



Department of Health

Invitation for Bids

IFB # 17794

WIC Infant Cereal Rebate

Issued: April 12, 2018

DESIGNATED CONTACT:

Pursuant to State Finance Law §§ 139-j and 139-k, the Department of Health identifies the following designated contact to whom all communications attempting to influence the Department of Health's conduct or decision regarding this procurement must be made.

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Pursuant to State Finance Law § 139-j(3)(a), the Department of Health identifies the following allowable contact for communications related to the submission of written bids, written questions, pre-bid questions, and debriefings.

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1. CALENDAR OF EVENTS

IFB 17794 – WIC INFANT CEREAL REBATE	
<u>EVENT</u>	<u>DATE</u>
Issuance of Invitation for Bids	April 12, 2018
Deadline for Submission of Written Questions	May 3, 2018 at 4:00 p.m. ET
Responses to Written Questions Posted by DOH	On or About June 14, 2018
Deadline for Registering for Public Bid Opening	June 26, 2018 4:00 p.m. ET
Deadline for Submission of Bids	Proposals Due on Or Before June 27, 2018 3:00 p.m. ET
Public Bid Opening	June 27, 2018 3:00 p.m. ET
<i>Anticipated</i> Contract Start Date	November 1, 2018

2. OVERVIEW

Through this Invitation for Bids (IFB), the New York State (State) Department of Health (DOH) is seeking competitive bids from infant cereal manufacturers as further described in this IFB. It is the Department's intent to award one (1) contract from this procurement. The winning bidder shall enter into a contract to manufacture federally-WIC-eligible infant cereals and provide a rebate on all such cereals that NYS WIC chooses to issue and that are purchased by NYSWIC participants using their WIC food instruments.

2.1. Introductory Background

DOH is seeking to maximize the number of participants served by the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) with available federal and state funds. NYS WIC distributes infant cereal through the retail purchase system and is requesting manufacturer rebates to reduce program costs. The purpose of this IFB is to implement a system that lowers the cost of retail infant cereal purchased by NYS WIC participants.

The NYS Special Supplemental Nutrition Program for Women, Infants and Children (WIC) provides breastfeeding support, nutrition counseling, health education, health care referrals, referrals to other services, and nutritious foods to over 400,000 women, infants and children each month through 92 local providers (hospitals, local health departments and community based organizations) at 400 service sites. The fundamental purpose of the program is to ensure the health and well-being of income eligible families with young children. WIC provides individually tailored food prescriptions issued to each participant for specific types and brands of foods that meet strict nutrition requirements. These food benefits, valued at nearly \$400 million annually, can be redeemed at approximately 3,000 authorized retail food vendors across the state.

The NYS WIC program provides infant cereal to eligible participants through a retail purchase system. This uniform delivery system is utilized statewide through contracts with retail food vendors that agree to accept WIC food instruments issued for specified authorized foods. All contracted vendors must comply with federal requirements set forth in 7 CFR, Part 246.12.

WIC food instruments are issued by local WIC providers throughout the State to certified eligible participants or participants' caregivers. During the period of this agreement, some local agencies will be issuing paper checks, and some local agencies will be issuing electronic benefits. Paper 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. Infant cereal checks will specify the quantity, unit size, and brand name of the infant cereal that may be purchased at an authorized retail vendor within the 30-day timeframe noted on the check. After a vendor accepts a WIC food instrument, it is processed through the Federal Reserve System to the WIC program's banking contractor 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.

Beginning April 2018, NYS WIC be transitioning from paper checks to an electronic benefit transfer (EBT) system. This transition is expected to be completed by June 2019. EBT delivery will affect many processes relevant to the infant cereal rebate system, such as participant certification, food issuance, and reconciliation of redeemed benefits. Electronic benefits may be issued in one month increments for up to a three-month period. For continuity with Federal mandates to transition to electronic benefit issuance, from this point in the solicitation, all WIC food benefits will be referred to as EBT.

To the extent that these system changes affect the language of the contract to be awarded (which will incorporate this IFB), NYS WIC will communicate these effects to the infant cereal contractor and discuss how they can be aligned with the contract language. For example, DOH may indicate to the contractor that including contractor UPC codes for infant cereal in the NYS WIC Approved Product List (APL) is the equivalent of printing contract brand cereal on WIC paper checks. 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.

The average monthly number of 8-ounce units of infant cereal redeemed during August 2017 – January 2018 is 111,754.

Table 1 depicts the NYS WIC program’s caseload over a recent six-month period, with detail provided on the number of infants eligible to receive WIC infant cereal. Infants over six months old may be issued up to three, 8-ounce units of infant cereal.

Table 1 - NYS WIC Caseload Statistics*

Month	Total Caseload	All Infants	All Infants Over Six Months Old
August 2017	429,824	99,066	49,447
September 2017	428,061	98,708	48,544
October 2017	431,067	99,536	47,826
November 2017	428,611	99,374	47,503
December 2017	419,548	97,698	47,241
January 2018	422,496	98,227	46,905
Six-Month Average	426,601	98,768	47,911

* No assurance is given that this amount of infant cereal is predictive of future redemption amounts.

The maximum amount of infant cereal that could be provided to the participant mix shown in Table 1 is 143,733 8-ounce units per month (47,911 X 3). This is higher than actual redemption amounts; however, this capacity is required to accommodate potential caseload increases or program expansions during the contract period. Actual redemption amounts are being used as the basis of the “estimated number of containers purchased per month” on the Infant Cereal Bid Form (Attachment C). Table 2 shows the distribution of all infant WIC participants and WIC-approved vendors across the State as of January 2018.

Table 2 Regional* Distribution of Eligible Infants and WIC Vendors

Category	Capital / Central		Western		Metropolitan	
	No.	Percent	No.	Percent	No.	Percent
Total Infant WIC Participation per Region	6,707	14.30%	5,828	12.43%	34,370	73.27%
WIC Vendors per Region	466	15.82%	300	10.18%	2,180	74.00%

*See Attachment K - New York State WIC Program Regions

2.2. Important Information

The bidder is required to review, and is requested to have legal counsel review, the DOH Agreement (Attachment M). The bidder must be willing to enter into an agreement substantially in accordance with the terms of Attachment M should the bidder be selected for contract award. Please note that this IFB and the awarded vendor’s bid will become part of the contract as Appendix B and C, respectively.

It should be noted that Appendix A in Attachment M, “Standard Clauses for New York State Contracts”, contains important information related to the contract to be entered into as a result of this IFB and will be incorporated, without change or amendment, into the contract entered into between DOH and the successful bidder. By submitting a response to the IFB, the bidder agrees to comply with all the provisions of Appendix A.

It is also mandatory to submit The Bidder’s Certifications/Acknowledgements (Attachment A). Attachment A includes a statement that the bidder accepts, without any added conditions, qualifications or exceptions, the contract terms and conditions contained in this IFB, including any exhibits and attachments.

Any qualifications or exceptions to this IFB proposed by a bidder should be submitted in writing using the process set forth in Section 5.2 (Questions) prior to the deadline for submission of written questions indicated in Section 1 (Calendar of Events). Any amendments DOH makes to the IFB as a result of questions and answers will be publicized on the DOH web site.

2.3. Term of the Agreement

This contract term will be for a period of five (5) years commencing on the date shown in Section 1 (Calendar of Events), subject to the availability of sufficient funding, successful contractor performance, and approvals from the New York State Attorney General (AG) and the Office of the State Comptroller (OSC). After the initial contract term expires, at the discretion of DOH, the contract may be extended, for up to an additional three (3) month period by amendment signed by both parties with all required approvals.

The resulting contract will cover WIC food instruments for infant cereal issued after November 1, 2018 and will provide for five (5) years of cereal issuance.

3. BIDDERS MINIMUM QUALIFICATIONS TO PROPOSE

DOH will only accept proposals from infant cereal manufacturers who meet all minimum requirements. Failure to meet these Minimum Qualifications will result in a proposal being found non-responsive and eliminated from consideration.

3.1. Manufacturer Requirements

- Must have a minimum of (3) three years of experience manufacturing infant cereal.
- Must have a product recall program that provides for immediate notification to all direct purchasers of the company's products.
- Must produce 100 percent of the NYS WIC infant participants' maximum issuance amount (the most recent monthly average is 143,733 8 oz. boxes) of infant cereal This capacity will be required to be maintained for the duration of the contract.
- Must be capable of distributing their infant cereal, directly or via wholesalers/distributors, to retail outlets throughout New York State. This capability will be required to be maintained for the duration of the contract.
- Must bid the least expensive (in wholesale price) infant cereal manufactured by the bidder that meets federal WIC guidelines .

3.2. Cereal Varieties

Must manufacturer a minimum of four (4) types of dry, plain infant cereal in 8-ounce containers, including:

- single grain rice
- single grain oatmeal
- and a minimum of two additional varieties (for example barley, whole wheat, multi-grain etc.)

3.3. Production

- Must produce infant cereal in eight (8)-ounce containers.
- Produces infant cereal in a manner that meets or exceeds all federal, state and industry standards and requirements.
- The required infant cereal varieties must be in production and listed on the bidder's national wholesale price list as of the date of the bid submission.

3.4. Product Quality

- Product must comply with all federal regulations pertaining to infant cereal.
- Product must contain a minimum of 45 milligrams of iron per 100 grams of dry cereal
- Each cereal must be the same as furnished to the general trade.

3.5. Product Exclusions

- Infant cereals containing infant formula, milk, fruit, or other non-cereal ingredients are not allowed.
- Containers with individual serving packets will not be considered.

4. CONTRACT REQUIREMENTS

This Section describes the services that are required to be provided by the selected bidder. The selected bidder must be able to provide all of these services throughout the contract term.

PLEASE NOTE: Bidders will be required to provide responses that address all of the requirements of this IFB as part of its bid.

The terms “bidders”, “vendors” and “proposers” are also used interchangeably. For purposes of this IFB, the use of the terms “shall”, “must” and “will” are used interchangeably when describing the contractor’s/bidder’s duties.

4.1. Definitions

Bid cereal	The least expensive (in wholesale price) infant cereal manufactured by the bidder that meets federal WIC guidelines.
Electronic Benefit Transfer (EBT)	A method that permits electronic access to WIC food benefits using a card or other access device approved by the State.
Issue date	The “not good before” date printed on the WIC paper checks or the date benefits are assigned to a participant using the WIC EBT card.
Issue month	The month in which the WIC food instrument’s “not good before” date falls.
Issued during the contract period	Refers to WIC food instruments with “not good before” dates falling between contract effective date and the end date of the contract.
Redemption date	The date on which the vendor receives payment for a WIC food instrument accepted at the vendor’s retail store.
Redemption month	The month in which the redemption date falls.
WIC eligible infant cereal	All infant cereal that meets federal regulatory criteria, regardless of whether the cereal is issued by any state WIC agency.
WIC food instruments	Will be used interchangeably for WIC paper checks and EBT.

4.2. Contractor Requirements

- a. DOH must receive at least a 90 day notice for any changes in labels, unit size, reformulation, UPC number, and product discontinuation necessitating food package changes that come into effect for any infant cereal produced by the contractor and approved by the NYS WIC program during the contract period or the subsequent redemption period of food instruments issued during the contract period. 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 DOH will maintain the information in a confidential manner.

If the contractor introduces a new federally WIC-eligible infant cereal during the contract period, an announcement of such must be communicated to NYS WIC at least 90-days prior to inviting orders for the product.

- b. Guarantee availability of NYS WIC-approved contract cereal 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 cereal 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 cereal 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 small-scale vendors who buy small amounts of infant cereal. Note that these vendors may be located in remote, rural areas of New York State.

- c. If any product is designated as kosher, it must be labeled with a common accepted kosher symbol as identified by the Chicago Rabbinical Council and listed on their website: http://www.crcweb.org/agency_list.php, and must meet all the requirements of that certification.
- d. Remit to the DOH a rebate per 8-ounce unit for all infant cereal produced by the contractor, issued by the New York State WIC program during the contract period, and purchased by NYSWIC participants using their WIC food instruments. The DOH is entitled to a rebate payment for all WIC food instruments for such infant cereal issued to WIC infants during the term of the contract and redeemed according to WIC program procedures. A sample of a prior rebate invoices for infant cereal is provided in Attachment L. Detailed information on rebate calculations and invoicing can be found in Section 5.4 (Payment).
- e. Notify the DOH of any wholesale price changes by telephone or email 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 DOH.
- f. Rebate the DOH for the infant cereal products on each redeemed food instrument used to purchase another company's infant cereal product when the entire line of the contractor's approved infant cereals has a factory backorder of three (3) calendar days or more and another company's infant cereal needs to 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 8-ounce unit to the DOH as that of the product which is unavailable.

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 DOH may procure the usage of other parties' services and may cancel the contract.

- g. Notify the DOH, 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 a billing error is waived. Payments cannot be withheld by the contractor in the event of a dispute or a billing error. The contractor may not withhold rebate payments based on rebate invoices issued by the DOH under any circumstances.

The 30-day limitation applies only to notification of intent. Full presentation of the contractor's concerns may be provided after the 30-day period has ended.

- h. 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 confidential records shall be subject to federal and DOH confidentiality requirements.
- i. Address correspondence and communications regarding this contract according to the instructions provided in Appendix G of the contract. All communications regarding wholesale price increases, container size changes, reformulations, new products, or cessations in the production of any cereal must be in writing, and the contractor must telephone or use email to confirm the DOH's receipt of the communication.
- j. Assist DOH with providing contract brand infant cereal 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, information system outages, 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 cereal to the DOH for direct distribution to WIC participants, or efforts to increase the supply of infant cereal available to WIC vendors. In the event of cereal purchased directly by the DOH, the cost to the DOH will be the national wholesale price in effect on the purchase date for the weight tier of cereal purchased, less the rebate in effect on the purchase date.

4.3. New York State Requirements

- a. Supply the 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 DOH will also notify all authorized WIC retail outlets to inform them of any change to approved infant cereals.
- b. Print contract brand infant cereal on WIC infant food instruments or include in the published Approved Product List, with two possible exceptions; In the circumstances described in Section 4.1.j. of this IFB, it may be temporarily necessary to print non-brand-specific infant food instruments and/ or the State reserves the right to issue a non-contract-brand cereal if the contract brand does not have kosher certification and the participant follows kosher dietary practices.
- c. Prepare invoices for the contractor's rebate payment. The invoice shall contain the issuance months, quantities, and rebate amounts used to calculate the monthly rebate payment. The State shall transmit the invoice to the contractor via email or fax, followed by hard copy sent via US mail. 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. A sample of a prior rebate invoices for infant cereal is provided in Attachment L.
- d. Upon resolution of a dispute, disburse in accordance with prompt payment provisions of Article 11-A of the State Finance Law, any funds due the contractor.
- e. Supply upon request 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:
 - Transaction Identifier
 - Benefits Issue Date
 - Redemption Date
 - Number of Units Redeemed

- f. 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 (3) 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 4.2.h. of this IFB.

4.4. Contractor and State Requirements

The State and the 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. 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.

4.5. Use of WIC Service Marks

By submitting a bid in response to this IFB, the bidder 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. The 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 the 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 cereal manufacturers, regardless of whether they provide cereal 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.

4.6. Royalties

The federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes, the copyright in any work developed under a grant, sub-grant, or contract under a grant or sub-grant or any rights of copyright to which a contractor purchases ownership.

4.7. Clean Air Act

The Clean Air Act, Section 306 stipulates:

- a. No Federal agency may enter into any contract with any person who is convicted of any offense under section 113(c) for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 113(c)(2), the condition giving rise to the conviction also shall be considered to include any substantive violation of this Act associated with the violation of 113(c)(2). The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.
- b. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).
- c. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after enactment of the Clean Air Amendments of 1970 cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.
- c. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption. The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section. [42 U.S.C. 7606]
- d. The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section. [42 U.S.C. 7606]

4.8. Clean Water Act

The Clean Water Act, Section 309 stipulates:

- a. No Federal agency may enter into any contract with any person who has been convicted of any offense under Section 309(c) of this Act for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.
- b. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.
- c. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's water, the President shall, not more than 180 days after the enactment of this Act, cause to be issued an order:

1. requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and
 2. setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.
- d. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.
- e. The President shall annually report to the Congress on measures taken in compliance with the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance.
- f. (1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.

(2) In paragraph (1), the term “commercial item” has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

5. ADMINISTRATIVE INFORMATION

The following administrative information will apply to this IFB. Failure to comply fully with this information may result in disqualification of your bid.

5.1. Restricted Period

“Restricted period” means the period of time commencing with the earliest written notice, advertisement, or solicitation of a Request for Proposals (“RFP”), Invitation for Bids (“IFB”), or solicitation of proposals, or any other method for soliciting a response from Bidders intending to result in a procurement contract with DOH and ending with the final contract award and approval by DOH and, where applicable, final contract approval by the Office of the State Comptroller.

This prohibition applies to any oral, written, or electronic communication under circumstances where a reasonable person would infer that the communication was intended to influence this procurement. Violation of any of the requirements described in this Section may be grounds for a determination that the bidder is non-responsible and therefore ineligible for this contract award. Two violations within four years of the rules against impermissible contacts during the “restricted period” may result in the violator being debarred from participating in DOH procurements for a period of four years.

Pursuant to State Finance Law §§ 139-j and 139-k, the Department of Health identifies a designated contact on face page of this IFB to whom all communications attempting to influence this procurement must be made.

5.2. Questions

There will be an opportunity available for submission of written questions and requests for clarification pertaining to this IFB. All questions and requests for clarification of this IFB should cite the relevant IFB, IFB number, section and paragraph number where applicable and must be submitted via email to wicifbs@health.ny.gov. It is the bidder’s responsibility to ensure that email containing written questions and/or requests for clarification is received at the above address no later than the Deadline for Submission of Written Questions as specified in Section 1. (Calendar of Events). Questions received after the deadline may **not** be answered.

5.3. Right to Modify IFB

DOH reserves the right to modify any part of this IFB, including but not limited to the date and time by which bids must be submitted and received by DOH, at any time prior to the Deadline for Submission of Bids listed in Section 1. (Calendar of Events). Modifications to this IFB shall be made by issuance of amendments and/or addenda.

Prior to the Deadline for Submission of Bids, any such clarifications or modifications as deemed necessary by DOH will be posted to the DOH website.

If the bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in this IFB, the bidder shall immediately notify DOH of such error in writing at wicifbs@health.ny.gov and request clarification or modification of the document.

If, prior to the Deadline for Submission of Bids, a bidder fails to notify DOH of a known error or an error that reasonably should have been known, the bidder shall assume the risk of bidding. If awarded the contract, the bidder shall not be entitled to additional compensation by reason of the error or its correction.

5.4. Payment

Invoices from the State to the contractor shall reflect the total number of 8-ounce units of each type of infant cereal redeemed during the preceding calendar month, with a breakdown of the months in which the infant cereal food benefits started. Any purchases of 16-ounce containers will be treated as two 8-ounce containers. 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 applicable rebate amount is determined by the wholesale price as communicated to DOH by the contractor on the date that each infant cereal product is issued to participants by the New York State WIC program. The DOH reserves the right to determine whether any of the infant cereals produced by the contractor at the time of bid submission or any new infant cereals introduced by the contractor during the term of the contract will be approved for use in the New York State WIC program.

a. Infant cereals approved for issuance as of the contract effective date:

- Identify the discount percentage from the Infant Cereal Bid Form (Attachment C).
- Multiply the lowest national wholesale price per unit (at the time of bid submission) for each type of cereal by the discount percentage. The result will be the initial rebate for each cereal.

b. Infant cereals approved after the effective date of the contract:

- Calculate the current discount percentage for the bid cereal. This is the current rebate amount for the bid cereal, divided by the bid cereal's current lowest national wholesale price per unit amount. The current discount percentage will be somewhat higher than the original discount percentage if there have been wholesale price increases since the date of bid submission.

ex. $\$1.020$ (rebate amount) / $\$2.040$ (wholesale price per unit) = discount 50%

- Multiply the current discount percentage by the current lowest national wholesale price per unit of the newly-approved infant cereal. The result will be the initial rebate for the newly-approved cereal.

ex. $.50$ (discount %) x $\$2.040$ (wholesale price per unit) = $\$1.20$ initial rebate

- c. Once a rebate amount is established for an infant cereal product, it will subsequently change with any wholesale price changes occurring after the date of bid submission.
- When the contractor increases its lowest national wholesale price per unit of a rebateable cereal, the rebate will automatically increase for each affected food product on a cent-for-cent basis.
 - When the contractor decreases its lowest national wholesale price per unit of a rebateable cereal, the rebate will automatically decrease for each affected cereal 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. The new rebate amount will apply to benefit start dates occurring on or after the effective date of the rebate change.
 - Any increase or decrease in the lowest national wholesale price per unit between the date of bid submission and the effective date of the contract will be added to or subtracted from the initial rebate amounts for approved cereals on a cent-for-cent basis.

The State may also issue supplemental invoices if it discovers that any infant cereal redemptions were not accounted for in the regular invoices. The contract entitles the State to rebates for all WIC contract infant cereal food instruments 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.

The contractor must forward payment to the State via wire transfer within thirty (30) days of the earliest postmark, fax mark, or email 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 email date of the invoice, the manufacturer shall pay the State, in addition to the amount due, interest at a rate of four (4) 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.

5.5. Minority & Woman-Owned Business Enterprise Requirements

Pursuant to New York State Executive Law Article 15-A, the New York State Department of Health (“DOH”) recognizes its obligation to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of DOH contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" (“Disparity Study”). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that DOH establish goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, DOH hereby establishes an overall goal of 0% for MWBE participation, 0% for Minority-Owned Business Enterprises (“MBE”) participation and 0% for Women-Owned Business Enterprises (“WBE”) (based on the current availability of qualified MBEs and WBEs and outreach efforts to certified MWBE firms).

5.6. Equal Employment Opportunity (EEO) Reporting

By submission of a bid in response to this solicitation, the Bidder agrees with all of the terms and conditions of Attachment M, Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. Additionally, the successful bidder will be required to certify they have an acceptable EEO (Equal Employment Opportunity) policy statement in accordance with Section III of Appendix M in Attachment M.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

To ensure compliance with this Section, the Bidder should submit with the bid or proposal an Equal Employment Opportunity Staffing Plan (Attachment F, Form #4) identifying the anticipated work force to be utilized on the Contract. Additionally, the Bidder should submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement (Attachment F, Form # 5), to DOH with their bid or proposal.

5.7. Sales and Compensating Use Tax Certification (Tax Law, § 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.

The successful Bidder must file a properly completed Form ST-220-CA with the Department of Health and Form ST-220-TD with the DTF. These requirements must be met before a contract may take effect. Further information can be found at the New York State Department of Taxation and Finance's website, available through this link: <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

Forms are available through these links:

- ST-220 CA: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf
- ST-220 TD: http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf

5.8. Subcontracting

Bidder's may not propose the use of a subcontractor. The Contractor shall obtain prior written approval from NYSDOH before entering into an agreement for services to be provided by a subcontractor. The Contractor is solely responsible for assuring that the requirements of the IFB are met. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of the prime contract, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the agreement between the DOH and the Contractor. DOH reserves the right to request removal of any bidder's staff or subcontractor's staff if, in DOH's discretion, such staff is not performing in accordance with the Agreement. Subcontractors whose contracts are valued at or above \$100,000 will be required to submit the Vendor Responsibility Questionnaire upon selection of the prime contractor.

5.9. DOH's Reserved Rights

The Department of Health reserves the right to:

1. Reject any or all bids received in response to the IFB;
2. Withdraw the IFB at any time, at the agency's sole discretion;
3. Make an award under the IFB in whole or in part;
4. Disqualify any bidder whose conduct and/or bid fails to conform to the requirements of the IFB;
5. Seek clarifications and revisions of bids;
6. Use bid 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;
7. Prior to the bid opening, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
8. Prior to the bid opening, direct bidders to submit bid modifications addressing subsequent IFB amendments;
9. Change any of the scheduled dates;
10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
11. Waive any requirements that are not material;
12. Negotiate with the successful bidder within the scope of the IFB in the best interests of the state;
13. Conduct contract negotiations with the next responsible bidder, should the Department be unsuccessful in negotiating with the selected bidder;
14. Utilize any and all ideas submitted in the bids received;
15. Every offer shall be firm and not revocable for a period of three hundred and sixty-five days (365) from the bid opening, to the extent not inconsistent with section 2-205 of the uniform commercial code. Subsequent to such three hundred and sixty-five days (365), any offer is subject to withdrawal communicated in a writing signed by the bidder; and,
16. 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 a bidder's bid and/or to determine a bidder's compliance with the requirements of the solicitation.

5.10. Freedom of Information Law ("FOIL")

All bids may be disclosed or used by DOH to the extent permitted by law. DOH may disclose a bid to any person for the purpose of assisting in evaluating the bid or for any other lawful purpose. All bids will become State agency records, which will be available to the public in accordance with the Freedom of

Information Law. **Any portion of the bid that a Bidder believes constitutes proprietary information entitled to confidential handling, as an exception to the Freedom of Information Law, must be clearly and specifically designated in the bid as directed in Section 6.1.6 of the IFB.** If DOH agrees with the proprietary claim, the designated portion of the bid will be withheld from public disclosure. Blanket assertions of proprietary material will not be accepted, and failure to specifically designate proprietary material may be deemed a waiver of any right to confidential handling of such material.

5.11. Lobbying

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, made significant changes as it pertains to development of procurement contracts with governmental entities. These changes include:

- a) making 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) requiring 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) requiring 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) authorizing the New York State Commission on Public Integrity, (now New York State Joint Commission on Public Ethics), 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) directing 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) requiring the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment; (Bidders responding to this IFB should submit a completed and signed Attachment G, "Prior Non-Responsibility Determination".)
- g) increasing the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- h) establishing the Advisory Council on Procurement Lobbying.

Subsequently, Chapter 14 of the Laws of 2007 amended the Lobbying Act of the Legislative Law, particularly as it related to specific aspects of procurements as follows: (i) prohibiting lobbyists from entering into retainer agreements on the outcome of government grant making or other agreement involving public funding; and (ii) reporting lobbying efforts for grants, loans and other disbursements of public funds over \$15,000.

The most notable, however, was the increased penalties provided under Section 20 of Chapter 14 of the Laws of 2007, which replaced old penalty provisions and the addition of a suspension option for lobbyists engaged in repeated violations. Further amendments to the Lobbying Act were made in Chapter 4 of the Laws of 2010.

Questions regarding the registration and operation of the Lobbying Act should be directed to the New York State Joint Commission on Public Ethics.

5.12. State Finance Law Consultant Disclosure Provisions

In accordance with New York State Finance Law Section 163(4)(g), State agencies must require all contractors, including subcontractors, that provide consulting services for State purposes pursuant to a contract to submit an annual employment report for each such contract.

The successful bidder for procurements involving consultant services must complete a "State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term" in order to be eligible for a contract.

The successful winning bidder must also agree to complete a "State Consultant Services Form B, Contractor's Annual Employment Report" for each state fiscal year included in the resulting contract. This report must be submitted annually to the Department of Health, the Office of the State Comptroller, and Department of Civil Service.

State Consultant Services Form A: Contractor's Planned Employment and Form B: Contractor's Annual Employment Report may be accessed electronically at:
<http://www.osc.state.ny.us/agencies/forms/ac3271s.doc> and
<http://www.osc.state.ny.us/agencies/forms/ac3272s.doc>.

5.13. Debriefing

Once an award has been made, bidders may request a debriefing of their bid. Please note the debriefing will be limited only to the vendor's bid, and will not include any discussion of other bids. Requests must be received no later than fifteen (15) business days from date of award or non-award announcement.

5.14. Protest Procedures

In the event unsuccessful bidders wish to protest the award resulting from this IFB, bidders should follow the protest procedures established by the Office of the State Comptroller (OSC). These procedures can be found in Chapter XI Section 17 of the Guide to Financial Operations (GFO). Available on-line at:
<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>

5.15. Iran Divestment Act

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website (currently found at this address: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>) and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should DOH receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, DOH will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then DOH shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default. DOH reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

5.16. Piggybacking

New York State Finance Law section 163(10)(e) (see also <http://www.ogs.ny.gov/BU/PC/SFL.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.

5.17. Encouraging Use of New York Businesses in Contract Performance

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. All bidders should complete Attachment H, Encouraging Use of New York Businesses in Contract Performance, to indicate their intent to use/not use New York Businesses in the performance of this contract.

6. BID FORMAT AND CONTENT

The following includes the Mandatory Bid Requirements and Other Bid Documents requested by each Bidder. Bidders responding to this IFB must satisfy all Mandatory Bid Requirements stated in this IFB. All Bidders are requested to submit all Other Bid Documents listed below in their Bid packages. A bid that is incomplete in any material respect will be rejected.

To expedite review of the bids, Bidders are requested to submit bids as summarized in Attachment B, Bid Submittal Document Checklist. This separation of information will facilitate the review of the material requested. No information beyond that specifically requested is required, and Bidders are requested to keep their submissions to the shortest length consistent with making a complete presentation of qualifications.

DOH will not be responsible for expenses incurred in preparing and submitting the Bid Packages.

6.1. Mandatory Bid Requirements

The purpose of the Mandatory Bid Requirements is to demonstrate the qualifications, competence, and capacity of the Bidder to provide the commodity and/or services contained in this IFB. A Bid Package that is incomplete in any material respect will be eliminated from consideration. The following outlines the required information to be provided by Bidders. The information requested should be provided in the prescribed format. Responses that do not follow the prescribed format may be eliminated from consideration. All responses to the IFB are subject to verification for accuracy.

THE BID PROPOSAL MUST INCLUDE:

6.1.1. Infant Cereal Bid Form

Submit a completed and signed in ink Attachment C (Infant Cereal Bid Form). The Bid Form must comply with the format and content requirements as detailed in this document and in Attachment C. Failure to comply with the format and content requirements will result in disqualification.

The prices bid must cover the cost of furnishing all of the said products or services, including but not limited to materials, equipment, profit, and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.

6.1.2. Bidder's National Wholesale Price List

Provide the national wholesale price list as of the date of the bid submission, which indicates the required cereal varieties.

6.1.3. Bidder's Certified Statements

Submit a completed and signed Attachment A (Bidder's Certified Statements), which includes information regarding the bidder as well as the Bidder's attestation they are able to meet all the specifications stated in Section 3.0 of the IFB.. Attachment A must be signed by an individual authorized to bind the bidder contractually. Please indicate the title or position that the signer holds with the bidder. DOH reserves the right to reject a bid that contains an incomplete, unsigned or no Attachment A.

6.2. Other Bid Documents

The following outlines the Other Bid Documents to be provided by Bidders. The information requested should be provided in the following order.

6.2.1. Bid Package Checklist

Use Attachment B to ensure the bid package is properly prepared.

6.2.2. References

Provide two (2) references using Attachment E (References) for clients you have manufactured infant cereal. Provide firm names, addresses, contact names, telephone numbers, and email addresses.

6.2.3. New York State DOH M/WBE Required Forms

Submit completed forms # 4 & 5 of Attachment F.

6.2.4. Bidder's Disclosure of Prior Non-Responsibility Determinations

Submit a completed and signed Attachment G (Bidder's Disclosure of Prior Non-Responsibility Determination).

6.2.5. Encouraging Use of New York Businesses in Contract Performance

Submit Attachment H (Encouraging Use of New York State Businesses in Contract Performance) to indicate which New York State Businesses you will use in the performance of the contract.

6.2.6. Vendor Responsibility Questionnaire

Complete, certify, and file a New York State Vendor Responsibility Questionnaire. DOH recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions at http://www.osc.state.ny.us/vendrep/info_vrsystem.htm or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the OSC Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us.

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website, www.osc.state.ny.us/vendrep, or may contact the Office of the State Comptroller's Help Desk for a copy of the paper form. Bidder's should complete and submit the Vendor Responsibility Attestation, Attachment I.

6.2.7. Freedom of Information Law – Bid Redactions

Bidders must clearly and specifically identify any portion of the bid that a bidder believes constitutes proprietary information entitled to confidential handling as an exception to the Freedom of Information Law. See Section 5.10 (Freedom of Information Law).

6.2.8. Conflict of Interest or Detrimental Effect

Submit Attachment J (Vendor's Assurance of No Conflict of Interest or Detrimental Effect), which includes information regarding the bidder, members, shareholders, parents, affiliates or subcontractors. Attachment J must be signed by an individual authorized to bind the bidder contractually.

6.2.9. The DOH Lobbying Form

Bidder should submit a completed Attachment G (DOH Lobbying form).

6.2.10. Sales and Compensating Use Tax Certification

Submit ST-220 CA (Contractor Certification to Covered Agency) Form, see Section 5.7 for electronic links to the proper forms.

7. BID SUBMISSION

7.1. Bid Submission Instructions

The table below outlines the requested format and volume for submission of each part. Bids should be submitted in all formats as prescribed below.

	Electronic Submission	Paper Submission
Bid Package	2 dedicated flash drives or CDs labeled with bidder's name and IFB Number/IFB Title containing standard searchable PDF file(s) with copy/read permissions only.	4 Originals 4 Copies

- All hard copy bid materials should be printed on 8.5" x 11" white paper (single sided), be clearly page numbered on the bottom of each page with appropriate header and footer information and presented separately, in three-ring binders if necessary. A type size of eleven (11) points or larger should be used;
- Where signatures are required, the bids designated as originals should have a handwritten signature and be signed in blue ink;
- DOH discourages overly lengthy bids. Therefore, marketing brochures, user manuals or other materials, beyond that sufficient to present a complete bid, are not desired. Elaborate artwork or expensive paper is not necessary or desired. In order for the DOH to evaluate bids fairly and completely, bids should follow the format described in this IFB and provide all requested information;
- Audio and/or videotapes are not allowed. Any submitted audio or videotapes will be ignored by the evaluation team; and
- In the event that a discrepancy is found between the electronic and hardcopy bid, the original hardcopy #1 will prevail.

7.2. Delivery

The complete bid must be received by the DOH, no later than the Deadline for Submission of Bids specified in Section 1., (Calendar of Events). Late bids will not be considered.

Bids should be submitted in a clearly labeled package, prepared in accordance with the requirements stated in this IFB. Mark the outside envelope of bid as "IFB# 17794 (WIC Infant Cereal Rebates)

Bids must be submitted, by U.S. Mail, by courier/delivery service (e.g., FedEx, UPS, etc.) or by hand as noted below, in a sealed package to:

Department of Health IFB # 17794 – WIC Infant Cereal Rebates
Attention: Stacey Johnson, HPA
Bureau of Supplemental Food Programs
Riverview Center
150 Broadway, Suite 650
Albany, NY 12204

NOTE: You should request a receipt containing the time and date received and the signature of the receiver for all hand-deliveries and ask that this information also be written on the package(s).

Submission of bids in a manner other than as described in these instructions (e.g., fax, electronic transmission) will not be accepted.

IMPORTANT NOTICE TO POTENTIAL BIDDERS:

Receipt of these bid documents does not indicate that the **Department of Health's (DOH) 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.**

7.3. No Bid Form

Bidders choosing not to bid are requested to complete Attachment D (No Bid form).

7.4. Public Bid Opening

Bid packages will be opened on the date and time indicated in Section 1 (Calendar of Events) of this IFB in the offices of:

Bureau of Supplemental Food Programs
Fiscal Management Section
New York State Department of Health
Riverview Center, 150 Broadway, Suite 650
Menands, NY 12204

Bidders are welcome to send up to two (2) 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 amounts from the cost proposal 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.

Bidders must pre-register for the Public Bid Opening by e-mailing Stacey Johnson at DON-WIC-IFBS@health.ny.gov by the deadline for registering indicated in Section 1 (Calendar of Events) of this IFB. Bidders must provide Name and title of their representatives when registering.

8. METHOD OF AWARD

At the discretion of the Department of Health, all bids may be rejected. The Department will award one contract as described in this IFB to the responsible and responsive bidder who offers the lowest total monthly net wholesale cost for infant cereal.

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

- Past experience
- New York Business Entity

8.1. General Information

At the discretion of the Department of Health, all bids may be rejected. The Department of Health will award the contract to the responsible and responsive bidder who offers the lowest total monthly net wholesale cost for infant cereal.

Bids that do not meet the minimum qualifications will not be considered for award. Once a bidder is selected, the Department of Health will issue a contract to the vendor. In order to be considered responsible and responsive, the bid must include all Invitation for Bid (IFB) required documents and meet the minimum qualifications as stated in the IFB.

Bidders may be requested by DOH to clarify the contents of their bids. Other than to provide such information as may be requested by DOH, no bidder will be allowed to alter its bid after the Deadline for Submission of Proposals listed in Section 1. (Calendar of Events).

8.2. Submission Review

DOH will examine all bids that are received in a proper and timely manner. The bid containing the lowest total monthly net wholesale cost for infant cereal offered will be further evaluated to determine if it meets all bid submission requirements, as described in Section 6 (Bid Format and Content) and Section 7 (Bid Submission) for award. That process will be followed until an award is made.

8.3. Reference Checks

The Bidder should submit references using Attachment E (References). At the discretion of the Department, references may be checked at any point during the process to verify bidder qualifications to propose (Section 3.0).

8.4. Award Recommendation

The Evaluation Committee will submit a recommendation for award to the responsible and responsive Bidder with the lowest total monthly net wholesale cost for infant cereal.

The Department will notify the awarded Bidder and Bidders not awarded. The awarded Bidder will enter into a written Agreement substantially in accordance with the terms of Attachment M (DOH Agreement) to provide the required services as specified in this IFB. The resultant contract shall not be binding until fully executed and approved by the New York State Office of the Attorney General and the Office of the State Comptroller.

9. ATTACHMENTS

- A Bidder's Certified Statements
- B Bid Submittal Document Checklist
- C Infant Cereal Bid Form
- D No-Bid Form
- E References
- F Guide to New York State DOH M/WBE Required Forms & Forms
- G Bidder's Disclosure of Prior Non-Responsibility Determination
- H Encouraging Use of New York Businesses in Contract Performance
- I Vendor Responsibility Attestation
- J Vendor Assurance of No Conflict of Interest
- K NYS WIC Program Regions
- L Sample Infant Cereal Rebate Invoices
- M DOH Agreement

**ATTACHMENT A
 BIDDER'S CERTIFIED STATEMENTS**

To be completed and included in the Administrative Package documents

IFB # 17794 – WIC Infant Cereal Rebates
1. Information with regard to the Bidder
A. Provide the Bidder's name, address, telephone number, and fax number.
Name: <input type="text"/>
Address: <input type="text"/>
City, State, ZIP Code: <input type="text"/>
Telephone Number (including area code): <input type="text"/>
Fax Number (including area code): <input type="text"/>
B. Provide the name, address, telephone number, and email address of the Bidder's Primary Contact with DOH with regard to this bid.
Name: <input type="text"/>
Address: <input type="text"/>
City, State, ZIP Code: <input type="text"/>
Telephone Number (including area code): <input type="text"/>
Email Address: <input type="text"/>
2. By submitting the bid the Bidder acknowledges and agrees to all of the following: [Please note: alteration of any language contained in this section may render your bid non-responsive.]
The Bidder certifies that it can and will provide and make available, at a minimum, all products or services as described in the IFB if selected for award.
Bidder accepts, without any added conditions, qualifications or exceptions, the contract terms and conditions contained in this IFB including any exhibits and attachments.
The bidder is either registered to do business in NYS, or if formed or incorporated in another jurisdiction than NYS, can provide a Certificate of Good Standing from the applicable jurisdiction or provide an explanation, subject to the sole satisfaction of the Department, if a Certificate of Good Standing is not available, and if selected, the vendor will register to do business in NYS.
Bidder certifies that either there is no conflict of interest or that there are business relationships and /or ownership interests for the organization for the above named organization that may represent a conflict of interest for the organization as a bidder and attached to this form is a description of how the potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided.

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

1. Is an infant cereal manufacturer.
2. Agrees to provide a rebate on all WIC-eligible infant cereal manufactured by the bidder, approved by the NYS WIC program, and covered under the contract resulting from this IFB.
3. Has a minimum of (3) three years of experience manufacturing infant cereal.
4. Has a product recall program that provides for immediate notification to all direct purchasers of the company's products.
5. Produces 100 percent of the NYS WIC infant participants' maximum issuance amount (the most recent monthly average is 143,733 8 oz. boxes) of infant cereal. This capacity will be required to be maintained for the duration of the contract.
6. Is capable of distributing their infant cereal, directly or via wholesalers/distributors, to retail outlets throughout New York State. This capability will be required to be maintained for the duration of the contract.
7. Has bid the least expensive (in wholesale price) infant cereal manufactured by the bidder that meets federal WIC guidelines.
8. Manufacturers a minimum of four (4) types of dry, plain infant cereal in 8-ounce containers, including:
 - a. single grain rice
 - b. single grain oatmeal
 - c. and a minimum of two additional varieties (for example barley, whole wheat, multi-grain etc.)
9. Produces infant cereal in eight (8)-ounce containers.
10. Produces infant cereal in a manner that meets or exceeds all federal, state and industry standards and requirements.
11. Attests the required infant cereal varieties are in production and listed on the bidder's national wholesale price list as of the date of the bid submission.
12. Products contain a minimum of 45 milligrams of iron per 100 grams of dry cereal
13. Cereals are the same as furnished to the general trade.
14. Guarantees availability of NYS WIC-approved contract infant cereal 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.
15. 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.
16. 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.

A. The Bidder is (check as applicable):

- A New York State Certified Minority-Owned Business Enterprise
- A New York State Certified Woman-Owned Business Enterprise
- A New York State Certified Minority and Woman-Owned Business Enterprise (Dual Certified)
- None of the above

B. Provide the name, title, address, telephone number, and email address of the person authorized to receive Notices with regard to the contract entered into as a result of this procurement. See Section ___ of the DOH Agreement (Attachment E), NOTICES.

Name:

Title:

Address:

City, State, ZIP Code:

Telephone Number (including area code):

Email Address:

C. Bidder's Taxpayer Identification Number:
Click here to enter text.
D. Bidder's NYS Vendor Identification Number as discussed in Section 6.1.F, if enrolled:
Click here to enter text.
By my signature on this Attachment A, I certify to the statements made above in Section 2 and that I am authorized to bind the Bidder contractually. Furthermore, I certify that all information provided in connection with its proposal is true and accurate.

Typed or Printed Name of Authorized Representative of the Bidder

Title/Position of Authorized Representative of the Bidder

Signature of Authorized Representative of the Bidder

Date

**ATTACHMENT B
BID PACKAGE CHECKLIST**

Please reference Section 7.0 for the appropriate format and quantities for each proposal submission.

IFB # 17794 – WIC Infant Cereal Rebates		
FOR THE BID PACKAGE		
IFB §	Mandatory Bid Requirements	INCLUDED
§ 6.1.1	Attachment C – Infant Cereal Bid Form	<input type="checkbox"/>
§ 6.1.2	Bidder’s National Wholesale Price List	<input type="checkbox"/>
§ 6.1.3	Attachment A - Bidder’s Certified Statements, completed & signed.	<input type="checkbox"/>
IFB §	Other Bid Documents	INCLUDED
§ 6.2.1	Attachment B- Bid Package Checklist	<input type="checkbox"/>
§ 6.2.2	Attachment E – References	<input type="checkbox"/>
§ 6.2.3	M/WBE Participation Requirements:	<input type="checkbox"/>
	Attachment F Form 4	<input type="checkbox"/>
	Attachment F Form 5	<input type="checkbox"/>
§ 6.2.4	Attachment G – Disclosure of Prior Non-Responsibility Determinations, completed and signed.	<input type="checkbox"/>
§ 6.2.5	Attachment H- Encouraging Use of New York Businesses in Contract Performance	<input type="checkbox"/>
§ 6.2.6	Attachment I- Vendor Responsibility Attestation	<input type="checkbox"/>
§ 6.2.7	Freedom of Information Law – Proposal Redactions (If Applicable)	<input type="checkbox"/>
§ 6.2.8	Attachment J – Vendor Assurance of No Conflict of Interest	<input type="checkbox"/>
§ 6.2.10	Sales and Compensating Use Form - ST-220-CA	<input type="checkbox"/>

**ATTACHMENT C
Infant Cereal Bid Form**

IFB 17794 BID SHEET – INFANT CEREAL

NEW YORK STATE WIC PROGRAM
Invitation for Bids for
WIC Infant Cereal Rebate System

Company Name:

Address:

Contact Name

Contact Phone

Contact E-Mail

SAMPLE

Product Name	Container Size in Ounces	A Lowest National Wholesale Price per Unit (4 decimal places)	B Rebate Bid per Container (4 decimal places)	C Percent Rebate Bid / A (2 decimal places) [B / A]	D Net Wholesale Cost per Container (4 decimal places) [A – B]	E Estimated Number of Containers Purchased per Month	F Total Net Wholesale Cost per Month [D x E]
Lowest Wholesale Federally WIC-Eligible Cereal							
This cereal MUST be the least expensive WIC-eligible cereal offered by the Manufacturer and will be the basis for award.							
1	8 ounce			0.00%	\$0.0000	111,754	\$0.0000
Net Wholesale Cost to the State						\$0.0000	

PRODUCT EXCLUSIONS:

- Infant cereals containing infant formula, milk, fruit, or other non-cereal ingredients are not allowed.
- Containers with individual serving packets will not be considered.

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

Signature of Company Representative:

Title:

Printed Name:

Date:

*An excel version will be available on the DOH website.

**ATTACHMENT D
NO-BID FORM**

PROCUREMENT TITLE: _____ IFB # _____

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 E
REFERENCES**

Submit a total of TWO references (Section 6.2.2) using this form.

Expand fields and duplicate this page as necessary.

IFB # 17794 – WIC Infant Cereal Rebate	
BIDDER:	
Provide the following information for each reference submitted. Fields will expand as you type.	
Reference Company #1:	Click here to enter text.
Contact Person:	Click here to enter text.
Address:	Click here to enter text.
City, State, Zip:	Click here to enter text.
Telephone Number:	Click here to enter text.
Email Address:	Click here to enter text.
Number of years Bidder provided services to this entity:	Click here to enter text.
Brief description of the services provided:	Click here to enter text.
Reference Company #2:	Click here to enter text.
Contact Person:	Click here to enter text.
Address:	Click here to enter text.
City, State, Zip:	Click here to enter text.
Telephone Number:	Click here to enter text.
Email Address:	Click here to enter text.
Number of years Bidder provided services to this entity:	Click here to enter text.
Brief description of the services provided:	Click here to enter text.

ATTACHMENT F
NEW YORK STATE DOH MWBE IFB REQUIRED FORMS

All DOH procurements have a section entitled “**MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE REQUIREMENTS.**” This section of procurement sets forth the established DOH goal for that particular procurement and also describes the forms that should be completed with their bid. Below is a summary of the forms used in the DOH MWBE Participation Program by a bidder.

Form #4 – MWBE Staffing Plan- This form should be completed based on the composition of staff working on the project. Enter the numbers or counts in the corresponding boxes and add up the totals in each column. This form is for diversity research purposes only and has no bearing on MWBE goal achievement.

Form #5 – EEO and MWBE Policy Statement -This is a standard EEO policy that needs to be signed and dated and submitted. If Bidder has their own EEO policy it may be submitted instead of endorsing this document.

M/WBE Form #4
New York State Department of Health
M/WBE STAFFING PLAN

For project staff, consultants and/or subcontractors working on this grant complete the following plan. This has no impact on MWBE utilization goals, or the submitted Utilization Plan - Form#1. This is for diversity research purposes.

Bidder/ Contractor Name _____

Address _____

STAFF	Total	Male	Female	Black	Hispanic	Asian/ Pacific Islander	Other
Executive/Senior level Officials							
Managers/Supervisors							
Professionals							
Technicians							
Administrative Support							
Craft/Maintenance Workers							
Laborers and Helpers							
Service Workers							
Totals							

 (Name and Title)

 (Signature)

 Date

**M/WBE Form #5
MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at

M/WBE	This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:	EEO
<p>Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.</p> <p>Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly. Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.</p> <p>Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.</p> <p>Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.</p> <p>Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.</p>		
<p>_____ Name & Title</p> <p>_____ Signature & Date</p>		<p>(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.</p> <p>(b) This organization shall state in all solicitation 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 disability or marital status.</p> <p>(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.</p> <p>(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.</p> <p>(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.</p>

**ATTACHMENT G
BIDDER'S DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS**

Procurement Title: [Type text]

FB #: [Type text]

Bidder Name: [Type text]

Bidder Address: [Type text]

Bidder SFS Vendor ID #: [Type text]

Bidder Federal ID#: [Type text]

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 Request for Proposal* 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, Request for Proposal, 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://ogs.ny.gov/acpl/>

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 Check):

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 Check):

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 Check):

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: [Type text]

Date of Finding of Non-responsibility: [Type text]

Basis of Finding of Non-Responsibility: [Type text]

(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 Check):

No

Yes

2b. If yes, please provide details below.

Governmental Entity: [Type text]

Date of Termination or Withholding of Contract: [Type text]

Basis of Termination or Withholding: [Type text]

(Add additional pages as necessary)

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.

(Officer Signature)

(Date)

(Officer Title)

(Telephone)

(E-mail Address)

ATTACHMENT H ENCOURAGING USE OF NEW YORK BUSINESSES IN CONTRACT PERFORMANCE

I. Background

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing service and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/ proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

II. Required Identifying Information

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract?

YES NO

If yes, identify New York State businesses that will be used and attach identifying information. Information should include at a minimum: verifiable business name, New York address and business contact information.

New York Business Identifying Information Business Name	Business Address	Contact Name	Contact Phone	Contact Email Address

**ATTACHMENT I
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 J

VENDOR ASSURANCE OF NO CONFLICT OF INTEREST OR DETRIMENTAL EFFECT

The CONTRACTOR offering to provide services pursuant to this Contract, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this contract does not and will not create a conflict of interest with nor position the CONTRACTOR to breach any other contract currently in force with the State of New York.

The CONTRACTOR will disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated contractor, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the Contractor or their Affiliates, in connection with your rendering services enumerated in this Contract. If a conflict does or might exist, please attach a description of how you would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts. If no such conflicts exists, please indicate.

In addition, the Contractor must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"). If so, attached a brief description indicating how any matter before the Commission was resolved or whether it remains unresolved. If no such action exists, please indicate that as well. Furthermore, the CONTRACTOR attests that it will not act in any manner that is detrimental to any State project on which the CONTRACTOR is rendering services. Specifically, the CONTRACTOR attests that:

1. The fulfillment of obligations by the CONTRACTOR, as proposed in the response, does not violate any existing contracts or agreements between the CONTRACTOR and the State;
2. The fulfillment of obligations by the CONTRACTOR, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the CONTRACTOR has with regard to any existing contracts or agreements between the CONTRACTOR and the State;
3. The fulfillment of obligations by the CONTRACTOR, as proposed in the response, does not and will not compromise the CONTRACTOR's ability to carry out its obligations under any existing contracts between the CONTRACTOR and the State;
4. The fulfillment of any other contractual obligations that the CONTRACTOR has with the State will not affect or influence its ability to perform under any contract with the State resulting from this IFB;
5. During the negotiation and execution of any contract resulting from this IFB, the CONTRACTOR will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this IFB, the CONTRACTOR will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is now employed by the CONTRACTOR, nor any former officer or employee of the CONTRACTOR who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and 77

8. The CONTRACTOR has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

CONTRACTORS responding to this contract should note that the State recognizes that conflicts may occur in the future because a CONTRACTOR may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name: _____

Title: _____

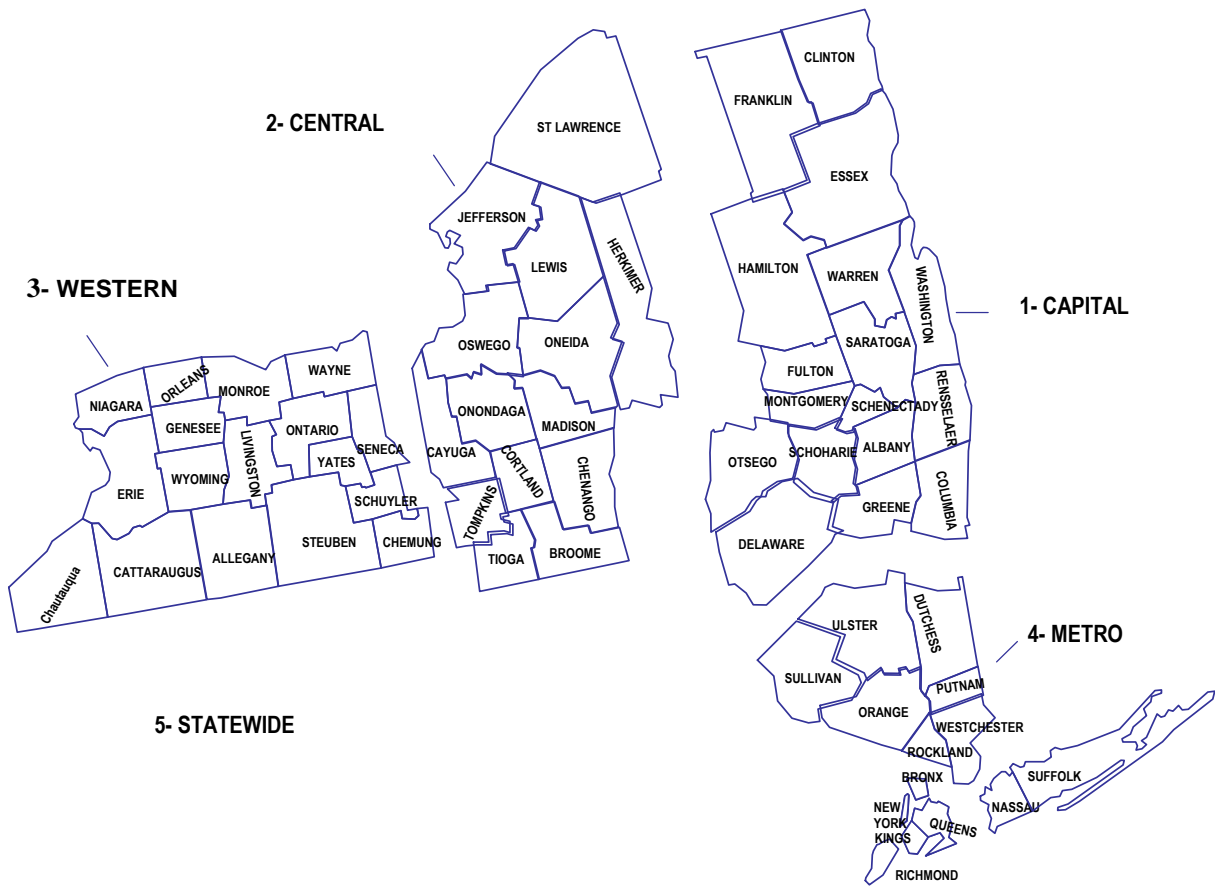
Signature: _____

Date: _____

This form must be signed by an authorized executive or legal representative.

ATTACHMENT K

NYS WIC Program Regions



**ATTACHMENT L
SAMPLE INFANT CEREAL REBATE INVOICES**

INFANT CEREAL

NEW YORK STATE DEPARTMENT OF HEALTH
INFANT CEREAL REBATE BILLING
FOR CHECKS REDEEMED DURING MONTH OF **FEBRUARY 2018**

CONTRACT NUMBER X-029123

REDEMPTION MONTH	ISSUE MONTH	NUMBER OF CHECKS	BILLABLE 8 OZ. UNITS	MULTIPLIED BY REBATE UNIT AMOUNT	EQUALS TOTAL REBATE
FEBRUARY	NOVEMBER	14	14	\$1.2534	\$17.5476
FEBRUARY	DECEMBER	4,042	4,045	\$1.2534	\$5,070.0030
FEBRUARY	JANUARY	53,138	53,215	\$1.3434	\$71,489.0310
FEBRUARY	FEBRUARY	41,442	41,568	\$1.3434	\$55,842.4512
				TOTAL	\$132,419.03

PAY THIS AMOUNT>>> \$132,419.03

I HEREBY CERTIFY THAT THE ABOVE ACCOUNT AND SCHEDULES ANNEXED ARE JUST, TRUE, AND CORRECT; THAT NO PART THEREOF HAS BEEN PAID, EXCEPT AS STATED THEREIN, AND THAT THE BALANCE STATED IS ACTUALLY DUE AND OWING.

Maureen Shanahan, M.S., R.N., Director
Food Delivery and Vendor Management Section
Bureau of Supplemental Food Programs

Date: _____

NEW YORK STATE DEPARTMENT OF HEALTH
 INFANT CEREAL REBATE BILLING
 FOR CHECKS REDEEMED DURING MONTH OF **JANUARY 2018**

CONTRACT NUMBER X-029123

REDEMPTION MONTH	ISSUE MONTH	NUMBER OF CHECKS	BILLABLE 8 OZ. UNITS	MULTIPLIED BY REBATE UNIT AMOUNT	EQUALS TOTAL REBATE
JANUARY	OCTOBER	32	32	\$1.2534	\$40.1088
JANUARY	NOVEMBER	5,482	5,483	\$1.2534	\$6,872.3922
JANUARY	DECEMBER	61,386	61,491	\$1.2534	\$77,072.8194
JANUARY	JANUARY	50,054	50,223	\$1.3434	\$67,469.58
				TOTAL	\$151,454.90

PAY THIS AMOUNT>>> \$151,454.90

I HEREBY CERTIFY THAT THE ABOVE ACCOUNT AND SCHEDULES ANNEXED ARE JUST, TRUE, AND CORRECT; THAT NO PART THEREOF HAS BEEN PAID, EXCEPT AS STATED THEREIN, AND THAT THE BALANCE STATED IS ACTUALLY DUE AND OWING.

 Maureen Shanahan, M.S., R.N., Director
 Food Delivery and Vendor Management Section
 Bureau of Supplemental Food Programs

Date: _____

NEW YORK STATE DEPARTMENT OF HEALTH
 INFANT CEREAL REBATE BILLING
 FOR CHECKS REDEEMED DURING MONTH OF **DECEMBER 2017**

CONTRACT NUMBER X-029123

REDEMPTION MONTH	ISSUE MONTH	NUMBER OF CHECKS	BILLABLE 8 OZ. UNITS	MULTIPLIED BY REBATE UNIT AMOUNT	EQUALS TOTAL REBATE
DECEMBER	SEPTEMBER	18	18	\$1.2534	\$22.5612
DECEMBER	OCTOBER	4,029	4,031	\$1.2534	\$5,052.4554
DECEMBER	NOVEMBER	55,795	55,876	\$1.2534	\$70,034.9784
DECEMBER	DECEMBER	41,797	41,901	\$1.2534	\$52,518.7134
				TOTAL	\$127,628.71

PAY THIS AMOUNT>>> \$127,628.71

I HEREBY CERTIFY THAT THE ABOVE ACCOUNT AND SCHEDULES ANNEXED ARE JUST, TRUE, AND CORRECT; THAT NO PART THEREOF HAS BEEN PAID, EXCEPT AS STATED THEREIN, AND THAT THE BALANCE STATED IS ACTUALLY DUE AND OWING.

 Maureen Shanahan, M.S., R.N., Director
 Food Delivery and Vendor Management Section
 Bureau of Supplemental Food Programs

Date: _____

NEW YORK STATE DEPARTMENT OF HEALTH
 INFANT CEREAL REBATE BILLING
 FOR CHECKS REDEEMED DURING MONTH OF **NOVEMBER 2017**

CONTRACT NUMBER X-029123

REDEMPTION MONTH	ISSUE MONTH	NUMBER OF CHECKS	BILLABLE 8 OZ. UNITS	MULTIPLIED BY REBATE UNIT AMOUNT	EQUALS TOTAL REBATE
NOVEMBER	AUGUST	22	22	\$1.2534	\$27.5748
NOVEMBER	SEPTEMBER	4,392	4,395	\$1.2534	\$5,508.6930
NOVEMBER	OCTOBER	54,792	54,896	\$1.2534	\$68,806.6464
NOVEMBER	NOVEMBER	48,105	48,247	\$1.2534	\$60,472.7898
				TOTAL	\$134,815.70

PAY THIS AMOUNT>>> \$134,815.70

I HEREBY CERTIFY THAT THE ABOVE ACCOUNT AND SCHEDULES ANNEXED ARE JUST, TRUE, AND CORRECT; THAT NO PART THEREOF HAS BEEN PAID, EXCEPT AS STATED THEREIN, AND THAT THE BALANCE STATED IS ACTUALLY DUE AND OWING.

 Maureen Shanahan, M.S., R.N., Director
 Food Delivery and Vendor Management Section
 Bureau of Supplemental Food Programs

Date: _____

NEW YORK STATE DEPARTMENT OF HEALTH
 INFANT CEREAL REBATE BILLING
 FOR CHECKS REDEEMED DURING MONTH OF **OCTOBER 2017**

CONTRACT NUMBER X-029123

REDEMPTION MONTH	ISSUE MONTH	NUMBER OF CHECKS	BILLABLE 8 OZ. UNITS	MULTIPLIED BY REBATE UNIT AMOUNT	EQUALS TOTAL REBATE
OCTOBER	JULY	10	10	\$1.2534	\$12.53
OCTOBER	AUGUST	4,509	4,509	\$1.2534	\$5,651.58
OCTOBER	SEPTEMBER	60,496	60,585	\$1.2534	\$75,937.24
OCTOBER	OCTOBER	50,677	50,815	\$1.2534	\$63,691.52
TOTAL					\$145,292.87

Credit for duplicate payment received

PAY THIS AMOUNT>>>	\$145,292.87
------------------------------------	---------------------

I HEREBY CERTIFY THAT THE ABOVE ACCOUNT AND SCHEDULES ANNEXED ARE JUST, TRUE, AND CORRECT; THAT NO PART THEREOF HAS BEEN PAID, EXCEPT AS STATED THEREIN, AND THAT THE BALANCE STATED IS ACTUALLY DUE AND OWING.

 Maureen Shanahan, M.S., R.N., Director
 Food Delivery and Vendor Management Section
 Bureau of Supplemental Food Programs

Date: _____

NEW YORK STATE DEPARTMENT OF HEALTH
 INFANT CEREAL REBATE BILLING
 FOR CHECKS REDEEMED DURING MONTH OF **SEPTEMBER 2017**

CONTRACT NUMBER X-029123

REDEMPTION MONTH	ISSUE MONTH	NUMBER OF CHECKS	BILLABLE 8 OZ. UNITS	MULTIPLIED BY REBATE UNIT AMOUNT	EQUALS TOTAL REBATE
SEPTEMBER	JUNE	17	17	\$1.2534	\$21.3078
SEPTEMBER	JULY	3,603	3,607	\$1.2534	\$4,521.0138
SEPTEMBER	AUGUST	55,305	55,416	\$1.2534	\$69,458.4144
SEPTEMBER	SEPTEMBER	47,361	47,492	\$1.2534	\$59,526.4728
				TOTAL	\$133,527.21

PAY THIS AMOUNT>>> \$133,527.21

I HEREBY CERTIFY THAT THE ABOVE ACCOUNT AND SCHEDULES ANNEXED ARE JUST, TRUE, AND CORRECT; THAT NO PART THEREOF HAS BEEN PAID, EXCEPT AS STATED THEREIN, AND THAT THE BALANCE STATED IS ACTUALLY DUE AND OWING.

 Maureen Shanahan, M.S., R.N., Director
 Food Delivery and Vendor Management Section
 Bureau of Supplemental Food Programs

Date: _____

**ATTACHMENT M
DOH AGREEMENT OR PURCHASE ORDER AGREEMENT**

STATE AGENCY (Name and Address):
Department of Health
Corning Tower
Albany, NY 12237

NYS COMPTROLLER'S NUMBER: C#
ORIGINATING AGENCY GLBU: DOH01
DEPARTMENT ID: 345XXXX (Use unit ID)

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

FROM:
TO:

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

FUNDING AMOUNT FOR CONTRACT
TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

STATUS:
CONTRACTOR IS () IS NOT () A SECTARIAN
ENTITY

NYS VENDOR IDENTIFICATION NUMBER:

MUNICIPALITY NO. (If Applicable)

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

CONTRACTOR IS () IS NOT () A NY STATE
BUSINESS ENTERPRISE

() IF MARKED HERE, THIS CONTRACT IS 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.

BID OPENING DATE: _____

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

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

- 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** – Bid
- APPENDIX E-1** – Proof of Workers' Compensation Coverage
- APPENDIX E-2** – Proof of Disability Insurance Coverage
- APPENDIX H** – Federal Health Insurance Portability and Accountability Act Business Associate Agreement
- APPENDIX G** – Notices
- APPENDIX M** – Participation by Minority Group Members and Women with respect to State Contracts Requirements and Procedures

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)
COUNTY OF _____) SS.:

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: _____

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE.

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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, licensor, 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 State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments 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). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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 (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of STANDARD CLAUSES FOR NYS CONTRACTS APPENDIX A Page 4 January 2014 any State approved sums due and owing for work done upon the project.

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) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may

delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, 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 the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, 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 and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, STANDARD CLAUSES FOR NYS CONTRACTS APPENDIX A Page 5 January 2014 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 the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(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, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts 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, upgrading, 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. 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 Department of Economic Development's Division 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 Section 165 of the State Finance Law, (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. STANDARD CLAUSES FOR NYS CONTRACTS APPENDIX A Page 6 January 2014. 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
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
Email: opa@esd.ny.gov

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
633 Third Avenue
New York, NY 10017
212-803-2414
Email: mwb certification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

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).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded STANDARD CLAUSES FOR NYS CONTRACTS APPENDIX A Page 7 January 2014 the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by

State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the

agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerors pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:
<http://www.ogs.ny.gov/about/reg/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Contractor in default. The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

APPENDIX X

MODIFICATION AGREEMENT FORM (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

Contract Number: _____ Contractor: _____

Amendment Number: X-_____ BSC Unit ID: 345<XXXX>

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), having its mailing address at _____, 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.

Additionally, Contractor certifies that it is not included on the prohibited entities list published at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> as a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Contractor (or any assignee) also certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

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)

SIGNATURE PAGE FOR:

Contract Number: _____ Contractor: _____

Amendment Number: X-_____ BSC Unit ID: 345<XXXX>

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

CONTRACTOR SIGNATURE

By: _____
(Signature)

Date: _____

Printed Name: _____

Title: _____

STATE OF NEW YORK)
COUNTY OF _____) SS.:

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)

STATE AGENCY SIGNATURE

"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."

By: _____
(Signature)

Date: _____

Printed Name: _____

Title: _____

ATTORNEY GENERAL'S SIGNATURE

By: _____

Date: _____

STATE COMPROLLER'S SIGNATURE

By: _____

Date: _____

STATE OF NEW YORK AGREEMENT

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

WITNESSETH:

WHEREAS, the STATE has formally requested contractors to submit bids 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 "Bid" includes all Appendix C documents as marked on the face page hereof.

II. Payment and Reporting

- A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment to one of the following addresses:

1. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at:

AccountsPayable@ogs.ny.gov with a subject field: Subject: Unit ID: 345XXXX; Contract #
(Note: do not send a paper copy in addition to your emailed voucher.)

2. Alternate Method: Mail vouchers to BSC at the following U.S. postal address:

NYS Department of Health
Unit ID 345<<xxxx>>
PO Box 2093
Albany, NY 12220-0093

- B. Payment of such invoices and/or vouchers by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law.

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at helpdesk@sfs.ny.gov or by telephone at 1-855-233-8363. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9, must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.state.ny.us/vendors/vendorsguide/guide.htm>.

III. Term of Contract

- A. Upon approval of the 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 mutual written agreement of the contracting parties.
- C. 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.
- D. 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 thirty (30) 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: 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
 - 1. 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
 - 2. 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

V. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.
- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claims, demand or application to or for any right based upon any different status.

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 specifications, 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, e-mail, 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 shall 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 allowance 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:

1. 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;

2. 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;

3. 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 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. 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 for use in the application software provided to the Department as a part of this contract.

M. Technology Purchases Notification --The following provisions apply if this Invitation for Bid (IFB) 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 IFB 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 IFB 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 IFB shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York. Incorporation of this IFB into the resulting contract also incorporates this provision in the contract.

N. Date/Time Warranty

1. Definitions: For the purposes of this warranty, the following definitions apply:

"Product" shall include, without limitation: when solicited from a vendor in a State government entity's contracts, RFPs, IFBs, or mini-bids, 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.

"Third Party Product" shall include product manufactured or developed by a corporate entity independent from the vendor and provided by the 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) 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. Date/Time Warranty Statement

Contractor warrants that Product(s) furnished pursuant to this Contract 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) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

O. No Subcontracting: Subcontracting by the contractor shall not be permitted except by prior written approval of the Department of Health. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.

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 judgment 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 judgment 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. 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. 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.

X. 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 whom 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.

Y. 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.

Z. 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 following address New York State Department of Health, Bureau of Contracts Room -2756, Corning Tower, Albany, NY 12237; 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, Albany NY 12239, ATTN: Consultant Reporting.

AA. Provisions Related to New York State Procurement Lobbying Law: 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.

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

CC. 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.

DD. On-Going Responsibility

1. General Responsibility Language: The CONTRACTOR shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Health or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

2. Suspension of Work (for Non-Responsibility) :The Commissioner of Health or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Health or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

3. Termination (for Non-Responsibility): Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Department of Health officials or staff, the Contract may be terminated by Commissioner of Health or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of Health or his or her designee to be non-responsible. In such event, the Commissioner of Health or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

EE. Provisions Related to Iran Divestment Act: As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list has been posted on the OGS website at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

By entering into this Contract, CONTRACTOR (or any assignee) certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list. Additionally, CONTRACTOR agrees that should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. CONTRACTOR also

agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the New York State Department of Health may approve a request for Assignment of Contract.

During the term of the Contract, should New York State Department of Health receive information that a person is in violation of the above referenced certification, New York State Department of Health will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then New York State Department of Health shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the CONTRACTOR in default.

New York State Department of Health reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

FF. CONFLICTS OF INTEREST

1. The CONTRACTOR has provided a form (Exhibit A, Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONTRACTOR's performance of the services does not and will not create a conflict of interest with, nor position the CONTRACTOR to breach any other contract currently in force with the State of New York, that the CONTRACTOR will not act in any manner that is detrimental to any STATE project on which the CONTRACTOR is rendering services.

2. The CONTRACTOR hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONTRACTOR's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this AGREEMENT. The CONTRACTOR shall have a duty to notify the STATE immediately of any actual or potential conflicts of interest.

3. In conjunction with any subcontract under this AGREEMENT, the CONTRACTOR shall obtain and deliver to the STATE, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The CONTRACTOR shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the STATE a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

4. The STATE and the CONTRACTOR recognize that conflicts may occur in the future because the CONTRACTOR may have existing, or establish new, relationships. The STATE will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of the STATE, a real or potential conflict of interest cannot be cured.

GG. Conflict of Interest

1. Disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated CONTRACTOR, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the Agencies and their Affiliates, in connection with your rendering services enumerated in this Contract/IFB. If a conflict does or might exist, please describe how your Staffing CONTRACTOR would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.

2. The Contractor/Bidder must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

HH. PUBLIC OFFICERS LAW

Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a "lifetime bar" from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority

II. ETHICS REQUIREMENTS

The Contractor and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The Contractor certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Contractor provide whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

JJ. SUBCONTRACTING

The CONTRACTOR agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the STATE. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The CONTRACTOR may arrange for a portion/s of its responsibilities under this AGREEMENT to be subcontracted to qualified, responsible subcontractors, subject to approval of the STATE. If the CONTRACTOR determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this AGREEMENT must be fully explained by the CONTRACTOR to the STATE. As part of this explanation, the subcontractor must submit to the STATE a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the CONTRACTOR prior to execution of this AGREEMENT.

The CONTRACTOR retains ultimate responsibility for all services performed under the AGREEMENT.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this AGREEMENT including, but not limited to, the body of this AGREEMENT, Appendix A – Standard Clauses for New York State Contracts and Appendix B. Unless waived in writing by the STATE, all subcontracts between the CONTRACTOR and subcontractors shall expressly name the STATE and the Department of Health, as the sole intended third party beneficiary of such subcontract. The STATE reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the Department of Health the STATE a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against the STATE.

The STATE reserves the right, at any time during the term of the AGREEMENT, to verify that the written subcontract between the CONTRACTOR and subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in this AGREEMENT.

The CONTRACTOR shall give the STATE immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the CONTRACTOR's duties under the AGREEMENT. Any subcontract shall not relieve the CONTRACTOR in any way of any responsibility, duty and/or obligation of the AGREEMENT.

If at any time during performance under this AGREEMENT total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

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.

APPENDIX M
PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

A. The New York State Department of Health is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

B. The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State New York State Department of Health (the “New York State Department of Health”), to fully comply and cooperate with the New York State Department of Health in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

A. For purposes of this procurement, the New York State Department of Health hereby establishes an overall goal of 0% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 0% for Minority-Owned Business Enterprises (“MBE”) participation and 0% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).

B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:
<http://www.esd.ny.gov/mwbe.html>.

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

III. Equal Employment Opportunity (EEO)

A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women’s Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

B. Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading,

demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Contractor shall submit an EEO policy statement to the New York State Department of Health within seventy two (72) hours after the date of the notice by New York State Department of Health to award the Contract to the Contractor.

3. If Contractor or Subcontractor does not have an existing EEO policy statement, the New York State Department of Health may provide the Contractor or Subcontractor a model statement (see Form #5 - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).

4. The Contractor's EEO policy statement shall include the following language:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.

c. 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.

d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

A. Form #4 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

B. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (Form #1) either prior to, or at the time of, the execution of the contract.

B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, New York State Department of Health shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

VII. Liquidated Damages - MWBE Participation

A. Where New York State Department of Health determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the New York State Department of Health liquidated damages.

B. Such liquidated damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the New York State Department of Health, Contractor shall pay such liquidated damages to the New York State Department of Health within sixty (60) days after they are assessed by the New York State Department of Health unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Department of Health.

APPENDIX E-1 and E-2

Placeholder for Proof of Workers' Compensation Coverage and Proof of Disability Insurance Coverage