB (Attachment 20).

- e. Upon resolution of a dispute, promptly disburse in accordance with prompt payment provisions of Article 11 of the State Finance Law, any funds due the contractor.
- f. Supply records directly related to the monthly billings to the contractor for review. This review shall be limited to books, records, and documents related to the generation of monthly invoices and shall include and be limited to the following data elements:

Check Number
Food Package Codes (Form, Formula and Unit Codes, and Quantity)
Issue Date
Redemption Date

In addition, the state is willing to provide (on a regular or upon-request basis) the following data elements for each check whose number of cans was adjusted as described in section C.5.d.: check number, food package codes (form, formula and unit codes, and quantity), issue date, redemption date, redeemed amount, and average per-can redeemed amount for the formula product/vendor management area represented on the check.

Each contractor may audit the books, records and documents of New York State that relate to the generation of monthly invoices. New York State shall retain all records for a minimum of three years. Individual applicant and/or participant records are confidential and exempt from audit by the contractor in accordance

with 7 CFR Part 246 of the Federal Regulations for the Special Supplemental Food Program for Women, Infants and Children. Vendor confidentiality will also be maintained as noted in section C.5.a. of this IFB.

- g. Meet with each contractor biennially or more frequently as determined by either party. The location shall be in the offices of the Division of Nutrition or, at the discretion of the state, by conference call.

6. Competitive Bid Rebate System – Contractor and New York State

The State and each contractor will make every effort, including but not limited to prompt responses to requests for additional information, to resolve all disputes between the parties pertaining to any rebate invoice covered by this Agreement by closeout of the federal fiscal year within which the issuance month of the disputed rebate amounts occurred. Notwithstanding the foregoing, nothing in this requirement should be construed as a waiver of the legal rights of either party to continue efforts to arrive at a satisfactory resolution of a dispute after the closeout of the federal fiscal year in the event that a satisfactory resolution cannot be reached before the closeout of the federal fiscal year.

D. BID REQUIREMENTS

In addition to the administrative requirements listed below in Section E. of the IFB, bidders must submit two (2) originals and three (3) copies of the following:

1. Certifications Form

Bidders must review, sign and submit the Certifications Form (Attachment 6) that addresses all the provisions outlined in Section C. of this IFB. The Certifications Form must be signed by a company representative with authority to commit the company to the bid package.

2. National Wholesale Price List

Bidders must include with their bid their national wholesale price list(s) showing all weight tiers available effective the date of bid submission.

3. Bid Sheet(s) (Attachments 11 and 12)

Bidders must include:

- a. A completed and signed Bid Sheet – Milk-Based Infant Formula (Attachment 11), **OR**
- b. A completed and signed Bid Sheet – Soy-Based Infant Formula (Attachment 12), **OR**
- c. A completed and signed Bid Sheet - Milk-Based Infant Formula (Attachment 11) **AND** a completed and signed Bid Sheet – Soy-Based Infant Formula (Attachment 12).

All bid sheets will be reviewed for completeness and signature, and to determine the lowest

total net wholesale cost to the state. All sheets must be signed by a company representative with authority to commit the company to the bid package.

On each bid sheet that the bidder chooses to submit, bidders must indicate one rebate amount and percentage discount for concentrated formula, one rebate amount and percentage discount for powdered formula, and one rebate amount and percentage discount for ready-to-feed formula.

The numbers of reconstituted ounces solicited on Attachments 11 and 12 are based on federal regulations and USDA guidance applied to NYS WIC caseload reports and formula issuance queries, including:

- The monthly average number of infants receiving infant formula (See Table I), broken down by age (in months) and feeding category. “Some breastfeeding” refers to infants who are partially breastfed but receive more than 50% of the maximum amount of formula. “Mostly breastfeeding” refers to infants who are partially breastfed and receive less than or equal to 50% of the maximum amount of formula.
-
- Each breakdown amount multiplied by the proportion of infants issued formula who receive contract formula (just over 92%). (See Table IV for proportions; see column 4 of Table V for calculated number of infants.) At present, there are no NYS WIC infants receiving non-contract, non-exempt formula.
- The resulting number of infants receiving contract formula by age and feeding category, multiplied by the full nutritional benefit (FNB) per month for each age and feeding category to determine the total FNB, in reconstituted ounces, for all infants receiving contract formula. (See column of Table V below.)
- The total FNB multiplied by the proportion of infants issued contract formula who receive each type of non-exempt formula: milk-based concentrate, milk-based powder, milk-based ready-to-feed, soy-based concentrate, soy-based powder and soy-based ready-to-feed.

The tables below summarize the figures used to calculate the number of reconstituted ounces shown on Attachments 11 and 12.

TABLE IV – NYS WIC Infant Formula Utilization Proportions

Type of Formula	Proportion of All Infants Issued Formula	Proportion of All Infants Issued Contract Formula
Milk-Based Concentrate	16.72%	18.13%
Milk-Based Powder	67.80%	73.48%
Milk-Based Ready-to-Feed	0.10%	0.11%
Soy-Based Concentrate	1.27%	1.37%
Soy-Based Powder	6.37%	6.90%
Soy-Based Ready-to-Feed	0.01%	0.01%
Exempt Formula	7.73%	N/A

TABLE V – NYS WIC Formula-Fed Infant Caseload Breakdown and FNB

Column Number: 1	2	3	4	5	6
Infant Feeding Category	Age Breakdown	Average Caseload of Infants Receiving Formula	Infants Receiving Contract Formula	FNB per Infant (ounces)	FNB per Age and Feeding Category (ounces)
Fully Formula Fed + Some Breastfeeding	0 to <4 Months	34,032	31,401	806	25,309,206
	4 to <6 Months	18,295	16,882	884	14,923,688
	6 to <12 Months	52,414	48,362	624	30,177,888
Mostly Breastfeeding	0 to <1 Month	1,062	980	0	0
	1 to <4 Months	3,537	3,264	364	1,188,096
	4 to <6 Months	1,936	1,786	442	789,412
	6 to <12 Months	5,720	5,279	312	1,647,048
TOTAL		116,996	107,954		74,035,338

TABLE VI - NYS WIC

Type of Formula	Proportion of All Infants Issued Contract Formula	Proportion Applied to Total Non-Exempt Reconstituted Ounces Solicited
Milk-Based Concentrate	18.13%	13,419,672
Milk-Based Powder	73.48%	54,400,486
Milk-Based Ready-to-Feed	0.11%	82,311
Soy-Based Concentrate	1.37%	1,017,759
Soy-Based Powder	6.90%	5,107,239
Soy-Based Ready-to-Feed	0.01%	7,871
TOTAL	100.0%	74,035,338

Instructions for completing Attachments 11 and 12 are provided in Attachment 10. The number of reconstituted ounces discussed above will be converted to a number of containers of the bidder's formula on the Bid Sheets.

To evaluate each bid, the state will subtract the rebate offer per container from the lowest national wholesale price per container for a full truckload of formula to obtain a net wholesale cost per container. In each of the "CONCENTRATE," "POWDER," and "READY-TO-FEED" rows of each bid sheet, the net wholesale cost per container will be multiplied by the number of containers for a one-month period to arrive at a total net wholesale cost for that form. The Net Wholesale Costs of each of the three forms will be totaled. As described in section D.4.a. of this IFB, the bidder with the lowest total monthly Net Wholesale Cost for milk-based formula will be awarded the milk-based contract, and the bidder with the lowest total monthly Net Wholesale Cost for soy-based formula will be awarded the soy-based contract.

4. Method of Award
 - a. Vendor Selection

At the discretion of the Department of Health, all bids may be rejected. The evaluation of the bids will include, but not be limited to the following considerations:

The responsive bid for milk-based formula with the lowest total monthly net wholesale cost to the state will be awarded the contract for milk-based infant formula. Bidders must bid on a milk-based infant formula in the concentrated, powdered and ready-to-feed forms that is suitable for routine issuance to the majority of healthy full-term infants.

The responsive bid for soy-based formula with the lowest total monthly net wholesale cost to the state will be awarded the contract for soy-based infant formula. Bidders must bid on a soy-based infant formula in the concentrated, powdered and ready-to-feed forms that is suitable for issuance to healthy full-term infants.

In the event of a tie, the determining factor(s) for award, in descending order of importance, will be:

- Minority/Woman-owned Business Enterprise (MWBE) utilization
- Past experience
- References

b. Correspondence

The successful bidder will receive written notice of the award from the State. The signed letter will be faxed or electronically sent to the manufacturer as well as mailed.

Within thirty days of the written notice of award, the State shall provide the successful bidder with:

- ◆ A contract for signature to be returned to the State via overnight mail within 30 days of the manufacturer's receipt of the contract.
- ◆ The telephone numbers, electronic mail addresses, and fax numbers of the director of the Bureau of Supplemental Food Programs and bureau staff responsible for contract management and able to confirm receipt of communications from the manufacturer.

Other bidders will also receive written notification that they were not awarded the contract.

E. ADMINISTRATIVE

1. Issuing Agency

This Invitation for Bids (IFB) is a solicitation issued by the NYS Department of Health. The Department is responsible for the requirements specified herein and for the evaluation of all bids.

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age or disability. To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TTY). USDA is an equal opportunity provider and employer.

In addition, New York State prohibits discrimination based on creed, marital status and sexual orientation. Persons who believe they have been discriminated against based on the New York Human Rights Law should call the Growing Up Healthy Hotline at 1-800-522-5006, or write to the WIC Program Director, Riverview Center, FL6W, 150 Broadway, Albany, NY, 12204.

2. Inquiries/Updates

Any questions concerning this solicitation must be submitted in writing. The questions must be received by the date indicated on the cover of this IFB.

Questions may be submitted in hard copy to:

NYS Department of Health
Division of Nutrition
Riverview Center
150 Broadway, 6th Floor West
Albany, New York 12204-2719
Attention: Timothy Mooney
Bureau of Supplemental Food Programs

As an alternative to traditional mail, questions may be sent via email to the following address:

nyswicformularebate@health.state.ny.us

Questions may not be faxed.

Questions and answers, as well as any IFB updates and/or modifications, will be posted on the Department of Health's website at <http://www.nyhealth.gov/funding/> by the date indicated on the cover of this IFB. Bidders wishing to receive these documents via mail must send a request, in writing, to the Department at the address above.

3. Submission of Bids

Bids shall be prepared in accordance with the requirements stated in this IFB. **All documentation requested under the Bid Requirements section (Section D) must be provided at the time the proposal is submitted.**

The Technical Response and the Cost Proposal must be sealed in separate envelopes. The sealed envelopes must be marked "Cost Proposal" or "Technical Response" respectively and labeled "BID ENCLOSED" with the IFB NUMBER and the BID OPENING DATE on the outside of each envelope. In addition, please label the outside of the bid package in which both of the above envelopes are enclosed with the following:

WIC INFANT FORMULA REBATE BID

CONFIDENTIAL - DO NOT OPEN

NAME OF BIDDER _____

Please see Section E.4 Bid Preparation for detailed information on preparing bids in response to this IFB and assembling the components for submission.

Interested infant formula manufacturers should submit their bid packages no later than 2:00PM on the date indicated on the cover of this IFB to the following address:

NYS Department of Health
Division of Nutrition
Riverview Center
150 Broadway, 6th Floor West
Albany, New York 12204-2719
Attention: Timothy Mooney
Bureau of Supplemental Food Programs

Bidders assume all risks for timely, properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of bids to DOH **prior to** the date of the bid opening. **LATE BIDS will be rejected. E-mail bid submissions are not acceptable and will not be considered.**

Bidders must allow for extra time to comply with the security procedures in effect at the Riverview Center Building when hand delivering bids or using deliveries by independent courier services.

Security procedures are in effect at the Riverview Center Building. These procedures govern the admittance to the Division of Nutrition in Riverview Center. Photo identification is required. These security procedures may change or be modified at any time. Vendors who intend to deliver bids or conduct business with the Division of Nutrition should allow extra time to comply with the security procedures.

Bid packages will be opened on the date and time indicated on the cover of this IFB in the offices of the Division of Nutrition (Riverview Center, 150 Broadway 6th Floor West, Albany, NY 12204-2719). Bidders are welcome to send up to two representatives to witness the package openings. There will be at least two representatives from the State present at the opening.

At the opening, the bidders' company names will be announced, and the formula names and the amounts entered into the Bid Sheets (Attachments 11 and 12) will be read aloud. No other information will be opened or shared. The contract will not be awarded at the time of the bid opening. The following steps must be completed by the Bureau of Supplemental Food

Programs after the bid opening and before a written award is made:

- ◆ Pass/fail review of the bidders' Certifications Form.
- ◆ Verification of all calculations on the Bid Sheets.
- ◆ Review of Cost Proposals and Vendor Responsibility Attestation forms for completeness and signature.
- ◆ Submission to and receipt of approval from, State executive staff of documentation of the contractor selection process.

Copies of the bid packages opened by the State may be requested after the award and execution of the contract by writing to the following electronic mail address: FOIL@health.state.ny.us.

The offer of a rebate is voluntary but every offer shall be firm and not revocable for a period of 180 days or until released by the state, whichever occurs first.

Manufacturers choosing not to bid are asked to submit a *No-Bid Form* (Attachment 2 of this IFB) to the above address by the Bids Due date and time indicated on the cover of this IFB. Failure to do so may result in the manufacturer being removed from the State's mailing list for future procurements.

Please note that the costs for preparing the bid are solely the responsibility of the bidder. New York State will not provide reimbursement for such costs.

Attachment 7 of this IFB contains a checklist that can be completed to assist with assembling a complete bid package.

4. BID PREPARATION

Prepare your bid on the attached forms using indelible ink. Print the name of your company on each form included in your bid package in the space provided.

IMPORTANT NOTICE TO POTENTIAL BIDDERS:

Receipt of these bid documents does not indicate that the Department of Health's (DOH) Division of Nutrition (DON) has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the bid opening and will be based on our evaluation of your bid submission compared to the specific requirements and qualifications contained in these bid documents.

Bid packages must contain two separate, sealed envelopes marked "BID ENCLOSED" and labeled with the IFB NUMBER and the BID OPENING DATE on the outside of each envelope. One envelope must be labeled "**Technical Response**" and one envelope must be labeled "**Cost Proposal**". The contents of the two envelopes are listed below. The two bid envelopes must be packaged together and delivered to:

NYS Department of Health
Division of Nutrition
Riverview Center
150 Broadway, 6th Floor West
Albany, New York 12204-2719
Attention: Timothy Mooney
Bureau of Supplemental Food Programs

Please label the outside of the bid package in which both of the above envelopes are enclosed with the following:

WIC INFANT FORMULA REBATE BID
CONFIDENTIAL - DO NOT OPEN
NAME OF BIDDER _____

Contents of overall bid submission package:

- Technical Response Envelope (see below)
- Cost Proposal Envelope (see below)

Contents of the “Technical Response” Envelope:

Item 1. Two signed originals and three copies of the “Vendor Information Form” (Attachment 3).

Item 2. Two signed originals and three copies of the “Vendor Responsibility Attestation” (Attachment 4) and “Vendor Responsibility Questionnaire” (Attachment 5).

Item 3. Two signed originals and three copies of the “Certifications Form” (Attachment 6).

Contents of the “Cost Proposal” Envelope:

Item 1. Two signed originals and three copies of the “NYS Department of Health Bid Form” (Attachment 1).

Item 2. Two signed originals and three copies of the “Milk-Based Infant Formula Bid Sheet” (Attachment 11) **and/or** “Soy-Based Infant Formula Bid Sheet” (Attachment 12).

Item 3. Two signed originals and three copies of the “M/WBE Utilization Plan” (Attachment 13).

Item 4. Five copies of the vendor’s National Wholesale Price List.

Proposals that do not include the following will be rejected:

- **two signed originals of the Certifications Form (Attachment 6),**
- **two signed originals of the Milk-Based Infant Formula Bid Sheet (Attachment 11) and/or Soy-Based Infant Formula Bid Sheet (Attachment 12)**
- **the vendor’s National Wholesale Price List**

In addition, prior to award, ST-220-CA Contractor Certification to Covered Agency (Attachment 8) must be submitted to the Department of Health and Form ST-220-TD Contractor Certification (Attachment 9) must be filed with the New York State Department of Taxation and Finance. These forms may be submitted with the bid as part of the Technical Proposal.

Bidders assume all risks for timely, properly submitted deliveries. Bidders are strongly

encouraged to arrange for delivery of bids to DOH **prior to** the date of the bid opening. **LATE BIDS will be rejected. E-mail bid submissions are not acceptable and will not be considered.**

NOTICE TO NON-BIDDERS:

Manufacturers choosing not to bid are asked to submit a *No-Bid Form* (Attachment 2 of this IFB) to the above address by the Bid Due date and time indicated on the cover of this IFB. Failure to do so may result in the manufacturer being removed from the State's mailing list for future procurements.

5. THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO

- a. Reject any or all proposals received in response to the IFB;
- b. Withdraw the IFB at any time, at the agency's sole discretion;
- c. Make an award under the IFB in whole or in part;
- d. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;
- e. Seek clarifications and revisions of proposals;
- f. Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the IFB;
- g. Prior to the ***bid opening***, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- h. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent IFB amendments;
- i. Change any of the scheduled dates;
- j. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- k. Waive any requirements that are not material;
- l. Negotiate with the successful bidder within the scope of the IFB in the best interests of the state;
- m. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- n. Utilize any and all ideas submitted in the proposals received;

- o. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 180 days from the bid opening; and,
- p. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.

6. Payment

The contractor shall make monthly rebate payments to the State, based on the documented purchases submitted by the State (i.e., food instrument redemptions supported by electronic data files subject to audit) as indicated on the State's invoice. Invoices shall reflect the total number of each contract formula redeemed within the preceding calendar month, with a breakdown for each redemption month of the months in which the infant formula check was issued, and adjustments, if any, resulting from the analyses described in section C.5.d. of this IFB. Each total will be multiplied by the applicable rebate amount. The products of these calculations will be summed to arrive at the total invoice amount.

The State may also issue supplemental invoices if it discovers that any infant formula redemptions were not accounted for in the regular invoices. The contract entitles the State to rebates for all WIC contract infant formula checks issued to WIC program infants during the contract period and redeemed by WIC program infants as the redemption period is defined within WIC program procedures.

Payments will be forwarded to the State by the manufacturer via wire transfer within thirty (30) days of the postmark, fax mark, or electronic mail date of the invoice according to specifications that will be provided by the state. If payment is not forwarded to the state within 30 days of the postmark, fax mark or electronic mail date of the invoice, the manufacturer shall pay the State, in addition to the amount due, interest at a rate of one (1) percent per month, or portion thereof, on the unpaid balance from the expiration of such 30-day period until such time as payment is received by the State.

7. Contract Period and Renewals

This agreement shall be effective upon approval of the NYS Office of the State Comptroller.

The anticipated start date is April 1, 2011 (for WIC infant formula checks dated July 1, 2011 or later) or another date as specified, and be effective through June 30, 2014. The contract may be extended at the sole discretion of the state for up to two additional one-year renewals and a final three-month extension. The contract(s) may be canceled by the state at any time, with or without cause, upon a 90-day written notice to the manufacturer. The contract(s) may be modified only by written amendment executed by the parties hereto and approved by the appropriate State official(s).

8. Debriefing

Once an award has been made, bidders may request a debriefing of their proposal. Please note the debriefing will be limited only to the bidder's proposal, and will not include any discussion of other proposals. Requests must be received no later than ten (10) business days from the date of the award announcement.

9. New York State Standard Vendor Responsibility Attestation (Attachment 4)

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Bidders using the VendRep system must also complete and submit the Vendor Responsibility Attestation (Attachment 4) and submit supporting documentation. Otherwise, bidders must submit a Vendor Responsibility Questionnaire (Attachment 5) and supporting documentation.

10. Lobbying Statute

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, provides, among other things, the following as pertains to development of procurement contracts with governmental entities:

- a. makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- b. requires the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
- c. requires governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
- d. authorizes the New York State Commission on Public Integrity to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
- e. directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website;
- f. requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
- g. expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal-State Agreements, and procurement contracts;

- h. modifies the governance of the New York State Commission on Public Integrity
- i. provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
- j. increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- k. establishes the Advisory Council on Procurement Lobbying.

Generally speaking, two related aspects of procurements were amended: (i) activities by the business and lobbying community seeking procurement contracts (through amendments to the Legislative Law) and (ii) activities involving governmental agencies establishing procurement contracts (through amendments to the State Finance Law).

Additionally, a new section 1-t was added to the Legislative Law establishing an Advisory Council on Procurement Lobbying (Advisory Council). This Advisory Council is authorized to establish the following model guidelines regarding the restrictions on contacts during the procurement process for use by governmental entities (see Legislative Law §1-t (e) and State Finance Law §139-j). In an effort to facilitate compliance by governmental entities, the Advisory Council has prepared model forms and language that can be used to meet the obligations imposed by State Finance Law §139-k, Disclosure of Contacts and Responsibility of Offerers. Sections 139-j and 139-k are collectively referred to as "new State Finance Law."

It should be noted that while this Advisory Council is charged with the responsibility of providing advice to the New York State Commission on Public Integrity regarding procurement lobbying, the Commission retains full responsibility for the interpretation, administration and enforcement of the Lobbying Act established by Article 1-A of the Legislative Law (see Legislative Law §1-t (c) and §1-d). Accordingly, questions regarding the registration and operation of the Lobbying Act should be directed to the New York State Commission on Public Integrity.

11. Accessibility of State Agency Web-based Intranet and Internet Information and Applications

Any web-based intranet and internet information and applications development, or programming delivered pursuant to the contract or procurement will comply with New York State Enterprise IT Policy NYS-P08-005, "Accessibility Web-based Information and Applications", and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that state agency web-based intranet and internet information and applications are accessible to persons with disabilities. Web content must conform to New York State Enterprise IT Standard NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing will be conducted by Department of Health, contractor or other, and the results of such testing must be satisfactory to the Department of Health before web content will be considered a qualified deliverable under the contract or procurement.

12. Information Security Breach and Notification Act

Section 208 of the State Technology Law (STL) and Section 899-aa of the General

Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Notification of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after measures are taken to determine the scope of the breach and to restore integrity; provided, however, that notification may be delayed if law enforcement determines that expedient notification would impede a criminal investigation.

When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: the Attorney General, the Office of Cyber Security & Critical Infrastructure Coordination (CSCIC) and the Consumer Protection Board (CPB). Information relative to the law and the notification process is available at: <http://www.cscic.state.ny.us/security/securitybreach/>

13. New York State Tax Law Section 5-a

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Tax and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agencies, from approving a contract awarded to an offerer meeting the registration requirements but who is not so registered in accordance with the law.

Contractor must complete and submit directly to the New York State Taxation and Finance, Contractor Certification Form ST-220-TD attached hereto. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new form (ST-220-TD) must be filed with DTF.

Contractor must complete and submit to the Department of Health the form ST-220-CA attached hereto, certifying that the contractor filed the ST-220-TD with DTF. Failure to make either of these filings may render an offerer non-responsive and non-responsible. Offerers shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

14. Piggybacking

New York State Finance Law section 163(10)(e) (see also <http://www.ogs.state.ny.us/procurecouncil/pgbguidelines.asp>) allows the Commissioner of the NYS Office of General Services to consent to the use of this contract by other New York State Agencies, and other authorized purchasers, subject to conditions and the Contractor's consent.

15. M/WBE Utilization Plan For Subcontracting And Purchasing

The Department of Health (DOH) encourages the use of Minority and/or Women Owned Business Enterprises (M/WBE's) for any subcontracting or purchasing related to this contract. Bidders who are not currently a New York State certified M/WBE must define the portion of all consumable products and personnel required for this bid that will be sourced from a M/WBE. The amount must be stated in total dollars and as a percent of the total cost necessary to fulfill the IFB requirement. Supportive documentation must include

a detail description of work that is required including products and services.

The goal for usage of M/WBE's is at least 10% of monies used for contract activities (Minority-owned – 5%; Women-owned – 5%). In order to assure a good-faith effort to attain this goal, the DOH requires that bidders complete the M/WBE Utilization Plan (Attachment 13) and submit this Plan with their bid documents.

Bidders that are New York State certified MBE's or WBE's are not required to complete this form. Instead, such bidders must simply provide evidence of their certified status.

Failure to submit the above referenced Plan (or evidence of certified M/WBE status) may result in disqualification of the vendor from consideration for award.

16. Non-Collusive Bidding Certification (State Finance Law Section 139-d and Appendix A, Clause 7)

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

- The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not submit a bid for the purpose of restricting competition.

17. Appendix A, Standard Clauses For All NYS Contracts (Attachment 15)

Standard Clauses for New York State Contracts, dated June 2006, attached hereto, is hereby expressly made a part of this Invitation for Bid document as fully as if set forth at length herein. Please retain this document for future reference. The contractor agrees to comply with Appendix A, Standard Clauses for New York State Contracts.

18. Confidentiality/Freedom Of Information Law

During the evaluation process, the content of each bid/proposal will be held in confidence and details of any bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. Should you feel your firm's bid/proposal contains any such trade secrets or other confidential or proprietary information, you must submit a request to except such information from disclosure. Such request must be in writing, must state the reasons

why the information should be exempted from disclosure and must be provided at the time of submission of the subject information. Requests for exemption of the contents of a bid/proposal from disclosure have generally not been found to be meritorious and are discouraged. Kindly limit any requests for exemption of information from disclosure to bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of your firm.

19. Summary Of Policy And Prohibitions On Procurement Lobbying

Pursuant to State Finance Law §§139-j and 139-k, this Invitation for Bid includes and imposes certain restrictions on communications between the Department of Health (DOH) and an Offerer during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit bids/proposals through final award and approval of the Procurement Contract by the DOH and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is/are identified on the first page of this Invitation for Bid or Invitation for Bid. DOH employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period; the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the Office of General Services Website at: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

F. APPENDICES

The following will be incorporated as appendices into any contract resulting from this Invitation for Bids. This Invitation for Bids will, itself, be referenced as an appendix of the contract.

- ❑ APPENDIX A - Standard Clauses for All New York State Contracts
- ❑ APPENDIX B – Invitation for Bids
- ❑ APPENDIX C - Bid
The winning bid (if selected for award), including any Bid Forms and all bid requirements.
- ❑ APPENDIX D - General Specifications
- ❑ APPENDIX E
Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:
 - ❑ Workers' Compensation, for which one of the following is incorporated into this contract as **Appendix E-1**:

- **CE-200**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers’ Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
- **C-105.2** – Certificate of Workers’ Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the **U-26.3**; OR
- **SI-12** – Certificate of Workers’ Compensation Self-Insurance, OR **GSI-105.2** – Certificate of Participation in Workers’ Compensation Group Self-Insurance.
- Disability Benefits coverage, for which one of the following is incorporated into this contract as **Appendix E-2**:
 - **CE-200**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers’ Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - **DB-120.1** – Certificate of Disability Benefits Insurance
 - **DB-155** – Certificate of Disability Benefits Self-Insurance
- APPENDIX H - Health Insurance Portability and Accountability Act (HIPAA) (if applicable)
- APPENDIX X – Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)
- APPENDIX G - Notices

G. CONFLICT OF TERMS AND CONDITIONS

Conflicts between contract documents shall be resolved in the following order of precedence:

- Appendix A (Standard Clauses for New York State Contracts)
- Appendix B (The “Invitation for Bids” document)
- Any added Contract/Clarification Documents
- Appendix C (The selected bidder’s proposal)
- Appendix D (General Specification)

H. ATTACHMENTS

1. Bid Form
2. No Bid Form
3. Vendor Information Form
4. Vendor Responsibility Attestation
5. N.Y.S. Office of the State Comptroller Vendor Responsibility Questionnaire (for procurements greater than or equal to \$100,000)
6. Certifications Form
7. WIC Formula Rebate IFB Checklist
8. N.Y.S. Taxation and Finance Contractor Certification Form ST-220-CA
9. N.Y.S. Taxation and Finance Contractor Certification Form ST-220-TD
10. Instructions for Completing Bid Sheets

11. Bid Sheet - Milk-Based Infant Formula
12. Bid Sheet - Soy-Based Infant Formula
13. M/WBE Procurement Forms
14. Sample Contract Cover Sheets and Agreement Language
15. Appendix A – Standard Clauses for All New York State Contracts
16. Appendix D – General Specifications
17. Appendix G - Notices
18. Appendix X – Modification Agreement Form
19. NYS WIC Program Regions
20. Infant Formula Rebate Invoices

ATTACHMENT 1
BID FORM

NEW YORK STATE
DEPARTMENT OF HEALTH

BID FORM

PROCUREMENT TITLE: _____ FAU # _____

Bidder Name:

Bidder Address:

Bidder Fed ID No:

A. _____ bids a total price of \$ _____
(Name of Offerer/Bidder)

B. Affirmations & Disclosures related to State Finance Law §§ 139-j & 139-k:

Offerer/Bidder affirms that it understands and agrees to comply with the procedures of the Department of Health relative to permissible contacts (provided below) as required by State Finance Law §139-j (3) and §139-j (6) (b).

Pursuant to State Finance Law §§139-j and 139-k, this *Invitation for Bid or Invitation for Bid* includes and imposes certain restrictions on communications between the Department of Health (DOH) and an Offerer during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit *bids/proposals* through final award and approval of the Procurement Contract by the DOH and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is/are identified on the first page of this *Invitation for Bid, Invitation for Bid, or other solicitation document*. DOH employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the Office of General Services Website at: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

1a. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

1b. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

1c. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

2a. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

2b. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

(Add additional pages as necessary)

C. Offerer/Bidder certifies that all information provided to the Department of Health with respect to State Finance Law §139-k is complete, true and accurate.

D. Offerer/Bidder agrees to provide the following documentation either *with their submitted bid/proposal or upon award* as indicated below:

With Bid

Upon Award

1. A completed N.Y.S Taxation and Finance Contractor Certification Form ST-220.

2. A completed N.Y.S. Office of the State Comptroller Vendor Responsibility Questionnaire (for procurements greater than or equal to \$100,000)

N/A

3. A completed State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term

(Officer Signature)

(Date)

(Officer Title)

(Telephone)

(e-mail Address)

**ATTACHMENT 2
NO BID FORM**

NEW YORK STATE
DEPARTMENT OF HEALTH

NO-BID FORM

PROCUREMENT TITLE: _____ FAU # _____

Bidders choosing not to bid are requested to complete the portion of the form below:

- We do not provide the requested services. Please remove our firm from your mailing list
- We are unable to bid at this time because:

- Please retain our firm on your mailing list.

(Firm Name)

(Officer Signature) _____
(Date)

(Officer Title) _____
(Telephone)

(e-mail Address)

FAILURE TO RESPOND TO BID INVITATIONS MAY RESULT IN YOUR FIRM BEING REMOVED FROM OUR MAILING LIST FOR THIS SERVICE.

**ATTACHMENT 3
VENDOR INFORMATION FORM**

Vendor Information Form

Page 1 of 2

Name of Company		Federal Tax ID Number
Company Address	Purchase Order Address	
Name of Company Official Submitting Bid (Print or Type)		Title
Authorized Signature		Date
Phone	Extension	
Toll Free Phone	Extension	
Fax	Extension	
E-Mail Address		
Company Web Site		

Person or Persons to Contact for Expediting New York State Contract Orders:

Name (s)	
Phone	Extension
Toll Free Phone	Extension
Fax	Extension
E-Mail Address (es)	

Vendor Information Form

Page 2 of 2

Name of Company	Federal Tax ID Number
-----------------	-----------------------

Failure to Answer the Questions will Delay the Evaluation of your Bid and May Result in Rejection of your Bid.

Pricing - Are prices quoted the same as or lower than those quoted other corporations, institutions and government agencies on similar products, quantities, terms and conditions?	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

Business Information

1. Are you a New York State Resident Business? Yes No
2. Total number of people employed by your business: _____
3. Total number of people employed by your business in New York State: _____
4. Is your business independently owned and operated? Yes No
5. Is your business at least 51% owned and controlled by women, or 50% owned and controlled by minority group members (i.e., Black, Hispanic, Asian, Pacific Islander, American Indian, Alaskan Native)?
 Yes No
 - a. If yes, have you been certified or registered? Yes No
 - b. List certification or registration authority: _____
6. Is your company considered an industry leader in your field? Yes No

Place of Manufacturer of Product(s)

1. All New York State Manufacture? Yes No
2. All Manufactured outside New York State? Yes No
3. Manufactured in New York State and Outside New York State? Yes No
 - a. If Yes, location (State) where more than half the value is added to the product(s):

 - b. Bidder's Principal Place of Business (*Principal Place of Business is the location of the primary control, direction and management of the enterprise*):

NYS Small Business Certification

Name of Company Official Submitting Certification Title

Signature Telephone Number Date

ATTACHMENT 4
VENDOR RESPONSIBILITY ATTESTATION

Vendor Responsibility Attestation

To comply with the Vendor Responsibility Requirements outlined in Section E, Administrative, 8. Vendor Responsibility Questionnaire, I hereby certify:

Choose one:

- An on-line Vendor Responsibility Questionnaire has been updated or created at OSC's website: <https://portal.osc.state.ny.us> within the last six months.

- A hard copy Vendor Responsibility Questionnaire is included with this proposal/bid and is dated within the last six months.

- A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.

Signature of Organization Official: _____

Print/type Name: _____

Title: _____

Organization: _____

Date Signed: _____

ATTACHMENT 5
VENDOR RESPONSIBILITY QUESTIONNAIRE

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

BUSINESS ENTITY INFORMATION				
Legal Business Name			EIN	
Address of the Principal Place of Business/Executive Office			Phone Number	Fax Number
E-mail		Website		
Authorized Contact for this Questionnaire				
Name:			Phone Number	Fax Number
Title			Email	
List any other DBA, Trade Name, Other Identity, or EIN used in the last five (5) years, the state or county where filed, and the status (active or inactive): (if applicable)				
Type	Name	EIN	State or County where filed	Status

I. BUSINESS CHARACTERISTICS	
1.0 Business Entity Type – Please check appropriate box and provide additional information:	
a) <input type="checkbox"/> Corporation (including PC)	Date of Incorporation
b) <input type="checkbox"/> Limited Liability Co. (LLC or PLLC)	Date Organized
c) <input type="checkbox"/> Limited Liability Partnership	Date of Registration
d) <input type="checkbox"/> Limited Partnership	Date Established
e) <input type="checkbox"/> General Partnership	Date Established County (if formed in
f) <input type="checkbox"/> Sole Proprietor	How many years in business?
g) <input type="checkbox"/> Other	Date Established
If Other, explain:	
1.1 Was the Business Entity formed in New York State?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If 'No' indicate jurisdiction where Business Entity was formed:	
<input type="checkbox"/> United States State _____	
<input type="checkbox"/> Other Country _____	
1.2 Is the Business Entity currently registered to do business in New York State with the Department of State? Note: Select 'Not Required' if the Business Entity is a Sole Proprietor or General Partnership	<input type="checkbox"/> Yes <input type="checkbox"/> No
If 'No' explain why the Business Entity is not required to be registered in New York State.	
1.3 Is the Business Entity registered as a Sales Tax Vendor with the New York State Department of Taxation and Finance?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If 'No', explain and provide detail, such as "not required", "application in process", or other reason for not being registered.	
1.4 Is the Business Entity publicly traded?	<input type="checkbox"/> Yes <input type="checkbox"/> No

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

I. BUSINESS CHARACTERISTICS		
CIK Code or Ticker Symbol 		
1.5 Is the responding Business Entity a Joint Venture? <i>Note: If the Submitting Business Entity is a Joint Venture, also submit a questionnaire for each Business Entity comprising the Joint Venture</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1.6 Does the Business Entity have a DUNS Number?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Enter DUNS Number		
1.7 Is the Business Entity's Principal Place of Business/Executive Office in New York State? If 'No', does the Business Entity maintain an office in New York State?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No	
Provide the address and telephone number for one New York office.		
1.8 Is the Business Entity a New York State Certified Minority Owned Business Enterprise (MBE), Women Owned Business Enterprise (WBE), New York State Small Business or a Federally Certified Disadvantaged Business Enterprise (DBE)?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
If 'Yes', check all that apply: <input type="checkbox"/> New York State Certified Minority Owned Business Enterprise (MBE) <input type="checkbox"/> New York State Certified Women Owned Business Enterprise (WBE) <input type="checkbox"/> New York State Small Business <input type="checkbox"/> Federally Certified Disadvantaged Business Enterprise (DBE)		
1.9 Identify Business Entity Officials and Principal Owners. For each person, include name, title and percentage of ownership, if applicable. <i>Attach additional pages if necessary.</i>		
Name	Title	Percentage Ownership (<i>Enter 0% if not applicable</i>)

II. AFFILIATES AND JOINT VENTURE RELATIONSHIPS		
2.0 Does the Business Entity have any Affiliates? <i>Attach additional pages if necessary.</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Affiliate Name	Affiliate EIN (<i>If available</i>)	Affiliate's Primary Business Activity
Explain relationship with the Affiliate and indicate percent ownership, if applicable (enter N/A, if not applicable):		
Are there any Business Entity Officials or Principal Owners that the Business Entity has in common with this Affiliate?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name	Position/Title with Affiliate	
2.1 Has the Business Entity participated in any Joint Ventures within the past three (3) years? <i>Attach additional pages if necessary</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Joint Venture Name:	Joint Venture EIN (<i>If available</i>):	Identify parties to the Joint Venture:

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

III. CONTRACT HISTORY	
3.0 Has the Business Entity held any contracts with New York State government entities in the last three (3) years? If “Yes” attach a list including the Contract Number, Agency Name, Contract Amount, Contract Start Date, Contract End Date, and the Contract Description.	<input type="checkbox"/> Yes <input type="checkbox"/> No

IV. INTEGRITY – CONTRACT BIDDING	
Within the past five (5) years, has the Business Entity or any Affiliate	
4.0 been suspended or debarred from any government contracting process or been disqualified on any government procurement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 been denied a contract award or had a bid rejected based upon a finding of non-responsibility by a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 had a low bid rejected on a government contract for failure to make good faith efforts on any Minority Owned Business Enterprise, Women Owned Business Enterprise or Disadvantaged Business Enterprise goal or statutory affirmative action requirements on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 agreed to a voluntary exclusion from bidding/contracting with a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes” answer above provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

V. INTEGRITY – CONTRACT AWARD	
Within the past five (5) years, has the Business Entity or any Affiliate	
5.0 been suspended, cancelled or terminated for cause on any government contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.1 been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any government contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.2 entered into a formal monitoring agreement as a condition of a contract award from a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes” answer provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

VI. CERTIFICATIONS/LICENSES	
Within the past five (5) years, has the Business Entity or any Affiliate	
6.0 had a revocation, suspension or disbarment of any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.1 had a denial, decertification, revocation or forfeiture of New York State certification of Minority Owned Business Enterprise, Women Owned Business Enterprise or federal certification of Disadvantaged Business Enterprise status, for other than a change of ownership?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes” answer provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

VII. LEGAL PROCEEDINGS	
Within the past five (5) years, has the Business Entity or any Affiliate	
7.0 been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.1 been the subject of an indictment, grant of immunity, judgment or conviction (including entering into a plea bargain) for conduct constituting a crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.2 received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.3 had a government entity find a willful prevailing wage or supplemental payment violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.4 had any New York State Labor Law violation deemed willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.5 entered into a consent order with the New York State Department of Environmental Conservation, or a Federal, State or local government enforcement determination involving a violation of federal, state or local environmental laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.6 other than the previously disclosed: (i) Been subject to the imposition of a fine or penalty in excess of \$1,000 imposed by any government entity as a result of the issuance of citation, summons or notice of violation, or pursuant to any administrative, regulatory, or judicial determination; or (ii) Been charged or convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each "Yes" answer provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

VIII. LEADERSHIP INTEGRITY	
NOTE: If the Business Entity is a Joint Venture Entity, answer 'N/A – Not Applicable' to questions 8.0 through 8.4.)	
Within the past five (5) years has any individual previously identified, any other Business Entity Leader not previously identified, or any individual having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation with New York State been subject to	
8.0 a sanction imposed relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.1 an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.2 an indictment, grant of immunity, judgment, or conviction of any business related conduct constituting a crime including, but not limited to, fraud, extortion, bribery, racketeering, price fixing, bid collusion or any crime related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.3 a misdemeanor or felony charge, indictment or conviction for: (i) any business-related activity including but not limited to fraud, coercion, extortion, bribe or bribe-receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price fixing or collusive bidding; or (ii) any crime, whether or not business related, the underlying conduct of which related to truthfulness, including but not limited to the filing of false documents or false sworn statements, perjury or larceny?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.4 a debarment from any government contracting process?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
For each "Yes" answer provide an explanation of the issue(s), the individual involved, the government entity involved, the relationship to the submitting Business Entity, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

IX. FINANCIAL AND ORGANIZATIONAL CAPACITY	
9.0 Within the past five (5) years, has the Business Entity or any Affiliates received a formal unsatisfactory performance assessment(s) from any government entity on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
9.1 Within the past five (5) years, has the Business Entity or any Affiliates had any liquidated damages assessed over \$25,000?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
9.2 Within the past five (5) years, has the Business Entity or any Affiliates had any liens, claims or judgments (not including UCC filings) over \$25,000 filed against the Business Entity which remain undischarged or were unsatisfied for more than 90 days?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the lien holder or claimant's name, the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
9.3 In the last seven (7) years, has the Business Entity or any Affiliates initiated or been the subject of any bankruptcy proceedings, whether or not closed, regardless of the date of filing, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" provide the Business Entity involved, the relationship to the submitting Business Entity, the Bankruptcy chapter number, the Court name, and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.	
9.4 During the past three (3) years, has the Business Entity and any Affiliates failed to file or pay any tax returns required by federal, state or local tax laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" provide the Business Entity involved, the relationship to the submitting Business Entity, the taxing jurisdiction (federal, state or other), the type of tax, the liability years, the tax liability amount the Business Entity failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.	
9.5 During the past three (3) years, has the Business Entity and any Affiliates failed to file or pay any New York State unemployment insurance returns?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" provide the Business Entity involved, the relationship to the submitting Business Entity, the years the Business Entity failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
9.6 During the past three (3) years, has the Business Entity or any Affiliates had any government audits? If "yes" did any audit reveal material weaknesses in the Business Entity's system of internal controls? If "Yes", did any audit reveal non-compliance with contractual agreements or any material disallowance (if not previously disclosed in 9.6)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
For each "Yes" answer provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY

X. FREEDOM OF INFORMATION LAW (FOIL)	
10.0 Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Indicate the question number(s) and explain the basis for the claim.	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State contracting entities in making responsibility determinations regarding an award of a contract or approval of a subcontract; (2) recognizes that the Office of the State Comptroller (OSC) will rely on information disclosed in the questionnaire in making responsibility determinations and in approving a contract or subcontract; (3) acknowledges that the New York State contracting entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (4) acknowledges that intentional submission of false or misleading information may constitute a misdemeanor or felony under New York State Penal Law, may be punishable by a fine and/or imprisonment under Federal Law, and may result in a finding of non-responsibility, contract suspension or contract termination.

The undersigned certifies that he/she:

- is knowledgeable about the submitting Business Entity's business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Business Entity's responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under obligation to update the information provided herein to include any material changes to the Business Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State contracting entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Officer _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Sworn to before me this _____ day of _____, 20____;

_____ Notary Public

**ATTACHMENT 6
CERTIFICATIONS FORM**

NEW YORK STATE DEPARTMENT OF HEALTH
Invitation for Bids
WIC Infant Formula Rebate System
BIDDER CERTIFICATIONS FORM

NAME OF BIDDER: _____

INSTRUCTIONS: Please review the statements below. Only those bidders for which each of the statements is true may bid. If all statements are true of the bidder, the bidder's signature under Part 8 of this document constitutes certification thereof.

The company (including the parent organization and proposed agents, and employees) that I represent:

1. Is an infant formula manufacturer registered with the Secretary of the United States Department of Health and Human Services (HHS) under the Federal Food, Drug and Cosmetic Act and producing infant formula products that are in compliance with Federal regulations issued pursuant to P.L. 100-137.
2. Agrees to provide a rebate on all non-exempt infant formulas manufactured by the bidder and covered under the contract resulting from this IFB.
3. Agrees to provide complete formulas not requiring the addition of any ingredients other than water prior to being served in a liquid state. All formulas, excluding low iron varieties, will contain at least 10 milligrams of iron per liter of formula at standard dilution, which supplies 67 kilocalories per 100 milliliter (i.e., approximately 20 kilocalories per fluid ounce of formula at standard dilution).
4. Can produce and distribute statewide infant formula products in sufficient quantity to serve 100 percent of potential New York State WIC participants' infant formula needs for the formulas covered under the contract resulting from this IFB.
5. Ensures that the primary contract infant formula is suitable for issuance to generally healthy full-term infants.
6. Certifies, along with each person signing on behalf of the company, under penalty of perjury, that to the best of their knowledge and belief:
 - A. This bid has been arrived at independently without collusion aimed at restricting competition;
 - B. The bidder has not disclosed, and will not knowingly disclose, the company's intent to bid (or not bid) and the amounts (rebate amount and percent discount) and formula name(s) included in this bid prior to the bids due date and time indicated on the cover of this IFB;

- C. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
- 8. Accepts as lawful and binding, and will abide by, the bid submission requirements and rules, and the procurement procedures, processes, and specifications identified in the IFB, including any IFB addenda and all appendices to this IFB.

SIGNATURE

Name of Business

Signature

Address

Typed Copy of Signature

City, State, Zip

ATTACHMENT 7
WIC INFANT FORMULA REBATE SYSTEM IFB CHECKLIST

WIC INFANT FORMULA REBATE SYSTEM IFB CHECKLIST

Vendor: _____

To assist with assembling a complete bid package, this checklist identifies all documents that are requested as part of your bid package. The cover page of this IFB identifies the due date for receipt of your bid package.

Bidders assume all risks for timely, properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of bids to DOH **prior to** the date of the bid opening. **LATE BIDS will be rejected. E-mail bid submissions are not acceptable and will not be considered.**

TECHNICAL RESPONSE

- Two signed originals and three copies of the Vendor Information Form (Attachment 3).
- Two signed originals and three copies of the Vendor Responsibility Attestation (Attachment 4) and Vendor Responsibility Questionnaire (Attachment 5)
- Two signed originals and three copies of the Certifications Form (Attachment 6).
- WIC Infant Formula Rebate System IFB Checklist (This Form).
- (OPTIONAL) Form ST-220-CA Contractor Certification to Covered Agency (Attachment 8).
* NOTE: This form must be submitted to DOH prior to award.
- Sealed in separate envelope. Envelope marked with the following information:
 1. "TECHNICAL RESPONSE"
 2. "BID ENCLOSED".
 3. "IFB NUMBER" (from the cover page of this IFB).
 4. "BID OPENING DATE" (from the cover page of this IFB).

COST PROPOSAL

- Two signed originals and three copies of the NYS DOH Bid Form (Attachment 1).
- Two signed originals and three copies of the Milk-Based Formula Bid Sheet (Attachment 11) and/or Soy-Based Formula Bid Sheet (Attachment 12).
- Two signed originals and three copies of the M/WBE Utilization Plan (Attachment 13).
- Five copies of the Vendor's National Wholesale Price List.
- Sealed in separate envelope. Envelope marked with the following information:
 1. "COST PROPOSAL"
 2. "BID ENCLOSED".
 3. "IFB NUMBER" (from the cover page of this IFB).
 4. BID OPENING DATE (from the cover page of this IFB).

PLEASE LABEL THE OUTSIDE OF THE BID PACKAGE WITH THE FOLLOWING:

1. "WIC INFANT FORMULA REBATE BID".
2. "CONFIDENTIAL – DO NOT OPEN"
3. NAME OF BIDDER _____

ATTACHMENT 8
FORM ST-220-CA CONTRACTOR CERTIFICATION TO COVERED
AGENCY



Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-CA

(6/06)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help? on back*).

Contractor name		For covered agency use only Contract number or description	
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)		Estimated contract value over the full term of contract (but not including renewals)	
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)		\$
Contractor's telephone number	Covered agency name		
Covered agency address		Covered agency telephone number	

I, _____, hereby affirm, under penalty of perjury, that I am _____

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ___ day of _____ in the year 20___, before me personally appeared _____,
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
_he resides at _____,
Town of _____,
County of _____,
State of _____; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): _he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
(If a partnership): _he is a _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
(If a limited liability company): _he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).
This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.
Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.
Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.
This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?
Internet access: www.nystax.gov (for information, forms, and publications)
Fax-on-demand forms: 1 800 748-3676
Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931
To order forms and publications: 1 800 462-8100
From areas outside the U.S. and outside Canada: (518) 485-6800
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110
Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

ATTACHMENT 9
FORM ST-220-TD CONTRACTOR CERTIFICATION



Contractor Certification

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-TD

(6/06)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name				
Contractor's principal place of business		City	State	ZIP code
Contractor's mailing address (if different than above)				
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)		Contractor's telephone number ()
Covered agency name	Contract number or description		Estimated contract value over the full term of contract (but not including renewals) \$	
Covered agency address			Covered agency telephone number	

General information

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a*, (as amended, effective April 26, 2006), available at www.nystax.gov. Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

Note: Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227**

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?

 **Internet access:** www.nystax.gov
(for information, forms, and publications)

 **Fax-on-demand forms:** 1 800 748-3676

 **Telephone assistance** is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

To order forms and publications: 1 800 462-8100

Sales Tax Information Center: 1 800 698-2909

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110

 **Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) *(title)*
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Make only one entry in each section below.

Section 1 — Contractor registration status

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 — Affiliate registration status

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 — Subcontractor registration status

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

ATTACHMENT 10
INSTRUCTIONS FOR COMPLETING BID SHEETS

NEW YORK STATE DEPARTMENT OF HEALTH INSTRUCTIONS FOR COMPLETING BID SHEETS

As part of their bid packages, bidders must include:

- 2 originals and 3 copies of a completed and signed Bid Sheet – Milk-Based Infant Formula (Attachment 11), **OR**
- 2 originals and 3 copies of a completed and signed Bid Sheet – Soy-Based Infant Formula (Attachment 12), **OR**
- 2 originals and 3 copies of a completed and signed Bid Sheet - Milk-Based Infant Formula (Attachment 11) **AND** 2 originals and 3 copies of a completed and signed Bid Sheet – Soy-Based Infant Formula (Attachment 12).

Bidders must use the Microsoft Excel spreadsheet files provided by the NYS Department of Health to prepare their Bid Sheets.

On each Bid Sheet that the bidder chooses to submit, bidders must:

- Complete the company identification information at the top of the sheet.
- Indicate the name of the bid formula on the line under the company identification information. The milk-based infant formula specified by the winning bidder will be the first choice of issuance to infants utilizing milk-based formula, and the soy-based infant formula specified by the winning bidder will be the first choice of issuance to infants utilizing soy-based formula.
- Column A of the table in the middle of the sheet is pre-filled.
- In column (B) of the table, indicate the container size **in ounces** for each form (concentrate, powder and ready-to-feed) of the bid formula. See section C.4.a. of this IFB for container size requirements.
- In column (C) of the table, indicate the number of reconstituted ounces per container for each form of the bid formula.
- Enter the lowest wholesale cost per container for a full truckload for each form of the bid formula in column (E) of the table. Please include four (4) decimal places.
- Indicate a rebate amount per container for each form of the bid formula in column (F) of the table. Include four (4) decimal places. The rebate is the dollar amount per container that will be returned to the State under the terms of the contract awarded as a result of this IFB.
- **DO NOT ENTER ANY TEXT (LETTERS) IN COLUMNS (B), (C), (E), OR (F). PLEASE ONLY ENTER NUMERIC VALUES.** For example, only enter “32” for 32 ounces.
- Print a hard copy of the sheet.
- Have the sheet signed by a company representative with authority to commit the company to the bid package.
- Include 2 originals and 3 copies of the signed sheet in the bid package.

The Microsoft Excel files will calculate columns (D), (G), (H) and (I) of the table.

ATTACHMENT 11
BID SHEET – MILK-BASED INFANT FORMULA

BID SHEET - MILK-BASED INFANT FORMULA

NEW YORK STATE DEPARTMENT OF HEALTH
 Invitation to Bid for
 WIC Infant Formula Rebate System

Company Name: _____
 Address Line 1: _____
 Address Line 2: _____
 Address Line 3: _____
 Contact Person: Name: _____ Telephone: _____
 Email: _____
 Formula Name: _____

Form	(A) Reconstituted Ounces: Solicited Amount	(B) Container Size: Bid Formula	(C) Reconstituted Ounces Per Container: Bid Formula	(D) Number of Containers Solicited [A / C, Rounded]	(E) Lowest Wholesale Cost per Container for Full Truckload (4 decimal places)	(F) Rebate Bid per Container (4 decimal places)	(G) Rebate Bid Divided by TL Wholesale (% with 2 decimal places) [F / E]	(H) Net Wholesale Cost per Container (4 decimal places) [E - F]	(I) Net Wholesale Cost per Month [D x H]
Concentrate	13,419,672								
Powder	54,400,486								
Ready to Feed	82,311								
Total Net Wholesale Cost per Month - All Forms									\$0

CERTIFICATION

The bidder hereby certifies that this company agrees to provide services and/or items at the prices quoted according to the terms outlined in this Invitation for Bids.

Signature of Company Representative: _____ Title: _____
 Printed Name: _____ Date: _____

ATTACHMENT 12
BID SHEETS – SOY-BASED INFANT FORMULA

BID SHEET - SOY-BASED INFANT FORMULA

NEW YORK STATE DEPARTMENT OF HEALTH
 Invitation to Bid for
 WIC Infant Formula Rebate System

Company Name: _____
 Address Line 1: _____
 Address Line 2: _____
 Address Line 3: _____
 Contact Person: Name: _____ Telephone: _____
 Email: _____
 Formula Name: _____

Form	(A) Reconstituted Ounces: Solicited Amount	(B) Container Size: Bid Formula	(C) Reconstituted Ounces Per Container: Bid Formula	(D) Number of Containers Solicited [A / C, Rounded]	(E) Lowest Wholesale Cost per Container for Full Truckload (4 decimal places)	(F) Rebate Bid per Container (4 decimal places)	(G) Rebate Bid Divided by TL Wholesale (% with 2 decimal places) [F / E]	(H) Net Wholesale Cost per Container (4 decimal places) [E - F]	(I) Net Wholesale Cost per Month [D x H]
Concentrate	1,017,759								
Powder	5,107,239								
Ready to Feed	7,871								
Total Net Wholesale Cost per Month - All Forms									\$0

CERTIFICATION

The bidder hereby certifies that this company agrees to provide services and/or items at the prices quoted according to the terms outlined in this Invitation for Bids.

Signature of Company Representative: _____ Title: _____
 Printed Name: _____ Date: _____

ATTACHMENT 13
M/WBE PROCUREMENT FORMS

New York State Department of Health
M/WBE Procurement Forms

The following forms are required to maintain maximum participation in M/WBE procurement and contracting:

1. Bidders Proposed M/WBE Utilization Form
2. Minority Owned Business Enterprise Information
3. Women Owned Business Enterprise Information
4. Subcontracting Utilization Form
5. M/WBE Letter of Intent to Participate
6. M/WBE Staffing Plan

New York State Department of Health

BIDDERS PROPOSED M/WBE UTILIZATION PLAN

Bidder Name:	
IFB Title:	IFB Number

Description of Plan to Meet M/WBE Goals

PROJECTED M/WBE USAGE

	%	Amount
1. Total Dollar Value of Proposal Bid	100	\$
2. MBE Goal Applied to the Contract		\$
3. WBE Goal Applied to the Contract		\$
4. M/WBE Combined Totals		\$

New York State Department of Health

**MINORITY OWNED BUSINESS ENTERPRISE (MBE)
INFORMATION**

In order to achieve the MBE Goals, bidder expects to subcontract with New York State certified MINORITY-OWNED entities as follows:

MBE Firm (Exactly as Registered)	Description of Work (Products/Services) [MBE]	Projected MBE Dollar Amount
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____

New York State Department of Health

**WOMEN OWNED BUSINESS ENTERPRISE (WBE)
INFORMATION**

In order to achieve the WBE Goals, bidder expects to subcontract with New York State certified WOMEN-OWNED entities as follows:

WBE Firm (Exactly as Registered)	Description of Work (Products/Services) [WBE]	Projected WBE Dollar Amount
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____

New York State Department of Health

MWBE ONLY

**MWBE SUBCONTRACTORS AND SUPPLIERS
LETTER OF INTENT TO PARTICIPATE**

To: _____ Federal ID Number: _____
(Name of Contractor)

Proposal/ Contract Number: _____

Contract Scope of Work: _____

The undersigned intends to perform services or provide material, supplies or equipment as: _____

Name of MWBE: _____

Address: _____

Federal ID Number: _____

Telephone Number: _____

Designation:

MBE - Subcontractor

WBE - Subcontractor

MBE - Supplier

WBE - Supplier

Joint venture with:

Name: _____

Address: _____

Fed ID Number: _____

MBE

WBE

Are you New York State Certified MWBE? _____ Yes _____ No

The undersigned is prepared to perform the following work or services or supply the following materials, supplies or equipment in connection with the above proposal/contract. (Specify in detail the particular items of work or services to be performed or the materials to be supplied): _____

at the following price: \$ _____

The contractor proposes, and the undersigned agrees to, the following beginning and completion dates for such work.

Date Proposal/ Contract to be started: _____

Date Proposal/ Contract to be Completed: _____

Date Supplies ordered: _____ Delivery Date: _____

The above work will not further subcontracted without the express written permission of the contractor and notification of the Office. The undersigned will enter into a formal agreement for the above work with the contractor ONLY upon the Contractor's execution of a contract with the Office.

Date

Signature of M/WBE Contractor

M/WBE Contractor

Printed/Typed Name of

**INSTRUCTIONS FOR M/WBE SUBCONTRACTORS AND SUPPLIERS LETTER OF
INTENT TO PARTICIPATE**

This form is to be submitted with bid attached to the Subcontractor's Information Form in a sealed envelope for each certified Minority or Women-Owned Business enterprise the Bidder/Awardee/Contractor proposes to utilize as subcontractors, service providers or suppliers.

If the MBE or WBE proposed for portion of this proposal/contract is part of a joint or other temporarily-formed business entity of independent business entities, the name and address of the joint venture or temporarily-formed business should be indicated.

**New York State Department of Health
M/WBE STAFFING PLAN**

Check applicable categories: Project Staff Consultants
Subcontractors

Contractor Name _____

Address _____

	Total	Male	Female	Black	Hispanic	Asian/ Pacific Islander	Other
STAFF							
Administrators							
Managers/Supervisors							
Professionals							
Technicians							
Clerical							
Craft/Maintenance							
Operatives							
Laborers							
Public Assistance Recipients							
TOTAL							

(Name and Title)

Date

ATTACHMENT 14
SAMPLE CONTRACT COVER SHEETS AND
AGREEMENT LANGUAGE

MISCELLANEOUS / CONSULTANT SERVICES

STATE AGENCY (Name and Address):

NYS COMPTROLLER'S NUMBER:

ORIGINATING AGENCY CODE:12000

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

FROM:

TO:

CONTRACTOR HAS () HAS NOT () TIMIELY. FILED WITH THE ATTORNEY GENERAL'S CHARITIES BUREAU ALL REQUIRED PERIODIC OR ANNUAL WRITTEN REPORTS

FUNDING AMOUNT FOR CONTRACT TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

MUNICIPALITY NO. (if applicable):

STATUS:

CONTRACTOR IS () IS NOT () A SECTARIAN ENTITY

CONTRACTOR IS () IS NOT () A NOT-FOR-PROFIT ORGANIZATION

() IF MARKED HERE, THIS CONTRACT'S RENEWABLE FOR ADDITIONAL ONE-YEAR PERIOD(S) AT THE SOLE OPTION OF THE STATE AND SUBJECT TO APPROVAL OF THE OFFICE OF THE STATE COMPTROLLER.

CONTRACTOR IS () IS NOT () A N Y STATE BUSINESS ENTERPRISE

BID OPENING DATE:

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

Precedence shall be given to these documents in the order listed below.

- X APPENDIX A Standard Clauses as required by the Attorney General for all State Contracts.
APPENDIX X Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)
APPENDIX Q Modification of Standard Department of Health Contract Language
STATE OF NEW YORK AGREEMENT
APPENDIX D General Specifications
APPENDIX B Invitation for Bid (IFB)
APPENDIX C Proposal
APPENDIX E-1 Proof of Workers' Compensation Coverage
APPENDIX E-2 Proof of Disability Insurance Coverage
APPENDIX G Notices
APPENDIX H Federal Health Insurance Portability and Accountability Act Business Associate Agreement
APPENDIX X :

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

CONTRACTOR . STATE AGENCY
.
.
.
.
.
.

By: _____ . By: _____

Printed Name . Printed Name

Title: _____ . Title: _____

Date: _____ . Date: _____

.
. State Agency Certification:
. "In addition to the acceptance of this contract,
. I also certify that original copies of this
. signature page will be attached to all other
. exact copies of this contract."

STATE OF NEW YORK)
)SS.:
County of _____)

On the ___ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/ capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(Signature and office of the individual taking acknowledgement)

ATTORNEY GENERAL'S SIGNATURE . STATE COMPTROLLER'S SIGNATURE

Title: _____ . Title: _____

Date: _____ . Date: _____

STATE OF NEW YORK
AGREEMENT

This AGREEMENT is hereby made by and between the State of New York agency (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

WHEREAS, the STATE has formally requested contractors to submit bid proposals for the project described in Appendix B for which bids were opened on the date noted on the face pages of this AGREEMENT; and

WHEREAS, the STATE has determined that the CONTRACTOR is the successful bidder, and the CONTRACTOR covenants that it is willing and able to undertake the services and provide the necessary materials, labor and equipment in connection therewith;

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the covenants and obligations moving to each party hereto from the other, the parties hereto do hereby agree as follows:

I. Conditions of Agreement

- A. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.
- B. The maximum compensation for the contract term of this AGREEMENT shall not *exceed the amount specified on the face page hereof.*
- C. This AGREEMENT may be renewed for additional periods (PERIOD), as specified on the face page hereof.
- D. To exercise any renewal option of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (the attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT. The modification agreement is subject to the approval of the Office of the State Comptroller.
- E. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.
- F. For the purposes of this AGREEMENT, the terms "Invitation for Bid" and "IFB" *include all Appendix B documents as marked on the face page hereof.*
- G. For the purposes of this AGREEMENT, the term "Proposal" includes all Appendix C documents as marked on the face page hereof.

II. Payment and Reporting

- A. The Contractor shall make monthly rebate payments to the State, based on the documented purchases submitted by the State (i.e., food instrument redemptions supported by electronic data files subject to audit) as indicated on the State's invoice.
- B. The State may issue supplemental invoices if it discovers that any infant formula redemptions were not accounted for in the regular invoices. The State is entitled to rebates for all WIC contract infant formula checks issued to WIC program infants

during the contract period and redeemed by WIC program infants as the redemption period is defined within WIC program procedures.

- C. Payments will be forwarded to the State by the Contractor thirty (30) days of the postmark, fax mark, or electronic mail date of the invoice according to specifications that will be provided by the State. If payment is not forwarded to the State within 30 days of the postmark, fax mark or electronic mail date of the invoice, the Contractor shall pay the State, in addition to the amount due, interest at a rate of one (1) percent per month, or portion thereof, on the unpaid balance from the expiration of such 30-day period until such time as payment is received by the State.

III. Term of Contract

- A. Upon approval of the NYS Office of the State Comptroller, this AGREEMENT shall be effective for the term as specified on the cover page.
- B. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefor, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- C. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.
- E. This agreement may be canceled at any time by the Department of Health giving to the contractor not less than ninety (90) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

IV. Proof of Coverage

Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:

- A. Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:
 - 1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - 2. C-105.2 – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR

3. SI-12 – Certificate of Workers' Compensation Self-Insurance, OR GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.

B. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:

1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
2. DB-120.1 – Certificate of Disability Benefits Insurance OR
3. DB-155 – Certificate of Disability Benefits Self-Insurance

ATTACHMENT 15
APPENDIX A – STANDARD CLAUSES FOR ALL NYS CONTRACTS

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the

performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor

within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment,

employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

THIS PAGE IS INTENTIONALLY LEFT BLANK

ATTACHMENT 16
APPENDIX D – GENERAL SPECIFICATIONS

APPENDIX D
GENERAL SPECIFICATIONS

- A. By signing the "Bid Form" each bidder attests to its express authority to sign on behalf of this company or other entity and acknowledges and accepts that:
- All specifications, general and specific appendices, including Appendix-A, the Standard Clauses for all New York State contracts, and all schedules and forms contained herein will become part of any contract entered, resulting from the Request for Proposal. Anything which is not expressly set forth in the specification, appendices and forms and resultant contract, but which is reasonable to be implied, shall be furnished and provided in the same manner as if specifically expressed.
- B. The work shall be commenced and shall be actually undertaken within such time as the Department of Health may direct by notice, whether by mail, telegram, or other writing, whereupon the undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the Department may prescribe.
- C. The Department reserves the right to stop the work covered by this proposal and the contract at any time that the Department deems the successful bidder to be unable or incapable of performing the work to the satisfaction of the Department and in the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable and if the cost thereof exceeds the amount of the bid, the successful bidder and its surety be liable to the State of New York for any excess cost on account thereof.
- D. Each bidder is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other means as it may select, of character, quality, and extent of work to be performed and the conditions under which the contract is to be executed.
- E. The Department of Health will make no allowances or concession to a bidder for any alleged misunderstanding or deception because of quantity, quality, character, location or other conditions.
- F. The bid price is to cover the cost of furnishing all of the said services, materials, equipment, and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.
- G. The successful bidder will be required to complete the entire work, or any part thereof as the case may be, to the satisfaction of the Department of

Health in strict accordance with the specifications and pursuant to a contract therefore.

H. Contractor will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.

I. Non-Collusive Bidding

By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

- a. The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

NOTE: Chapter 675 of the Laws of New York for 1966 provides that every bid made to the state or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the foregoing statement subscribed by the bidder and affirmed by such bidder as true under penalties of perjury.

A bid shall not be considered for award nor shall any award be made where (a), (b) and (c) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a), (b) and (c) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made or its designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of the above quoted certification.

Any bid made to the State or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods, sold or to be sold, where competitive bidding is required by statute, rule or regulation and where such bid contains the certification set forth above shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

- J. A bidder may be disqualified from receiving awards if such bidder or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its or its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
- K. The Department reserves the right to make awards within ninety (90) days after the date of the bid opening, during which period bids shall not be withdrawn unless the bidder distinctly states in the bid that acceptance thereof must be made within a shorter specified time.
- L. **Work for Hire Contract**
Any contract entered into resultant from this request for proposal will be considered a "Work for Hire Contract." The Department will be the sole owner of all source code and any software which is developed or included in the application software provided to the Department as a part of this contract.
- M. **Technology Purchases Notification --** The following provisions apply if this Request for Proposal (RFP) seeks proposals for "Technology"
 - 1. For the purposes of this policy, "technology" applies to all services and commodities, voice/data/video and/or any related requirement, major software acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices.

2. If this RFP results in procurement of software over \$20,000, or of other technology over \$50,000, or where the department determines that the potential exists for coordinating purchases among State agencies and/or the purchase may be of interest to one or more other State agencies, PRIOR TO AWARD SELECTION, this RFP and all responses thereto are subject to review by the New York State Office for Technology.
3. Any contract entered into pursuant to an award of this RFP shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York. Incorporation of this RFP into the resulting contract also incorporates this provision in the contract.
4. The responses to this RFP must include a solution to effectively handle the turn of the century issues related to the change from the year 1999 to 2000.

N. YEAR 2000 WARRANTY

1. Definitions

For purposes of this warranty, the following definitions shall apply:

- a. Product shall include, without limitation: any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g. consulting, systems integration, code or data conversion or data entry, the term Product shall include resulting deliverables.
- b. Vendor's Product shall include all Product delivered under this Agreement by Vendor other than Third Party Product.
- c. Third Party Product shall include products manufactured or developed by a corporate entity independent from Vendor and provided by Vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. Third Party Product does not include product where Vendor is: a) corporate subsidiary or affiliate of the third party manufacturer/developer; and/or b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

2. Warranty Disclosure

At the time of bid, Product order or Product quote, Vendor is required to disclose the following information in writing to Authorized User:

- a. For Vendor Product and for Products (including, but not limited to, Vendor and/or Third Party Products and/or Authorized User's Installed Product) which have been specified to perform as a system: Compliance or non-compliance of the Products individually or as a system with the Warranty Statement set forth below; and
- b. For Third Party Product Not Specified as Part of a System: Third Party Manufacturer's statement of compliance or non-compliance of any Third Party Product being delivered with Third Party Manufacturer/Developer's Year 2000 warranty. If such Third Party Product is represented by Third Party Manufacturer/Developer as compliant with Third Party Manufacturer/Developer's Year 2000 Warranty, Vendor shall pass through said third party warranty from the third party manufacturer to the Authorized User but shall not be liable for the testing or verification of Third Party's compliance statement.

An absence or failure to furnish the required written warranty disclosure shall be deemed a statement of compliance of the product(s) or system(s) in question with the year 2000 warranty statement set forth below.

3. Warranty Statement

Year 2000 warranty compliance shall be defined in accordance with the following warranty statement:

Vendor warrants that Product(s) furnished pursuant to this Agreement shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations. Where a purchase requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

In the event of any breach of this warranty, Vendor shall restore the Product to the same level of performance as warranted herein, or repair or replace the Product with conforming Product so as to minimize interruption to Authorized User's ongoing business processes, time being of the essence, at Vendor's sole cost and

expense. This warranty does not extend to correction of Authorized User's errors in data entry or data conversion.

This warranty shall survive beyond termination or expiration of the Agreement.

Nothing in this warranty shall be construed to limit any rights or remedies otherwise available under this Agreement.

- O. No Subcontracting
Subcontracting by the contractor shall not be permitted except by prior written approval and knowledge of the Department of Health.
- P. Superintendence by Contractor
The Contractor shall have a representative to provide supervision of the work which Contractor employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department of Health. A confirmation in writing of such orders or directions will be given by the Department when so requested from the Contractor.
- Q. Sufficiency of Personnel and Equipment
If the Department of Health is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the authority to require the Contractor to use such additional personnel, to take such steps necessary to perform the services satisfactorily at no additional cost to the State.
- R. Experience Requirements
The Contractor shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the type of services required under this contract and must show that it is currently performing similar services. The Contractor shall submit at least two references to substantiate these qualifications.
- S. Contract Amendments
This agreement may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This agreement may not be amended orally.

The contractor shall not make any changes in the scope of work as outlined herein at any time without prior authorization in writing from the Department of Health and without prior approval in writing of the amount of compensation for such changes.

T. Provisions Upon Default

1. In the event that the Contractor, through any cause, fails to perform any of the terms, covenants or promises of this agreement, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor
2. If, in the judgement of the Department of Health, the Contractor acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor. In such case the Contractor shall receive equitable compensation for such services as shall, in the judgement of the State Comptroller, have been satisfactorily performed by the Contractor up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the Contractor was engaged in at the time of such termination, subject to audit by the State Comptroller.

U. Termination Provision

Upon termination of this agreement, the following shall occur:

1. Contractor shall make available to the State for examination all data, records and reports relating to this Contract; and
2. Except as otherwise provided in the Contract, the liability of the State for payments to the Contractor and the liability of the Contractor for services hereunder shall cease.

V. Conflicts

If, in the opinion of the Department of Health, (1) the specifications conflict, or (2) if the specifications are not clear as to (a) the method of performing any part of the work, or as to (b) the types of materials or equipment necessary, or as to (c) the work required to be done in every such situation, the Contractor shall be deemed to have based his bid upon performing the work and furnishing materials or equipment in the most inexpensive and efficient manner. If such conflicts and/or ambiguities arise, the Department of Health will furnish the Contractor supplementary information showing the manner in which the work is to be performed and the type or types of material or equipment that shall be used.

W. MINORITY AND WOMEN OWNED BUSINESS POLICY STATEMENT

The New York State Department of Health recognizes the need to take

affirmative action to ensure that Minority and Women Owned Business Enterprises are given the opportunity to participate in the performance of the Department of Health's contracting program. This opportunity for full participation in our free enterprise system by traditionally, socially and economically disadvantaged persons is essential to obtain social and economic equality and improve the functioning of the State economy.

It is the intention of the New York State Department of Health to fully execute the mandate of Executive Law, Article 15-A and provide Minority and Women Owned Business Enterprises with equal opportunity to bid on contracts awarded by this agency in accordance with the State Finance Law.

To implement this affirmative action policy statement, the contractor agrees to file with the Department of Health within 10 days of notice of award, a staffing plan of the anticipated work force to be utilized on this contract or, where required, information on the contractor's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the Department. The form of the staffing plan shall be supplied by the Department.

After an award of this contract, the contractor agrees to submit to the Department a work force utilization report, in a form and manner required by the Department, of the work force actually utilized on this contract, broken down by specified ethnic background, gender and Federal occupational categories or other appropriate categories specified by the Department.

X. Contract Insurance Requirements

1. The successful bidder must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this proposal and the contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York covering all operations under this proposal and the contract, whether performed by it or by subcontractors. Before commencing the work, the successful bidder shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to the Department. The kinds and amounts of required insurance are:
 - a. A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the

contract shall be void and of no effect unless the successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).

- b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
 - i. Contractor's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
 - ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
 - iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

Y. Certification Regarding Debarment and Suspension

Regulations of the Department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and

benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government-wide effect.

Pursuant to the above-cited regulations, the New York State Department of Health (as a participant in a primary covered transaction) may not knowingly do business with a person who is debarred, suspended, proposed for debarment, or subject to other government-wide exclusion (including any exclusion from Medicare and State health care program participation on or after August 25, 1995), and the Department of Health must require its prospective contractors, as prospective lower tier participants, to provide the certification in Appendix B to Part 76 of Title 45 CFR, as set forth below:

1. APPENDIX B TO PART 76-CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered and erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of

those regulations.

- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, 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.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of parties Excluded from Federal Procurement and Non-procurement Programs.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions
 - a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.
 - b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Z. Confidentiality Clauses

1. Any materials, articles, papers, etc., developed by the CONTRACTOR under or in the course of performing this AGREEMENT shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the STATE for conformity with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The Department reserves the right to disallow funding for any educational materials not approved through its review process.
2. Any publishable or otherwise reproducible material developed under or in the course of performing this AGREEMENT, dealing with any aspect of performance under this AGREEMENT, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the STATE, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is secured from the STATE or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.

3. No report, document or other data produced in whole or in part with the funds provided under this AGREEMENT may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data developed pursuant to this AGREEMENT.
4. All reports, data sheets, documents, etc. generated under this contract shall be the sole and exclusive property of the Department of Health. Upon completion or termination of this AGREEMENT the CONTRACTOR shall deliver to the Department of Health upon its demand all copies of materials relating to or pertaining to this AGREEMENT. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department of Health or its authorized agents.
5. The CONTRACTOR, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.
6. All subcontracts shall contain provisions specifying:
 - a. that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and
 - b. that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.

AA. Provision Related to Consultant Disclosure Legislation

1. If this contract is for the provision of consulting services as defined in Subdivision 17 of Section 8 of the State Finance Law, the CONTRACTOR shall submit a "State Consultant Services Form B, Contractor's Annual Employment Report" no later than May 15th following the end of each state fiscal year included in this contract term. This report must be submitted to:
 - a. The NYS Department of Health, at the STATE's designated payment office address included in this AGREEMENT; and

- b. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany NY 12236 ATTN: Consultant Reporting - or via fax at (518) 474-8030 or (518) 473-8808; and
- c. The NYS Department of Civil Service, Alfred E. Smith Office Building, Albany NY 12239, ATTN: Consultant Reporting.

BB. Provisions Related to New York State Procurement Lobbying Law

- 1. The STATE reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONTRACTOR in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this AGREEMENT.

CC. Provisions Related to New York State Information Security Breach and Notification Act

- 1. CONTRACTOR shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). CONTRACTOR shall be liable for the costs associated with such breach if caused by CONTRACTOR'S negligent or willful acts or omissions, or the negligent or willful acts or omissions of CONTRACTOR'S agents, officers, employees or subcontractors.

DD. Lead Guidelines

All products supplied pursuant to this agreement shall meet local, state and federal regulations, guidelines and action levels for lead as they exist at the time of the State's acceptance of this contract.

ATTACHMENT 17
APPENDIX G - NOTICES

Appendix G

NOTICES

All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time to time designate:

State of New York Department of Health

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

[Insert Contractor Name]

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this AGREEMENT by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representative for the purposes of receiving notices under this AGREEMENT. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution.

ATTACHMENT 18
APPENDIX X – MODIFICATION AGREEMENT FORM

Agency Code 12000
APPENDIX X

Contract Number: _____

Contractor: _____

Amendment Number X-_____

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through NYS Department of Health, having its principal office at Albany, New York, (hereinafter referred to as the STATE), and _____ (hereinafter referred to as the CONTRACTOR), for amendment of this contract.

This amendment makes the following changes to the contract (check all that apply):

- _____ Modifies the contract period at no additional cost
- _____ Modifies the contract period at additional cost
- _____ Modifies the budget or payment terms
- _____ Modifies the work plan or deliverables
- _____ Replaces appendix(es) _____ with the attached appendix(es) _____
- _____ Adds the attached appendix(es) _____
- _____ Other: (describe) _____

This amendment *is* ___ *is not* ___ a contract renewal as allowed for in the existing contract.

All other provisions of said AGREEMENT shall remain in full force and effect.

Prior to this amendment, the contract value and period were:

\$ _____ From ____ / ____ / ____ to ____ / ____ / ____
(Value before amendment) (Initial start date)

This amendment provides the following modification (complete only items being modified):

\$ _____ From ____ / ____ / ____ to ____ / ____ / ____

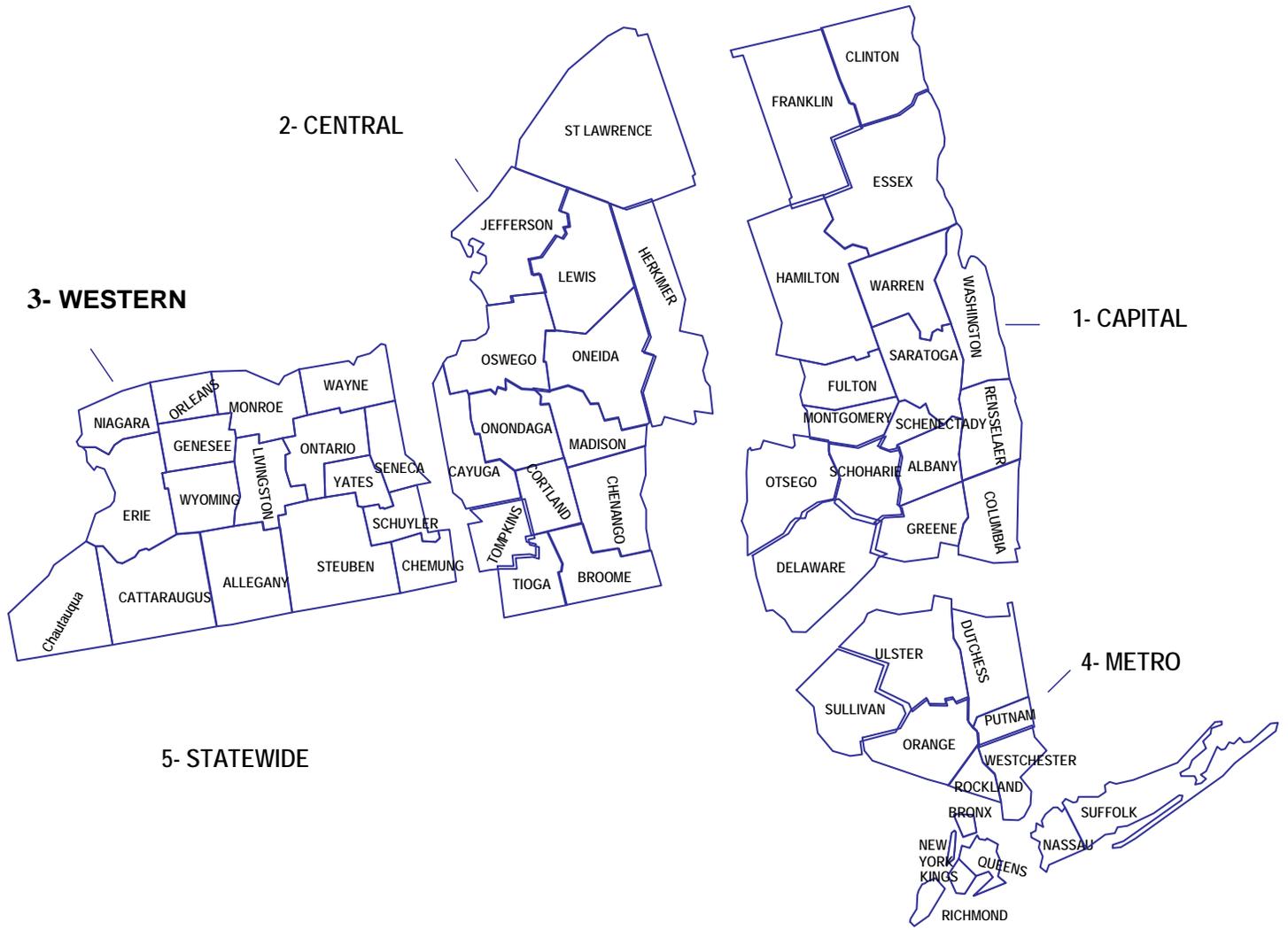
This will result in new contract terms of:

\$ _____ From ____ / ____ / ____ to ____ / ____ / ____
(All years thus far combined) (Initial start date) (Amendment end date)

ATTACHMENT 19
NYS WIC PROGRAM REGIONS

NEW YORK STATE DEPARTMENT OF HEALTH

NYS WIC PROGRAM REGIONS



ATTACHMENT 20
SAMPLE INFANT FORMULA REBATE INVOICES