

**WIC Infant Formula Rebate System
Invitation for Bid # 20051
Questions and Answers
February 23, 2021**

1. Amendment #1, Section 1, Calendar of Events

- a. Please confirm if any amendments are required to be signed and/or included as part of a bidder's proposal

Answer: No, amendments to this IFB are not required to be included as part of the Bidder's proposal. If an amended or revised form is provided, it must be used in place of earlier versions of the form issued with the IFB.

- i. If confirmed, please add amendments to Attachment A – Bid Package Checklist, so that potential bidders know the order in which they should be submitted.

Answer: Not applicable.

- b. We appreciate the State's willingness to respond to the bidders' written questions and inquiries. Timing between answers and bid submission is important and necessary to allow bidders enough time to prepare a bid proposal that is responsive and reflective of the responses provided by the State

- i. Because of the amount of analysis and approvals required for a contract of this size, please confirm that if answers are delayed from the current published due date the State will allow 10 business days between the day responses to questions are published and the bid due/opening date.

Answer: See IFB Amendment #2.

- c. Please advise when the State will decide on an in-person versus virtual public bid opening. To accommodate for necessary travel arrangements, we would ask that this information be shared at least 10 business days prior to the deadline for bid submission.

Answer: See IFB Amendment #2.

- d. Please describe the method for securing the sealed bids between the bid due time and the bid opening time.

Answer: All bids received prior to the deadline for submission will be kept locked in a secure location on site. These bids will not be opened prior to the date and time of the bid opening.

- e. Please confirm that the bids will be opened in front of the representatives attending the bid opening regardless if it is in person or done virtually.

Answer: This is confirmed.

2. Amendment #1, Section 4.1, Definitions – Given the current environment, number of small retailers and the need to have local distributors stocked, 90 days seems insufficient if there were a change in contract manufacturers to ensure a smooth transition. Please confirm the State will allow, at a minimum, 120 days between the award date and the contract start date.

Answer: This section is not amended.

3. IFB, Page 4, Section 2, Overview
 - a. According to governing Federal Regulations, only states or consortiums with 100,000 infant participants are required to do a separate bid for milk-based and soy-based formulas. According to FNS published data, the New York WIC infant participant numbers have fallen below the federal threshold that makes it necessary to separate the IFB. Please revise this IFB from a split bid to a milk-based bid.

Answer: This section is not amended.

- i. If not revised, please describe why the State is choosing to issue a split bid when it is not a Federal requirement.

Answer: Historically, New York State has held separate bids, and this practice is the State's preference at this time.

4. Page 5, Section 2.2- Please confirm that Attachment 8 along with all Appendix included within this attachment do not have to be completed and submitted as part of this bid. If that is not the case, please confirm which sections of Attachment 8 need to be included with the bid.

Answer: Bidders must submit all items listed in IFB Section 6.1. Mandatory Bid Requirements.

5. Page 5, Section 2.3 - Will the State please consider making the 6-month extension a mutually agreed upon extension? Please explain how/when the decision will be made to execute the 6-month extension and how the contractor will be notified.

Answer: This section is not amended. The decision to execute a contract extension and its timing will be based on the future needs of the State. The contractor will be notified in writing of the State's intent to execute an extension.

6. Page 5, Section 2.3 – Would the State provide additional information regarding the purpose of the six-month extension? Does the State anticipate using this provision only if there is a delay in getting a new contract in place, or does the State anticipate extending for other reasons?

Answer: The decision to execute a contract extension and its timing will be based on the future needs of the State.

7. IFB, Page 5, Section 2.3 Term of Agreement – Contracts with mutual extension options can be more attractive to potential bidders. Please consider changing this section to make the extension options subject to mutual agreement.

Answer: This section is not amended.

8. Page 5, Section 3 – What percent of NY WIC participating infants are entering the program through adjunctive eligibility (i.e., SNAP, TANF or Medicaid)?

Answer: An estimated 90.4% of participating infants are entering the program through adjunctive eligibility (see Table 4.3; Sum of Reported Combinations in Columns B31-H31, [WIC Participant and Program Characteristics Report 2018](#)).

9. Page 5, Section 3 - This section states that the estimate of infants potentially eligible for WIC program services have been adjusted for adjunctive eligibility. What percentage of participants have incomes that exceed 185% of the federal poverty level?

Answer: 2.5% (see Table 4.6; Column G32, [WIC Participant and Program Characteristics Report 2018](#)).

10. Page 5, Section 3 – The second paragraph in this section states “In 2018, there were an estimated 141,122 infants potentially eligible for WIC Program services in New York State.” We have the following questions related to this paragraph that will help us better understand the potential scope of this contract:

- a. NY State reported to FNS-USDA total infant participation in WIC during FY 2018 at 97,000 infants. Is the State saying it believes it is currently serving only approximately two thirds of WIC-eligible infants?

Answer: Yes.

- b. Does the State anticipate it will serve a larger percentage of eligible infants over the term of this five-year contract?

Answer: The State has to anticipate full participation. Bidders must produce and distribute infant formula products in sufficient quantity to serve 100 percent of potential WIC infant participants’ milk and/or soy-based infant formula needs in New York State.

- c. What are the primary reasons NY WIC does not currently serve a higher percentage of eligible WIC infants?

Answer: The State is currently serving about 50% of the WIC eligible population in New York State, which is consistent with national averages. The State continues to focus on outreach efforts.

- d. How many infants above 185% of the federal poverty line are currently served by NY WIC?

Answer: 2.5% (see Table 4.6; Column G32, [WIC Participant and Program Characteristics Report 2018](#)).

- e. Is the State able to estimate the total number of eligible infants above 185% of the federal poverty line?

Answer: This information is not available.

- f. How many infants currently participating in the NY WIC Program were certified through adjunctive eligibility?

Answer: The estimate is 101,045 (see Table 4.3; Sum of Reported Combinations in Columns B31-H31, [WIC Participant and Program Characteristics Report 2018](#)).

NOTE: Since this is reported participation, we cannot be certain that participants demonstrated participation in any of the other programs in order to meet WIC certification requirements.

- g. What is the current Medicaid eligibility level for infants in NY State – i.e., at what percent of the poverty level are infants in NY eligible for Medicaid?

Answer: This information is not relevant to bidding on this IFB.

11. Page 5, Section 3 – Would the State provide additional information and/or clarify what is meant by this paragraph? Why was 2010 Census data used to stratify the infant count for 2018 infant data?

Answer: Data from the American Community Survey for 2018 eligible participants was the most recent data available when the IFB was written, and it was supported by 2010 census data.

12. IFB, Page 5, Section 3 Minimum Qualifications to Bid, Paragraph 3 – This section states, “In 2018, there were an estimated 141,122 infants potentially eligible for WIC program services in New York State. This estimate was calculated by obtaining the number of infants below 185% federal poverty line...”

- a. Please indicate the significance in providing data from 2018, as opposed to a more recent year.

Answer: At the time this IFB was written, this was the most current data available.

- b. Please indicate what percentage of infants that are enrolled in the WIC program were enrolled with incomes higher than 185% of the Federal poverty level.

Answer: 2.5% (see Table 4.6; Column G32, [WIC Participant and Program Characteristics Report 2018](#)).

- c. Please indicate what percentage of infants that are enrolled in the WIC program were enrolled via adjunctive eligibility (i.e., they demonstrated active participation in SNAP, TANF, Medicaid or CHIP).

Answer: An estimated 90.4% of participating infants are entering the program through adjunctive eligibility (see Table 4.3; Sum of Reported Combinations in Columns B31-H31, [WIC Participant and Program Characteristics Report 2018](#)).

13. IFB, Page 6, Section 3, Minimum Qualifications to Bid, Paragraph 2

- a. Please confirm that a signature on Attachment G (Bidder’s Certified Statements) is sufficient as acknowledgment that all minimum requirements are met.

Answer: This is confirmed.

- i. If not confirmed, please describe what is required to fulfill the acknowledgement of this section.

Answer: Not applicable.

- ii. If an additional document is required, please add to Attachment A –Bid Package Checklist so that potential Bidders know the order in which they should be submitted.

Answer: Not applicable.

14. IFB, Page 6, Section 4.1, Definitions, Paragraph 5 – Please provide a full definition of “contract formulas” that require rebates and verify that formulas classified as exempt will not be included.

Answer: Per regulations 7 CFR § 246.16a, contract brand infant formula means all infant formulas (except exempt infant formulas) produced by the manufacturer awarded the infant formula cost containment contract. If a State agency elects to solicit separate bids for milk-based and soy-based infant formulas, all infant formulas issued under each contract are considered the contract brand infant formula (see 246.16a(c)(1)(ii)). For example, all of the milk-based infant formulas issued by a State agency that are produced by the manufacturer that was awarded the milk-based contract are considered contract brand infant formulas. Similarly, all of the soy-based infant formulas issued by a State agency that are produced by the manufacturer that was awarded the soy-based contract are also considered to be contract brand infant formulas. Contract brand infant formulas also include all infant formulas (except exempt infant formulas) introduced after the contract is awarded.

15. Page 6, Section 4.1. Definitions –

- a. Is there a difference between the “contract effective date” and the “contract execution date”? If yes, please explain the difference.

Answer: The “contract effective date” and “contract execution date” as used in Section 4.1 have the same meaning.

- b. Please further confirm the products approved under the contract resulting from this IFB will be available for purchase/redemption by WIC participants no earlier than October 1, 2021?

Answer: This is confirmed.

- c. Please also amend this section consistent with Amendment 1 issued on December 18, 2020.

Answer: This section was amended by IFB Amendment #1.

16. Page 6, Section 4.1. – the contract effective date also determines how the transition from the previous contract holder to a potential new contractor holder may be implemented. Please clarify the transition process at the end of the contract resulting from this IFB.

Answer: Transition from one contract to another contract requires, at a minimum, information system changes to associate formula benefits to the appropriate contract and rebate amounts. If there is a changeover from one manufacturer to another, additional activities will include information and support for WIC local agencies, WIC participants, and WIC vendors regarding the changes that they will have to make, such as transitioning infants from one formula to another, and changing business ordering and stocking practices to comply with WIC requirements.

- a. Will the State issue up to three months of benefits for the current contractor's formulas each day and month up to September 30, 2021? For example, will a participant receiving benefits for the first time on September 1 (or receiving their next three months of benefits on September 1) receive September, October, and November benefits for the current contractor's formulas, or will the infant receive the current contractor's formulas in September and the new contractor's formulas in October and November?

Answer: Benefits for October and November would be issued under the terms of the contract(s) resulting from this IFB.

- b. Do most infants receive three months of benefits each month? If yes, what percentage of infants receive three months of benefit at a time?

Answer: This information is not available.

- c. Are benefits issued on a rolling basis (i.e., benefits issued on June 15 have a last-day-to-use date of July 15) or does the State pro-rate the benefits so the second month of benefits will have a first day-to-use on the first day of the month?

Answer: Benefits are issued on a rolling 30-day basis.

17. Page 6, Section 4.2. Programmatic Statistics – We request the State provide data on the number of infants receiving exempt infant formulas. Issuance data for these formulas are important for eligible bidders to estimate the potential scope of the contract resulting from this IFB. We understand exempt formulas are not subject to rebates. However, this data is nevertheless important to bidders in understanding the scope of the contract. Therefore, we urge the State to provide separate infant participation numbers covering exempt infant formulas.

Answer: For May – October 2020, a monthly average of 7,236 infants received exempt infant formula.

18. Page 6, Section 4.2. – We further request the State provide issuance data for exempt infant formulas covering the most recent 3-6 months. We request issuance data for exempt infant formulas listed by brand and the number of units issued. Again, even though these formulas are not rebated, this issuance data is important for bidders in understanding the potential scope of this contract.

Answer: For May – October 2020, a monthly average of 7,236 infants received exempt infant formula. Issuance data for exempt infant formulas by brand and the number of units issued is not be available.

19. Page 6, Section 4.2. – The first paragraph of this section states “90 WIC local agencies are under contract to provide services at 400 clinics state-wide.” We have the following questions related to this paragraph:

- a. Do WIC participants receive services at the local agencies as well as the clinics?

Answer: Yes.

- b. Have both the local agencies and the clinics been open and taking in-person visits since the pandemic, or has the State been utilizing WIC waivers to provide services online?

Answer: Services have been provided virtually.

- c. Does the State believe participation has either increased or decreased because of the pandemic?

Answer: This cannot be determined. WIC participation fluctuates based on many factors.

- d. Does the State foresee benefits by continuing to provide online services to WIC participants once the pandemic is over?

Answer: Decisions to grant physical presence waivers are made by the USDA Food and Nutrition Service.

- e. Any additional information the State is willing to share regarding the effect of the pandemic on participation, delivery of services, participant satisfaction and interest in the program would be helpful in understanding program needs and scope in the future.

Answer: Additional information is not available.

- 20. Page 6, Section 4.2. – The second paragraph of this section discusses the retail food delivery system in NY State. How many retailers in NY were able to provide some level of online services to WIC participants (i.e., online ordering, curbside pickup, etc.)? Does the State see value in expanding the use of online services in the future?

Answer: This information is not available.

- 21. Page 6, Section 4.2. – How many above 50% vendors are currently authorized by NY WIC? Would the State indicate the number of authorized above 50% vendors by WIC Program Region?

Answer: See IFB amendment #3, which adds Attachment I – A50 Vendors by County.

- 22. IFB, Page 6, Section 4.2 Programmatic Statistics, Paragraph 1
 - a. Please provide the percentage of infant formula food instruments/EBT benefits that were issued to participants but never redeemed in 2020 or most current year the data is available.

Answer: This information is not available.

- 23. IFB, Page 6, Section 4.2 Programmatic Statistics, Paragraph 2
 - a. Does the State authorize vendors doing more than 50% of their sales via the WIC program?

Answer: Yes.

- b. How many WIC-only (above 50% vendors) are currently authorized?

Answer: See IFB amendment #3, which adds Attachment I – A50 Vendors by County.

- c. Does the State conduct retailer inventory audits for infant formula, other than compliance buys, to identify potential discrepancies between a store’s purchasing records and their WIC transactions processed at the retailer’s location and submitted for reimbursement?

Answer: Yes.

- i. If the State does not conduct retailer inventory audits for infant formula, please explain all the reasons why these are not done.

Answer: Not applicable.

- ii. If a discrepancy is found, what steps are taken to determine if reimbursement of rebate payment to the infant formula manufacturer is required?

Answer: While there is no provision for or guidance on infant formula rebate contract language regarding potential fraud- or audit-related recoveries in 7 CFR 246.16a, NYS WIC will carefully review and attempt to resolve documented discrepancies, in consultation with the New York Attorney General where appropriate.

- d. Please specify how the State ensures that retailers are not accepting returns for WIC issued infant formulas.

Answer: Section 4c of the vendor contract states, “Never provide refunds or store credit or permit substitutions for foods/formula purchased with eWIC except for exchanges for an identical authorized food/formula item when the original item is defective, spoiled, has exceeded its ‘sell by,’ ‘best if used by,’ or other date limiting the sale or use of the item.” Vendors are trained by the vendor management agencies not to accept returns for formula during annual mandatory trainings and initial monitoring.

24. Page 6, Section 4.2 – “The retail food delivery system is utilized statewide through contracts with approximately 2,800 retail grocery stores and pharmacies that agree to accept WIC benefits issued for specified authorized foods.”

- a. How many of the 2,800 are pharmacies and what percentage of the average monthly infant formula volume goes through these pharmacies?

Answer: There are 546 standalone pharmacies and 379 pharmacies embedded within grocery stores. Approximately 5.6% of infant formula volume goes through standalone pharmacies. The percentage of infant formula volume for pharmacies embedded within grocery stores is not available.

- b. Can the State provide a full list of the WIC approved stores?

Answer: See IFB amendment #3, which adds Attachment H – Active Vendor List.

- c. How many of the 2,800 are Above-50-Percent?

Answer: See IFB amendment #3, which adds Attachment I – A50 Vendors by County.

- d. Approximately what percentage of the average monthly infant formula volume goes through Above-50-Percent vendors?

Answer: Approximately 1.5%.

- e. Is the State able to break these Above-50-Percent vendors out by the regions?

Answer: See IFB amendment #3, which adds Attachment I – A50 Vendors by County.

- f. Is the State able to provide the counties that have the Above-50-Percent stores?

Answer: See IFB amendment #3, which adds Attachment I – A50 Vendors by County.

25. Page 6, Section 4.2 – Who are the top five (5) WIC retailers measured by the percentage of WIC food volume (i.e., redeemed food instruments)?

Answer: Per Federal regulations (7 CFR 246.9), any information that individually identifies a WIC vendor (except for the vendor's name, address, telephone number, website/e-mail address, store type, and authorization status) is confidential.

26. Page 7, Section 4.2 – “While infant formula is primarily issued to infants, it may also be issued to women and children with qualifying medical conditions if it is prescribed by the health care provider with medical documentation.”

a. In the most recent 6 months, how many children with qualifying medical conditions were issued infant formula?

Answer: For May – October 2020, a monthly average of 1,044 children and 0 women with qualifying medical conditions were issued infant formula. 238 children received contract formula.

b. Please confirm that the manufacturer is not obligated to pay a rebate on infant formula issued to children and women.

Answer: This is not confirmed. The Department will submit invoices for rebates on all contract-brand infant formula issued under the terms of the contract and redeemed according to program rules, regardless of whether the recipient is a woman, infant or a child.

27. Page 7, Section 4.2 – What percentage of infants receive benefits for a three-month period? Please also provide this percentage for participants who receive benefits for a two-month period or one-month period.

Answer: This information is not available.

28. Page 7, Section 4.2 – Can the State explain their benefit redemption timing? (i.e., Does New York follow the calendar month or are benefits rolling)

Answer: Benefits are issued on a rolling 30-day basis.

29. Page 7, Section 4.2 – Should a contract transition occur, please provide detail as to how the State will manage the transition:

a. Will participants entering the WIC clinic on September 1, 2021 receive benefits for September, October, and November that include the existing manufacturer's products? Or, will only the month of September be for the current manufacturer's product?

Answer: Benefits for October and November would be issued under the terms of the contract(s) resulting from this IFB.

- b. Please provide any additional details regarding the transition process if a different contract brand formula will be issued under the new contract.

Answer: Transition from one contract to another contract requires, at a minimum, information system changes to associate formula benefits to the appropriate contract and rebate amounts. If there is a changeover from one manufacturer to another, additional activities will include information and support for WIC local agencies, WIC participants, and WIC vendors regarding the changes that they will have to make, such as transitioning infants from one formula to another, and changing business ordering and stocking practices to comply with WIC requirements.

30. Page 7, Section 4.2. – The third paragraph of this section references women and children with qualifying conditions prescribed infant formula. We have the following questions:

- a. Please confirm the State only issues infant formula to children with qualifying conditions.

Answer: The State may issue infant formula to women with qualifying medical conditions.

- b. How many children receive contract infant formula for which the State bills the contractor for rebates?

Answer: For May – October 2020, a monthly average of 238 children with qualifying medical conditions received contract formula.

- c. Did the State include these children within the participation totals added to the Bid Sheets?

Answer: Data for women and children with qualifying medical conditions is not included in the participation totals on the Bid Sheets.

31. Page 7, Section 4.2. – Table I – NYS WIC Caseload – Please confirm the “Infants Receiving Formula” includes those infants receiving exempt infant formulas? We request the State revise this table by breaking out the number of infants receiving exempt infant formulas. This Table indicates an average of 75,925 infants received infant formula from May – October 2020. However, the Bid Sheets indicate a total of 71,774 infants received infant formula (we note the Bid Sheet does not indicate the time period used, other than “six months of the most recent data available”).

Answer: “Infants Receiving Formula” includes infants receiving contract and exempt formula. For May – October 2020, a monthly average of 7,236 infants received exempt infant formula. Table I is not amended. **See IFB amendment #3, which amends and replaces Attachments C and D.**

32. Page 7, Section 4.2. – Table II – NYS WIC Formula-Fed Infant Caseload Breakdown – We appreciate the State providing this level of detail in its IFB. The age breakdown is important for assisting bidders in understanding whether the IFB is fully compliant with USDA regulations that specify how infant participation must be calculated. However, the participation numbers in this table do not match those provided on the Bid Sheets. This Table indicates 68,803 infants received contract infant formula. The Bid Sheets state 69,344 infants received milk-based contract formula and 2,430 infants received soy-based contract formula for a total of 71,774 infants receiving contract formula. We request the State revise this Table to be consistent with the Bid Sheets. We further request the State clarify the time periods used when participation numbers are presented, and that consistent time period be used each time the data is presented.

Answer: See IFB amendment #3, which amends and replaces Attachments C and D.

33. IFB, Page 7, Section 4.2 Programmatic Statistics, Paragraph 1 – This section states, “While infant formula is primarily issued to infants, it may also be issued to women and children with qualifying medical conditions...”

- a. Please confirm a manufacturer is not billed for rebates for infant formula issued to women or children.

Answer: State will submit invoices for rebates on all contract-brand infant formula issued under the terms of the contract and redeemed according to program rules, regardless of whether the recipient is a woman, infant or a child.

- i. If not confirmed, please provide the monthly average number of women or children receiving infant formula.

Answer: For May – October 2020, a monthly average of 1,044 children and 0 women with qualifying medical conditions were issued infant formula. 238 children received contract formula.

- b. Please provide the percentage of infants that are issued benefits 3 months at a time, 2 months at a time and 1 month at a time.

Answer: This information is not available.

34. IFB, Page 7, Section 4.2, Programmatic Statistics

- a. Please describe how the State issues infant formula benefits. Does the State issue benefits on a calendar month benefit (1st to last day of month) issuance schedule or a rolling 30 days based on when the participant comes in for benefits?

Answer: Benefits are issued on a rolling 30-day basis.

- b. If a calendar benefit period will be used and benefits are prorated during the participant’s initial benefit period, please explain how the initial proration affects the total number of cans to be rebated for the participant for the length of time the participant is receiving infant formula benefits. For example, if a participant receives a prorated amount during the first benefit period (i.e. 5 cans powder—90 oz reconstituted) will that participant then receive full monthly allotments for the next 12 calendar months?

Answer: Not applicable.

35. IFB, Page 7, Section 4.2 Programmatic Statistics, Table 1

- a. Please provide total number of infants issued benefits for exempt formula for the most recent 6 months.

Answer: For May – October 2020, a monthly average of 7,236 infants received exempt infant formula.

36. IFB, Page 7, Section 4.2 Programmatic Statistics, Table II

- a. For infants categorized as mostly breastfeeding, please provide the AVERAGE infant formula allotment by baby age.

Answer: See Table II for infants receiving contract and exempt formula and infants receiving contract formula by age. See Table IV for the maximum monthly formula allowance by age.

- b. For infants categorized as some breastfeeding, please provide the AVERAGE infant formula allotment by baby age.

Answer: See Table II for infants receiving contract and exempt formula and infants receiving contract formula by age. See Table IV for the maximum monthly formula allowance by age.

37. Page 8, Section 4.2. – Table III – NYS WIC Contract Formula Issuance – Please explain the difference between the Formula-Fed Infant Caseload Breakdown numbers used in Table II and the numbers used in Table III. Table II indicates 68,803 infants received contract infant formula; Table III indicates 68,861 infants received contract formulas. Why do these Tables have different totals?

Answer: Table III includes approximately 59 infants per month categorized as fully breastfeeding, who received a small amount of formula. These infants are not included in the “Estimated Caseload of Infants Receiving Contract Formula in Table II

38. Page 8, Table III - Please explain the State’s policy on accepting returned formula from participants.
- a. Please confirm that if the State reissues formula (in the event of a return), that the contracted manufacturer will not pay rebates on any formula that exceeds the total monthly ounces allowed by the federal maximum.

Answer: This is confirmed.

- i. Example: Mom is issued 9 cans of Enfamil Infant powder and redeems all 9 cans. Mom returns 7 cans to the clinic and is issued a new benefit for 7 cans of Enfamil Gentlease powder. Does the State seek rebates on 9 cans or 16 cans?

Answer: In the example above, the State would seek rebates on 16 cans. Because the participant has returned unopened cans to the local agency (which will be destroyed per State and Federal guidelines) and the same number of cans was re-issued, this is not considered over-issuance. For further information, please review the USDA Operating Rules for WIC EBT accounting, section 4.7.8.4, which describes the food item exchange process with which NYS WIC policy is fully compliant.

- b. If above is not confirmed, please detail by age of baby, form, and type how many units of formula are rebated above the federal maximum.

Answer: Not applicable.

39. Page 8 Table IV- Please explain the minor differences between the number of infants listed in the bid sheets and the number of infants detailed in table NYS WIC Number of Infants by Age, Feeding Status and Type of Formula.

Answer: See IFB amendment #3, which amends and replaces Attachments C and D.

40. Page 8, Section 4.2. – Table IV – NYS WIC Number of Infants by Age, Feeding Status and Type of Formula – We again commend the State for presenting the infant participation numbers with this level of detail and providing the data by age, feeding status and type of formula. The total number of infants receiving (or issued?) milk-based formula as presented in this Table is 66,440; the total number of infants receiving (or issued?) soy-based formula is 2,366. However, the Bid Sheet indicates 69,344 infants were issued milk-based formula and 2,430 infants were issued soy-based formula. We respectfully request the State revise the infant participation numbers in the Tables and/or the Bid Sheets so the numbers match. Please clarify the time period used and what the numbers represent – i.e., issuance, redemption, etc.

Answer: See IFB amendment #3, which amends and replaces Attachments C and D.

41. IFB, Page 8, Table IV- NYS WIC Number of Infants by Age
a. The data for total infants in this table does not match the data for total infants on both the milk and soy bid sheets (Attachments C & D). Please confirm which data is correct and revise the tables/Attachments to reflect the appropriate number of infants for the most recent 6 months.

Answer: See IFB amendment #3, which amends and replaces Attachments C and D.

42. The infant participation data presented in recent WIC bid solicitations has been the subject of numerous protests. If two or more bids are very close, which has occurred in the past, a small difference in the participation numbers can affect the outcome of the bid. Therefore, we urge the State to revise the infant participation data to ensure consistency with the various Tables and the Bid Sheets. We also request the State use consistent time periods when presenting this data and clearly indicate what the numbers represent – i.e., issuance, redemption, etc. We understand small differences can occur because of rounding issues. Please confirm the State will revise this data.

Answer: See IFB amendment #3, which amends and replaces Attachments C and D.

43. Page 9 – We have the following questions regarding issuance of exempt formulas:
a. How many infants are currently receiving exempt infant formula products? Please provide monthly totals for the most recent six-month period.

Answer: For May – October 2020, a monthly average of 7,236 infants received exempt infant formula.

b. Please provide the number of units of exempt infant formula products issued in each of six recent months, broken out by brand name and form.

Answer: This information is not available.

c. Please provide copies of the State’s current policies with respect to the issuance of exempt infant formulas.

Answer: See IFB amendment #3, which adds Attachment J – WPM 1250 WIC Food Packages and Tailoring, Attachment K – WPM 1253 WIC Formulas, and Attachment L – WPM 1255 Food Package III and Medical Documentation.

44. IFB, Page 9, Paragraph 4

- a. Please provide examples or circumstances that would cause the State to reconsider their policy to not allow off-contract formulas.

Answer: DOH will not speculate on the circumstances that would dictate a change in policy.

45. Page 9, Section 4.2. – The first paragraph on this page states rounding is utilized to provide the FNB if necessary. Is the State currently using the rounding methodology? Please indicate which infant formula products currently requiring the use of the rounding methodology specified in §246.10(h).

Answer: The State is using rounding methodology. Infant formula products requiring the use of rounding methodology include: Enfamil Gentlease (powder), Enfamil Infant (powder), Gerber Good Start Soy (concentrate), Neocate Infant with DHA and ARA (powder), Pregestimil (powder), Enfaport (ready-to-use), and Similac PM 60/40 (powder).

46. Page 9, Section 4.2. – the paragraph in the middle of this page states “Non-contract non-exempt formulas are not currently among the choices available to be prescribed for infants or for children or women with qualifying medical conditions.” Does the State expect this policy to continue during the term of the contract resulting from this IFB?

Answer: DOH will not speculate on the circumstances that would dictate a change in policy.

47. Page 9, Section 4.2. – The invoices provided to Bidders indicate approximately 18,000 units of Enfamil AR are redeemed each month by NY WIC participants. If the winning Bidder does not offer a rice-thickened, 20-calorie infant formulas such as Enfamil AR, will the State continue to adhere to its current policy with respect to non-contract non-exempt formulas? Please indicate how and whether the State’s current policy might change if the contractor does offer a rice-thickened infant formula.

Answer: DOH will not speculate on the circumstances that would dictate a change in policy.

48. Page 9, Section 4.2. – Is the State able to estimate the number of infants currently requiring a kosher or halal infant formula?

Answer: This information is not available.

49. Page 10, Section 4.3. – Contract Product and Service Requirements – The second paragraph states all formulas must provide approximately 20 kilocalories per fluid ounce of formula at standard dilution. Will the State authorize alternate formulas to the primary contract formula that do not provide 20 kilocalories?

Answer: No. Per 7 CFR § 246.10, authorized infant formula must provide at least 67 kilocalories per 100 milliliters (approximately 20 kilocalories per fluid ounce) at standard dilution.

50. Page 10, Section 4.3. – The third paragraph on this page specifies liquid concentrate formulas in 12-to-13-ounce container sizes. Not all manufacturers produce a liquid concentrate formula in this size range. Please amend this section by changing “12” to “8” and please confirm package size will not be a limiting factor for the liquid infant formula products.

Answer: See IFB Amendment #3; the size for liquid concentrate is revised to 8-to-13 oz containers.

51. IFB, page 10, Section 4.3 Contractor Product and Service Requirements – Is written documentation of compliance necessary for this section? If documentation is necessary, please advise where it should be added within the bid submission and add to necessary documents for completion to Attachments A—Bid Package Checklist.

Answer: Attachment G (Bidder’s Certified Statements) is sufficient as acknowledgment as Bidders must attest that all minimum requirements are met.

52. IFB, Page 10, Section 4.3.a Contractor Product and Service Requirements – Concerning discontinued product – please consider changing the notifications languages from 90 days before cessation of production to a 90-day notice before final shelf availability—as many products have the potential to be distributed for several months after final production date.

Answer: This is not amended.

53. IFB, Page 10, Section 4.3.b Contractor Product and Service Requirements – Please advise what the current minimum stocking requirements are for infant formula.

Answer: Pharmacies and grocery stores must stock, at a minimum, 24 cans of 13 oz. Enfamil Infant Concentrate and 12 cans of 12.5 oz. cans of Enfamil Infant Powder. Additionally, pharmacies must order and stock exempt and soy formula as requested by the vendor management agency.

54. Page 10, Section 4.3.b - Please confirm that should there be a shortage or recall of products, the state will first issue a different physical form of the contractor’s formula, secondly, consider issuing another appropriate sub brand of rebate eligible formula of the contracted manufacturer prior to issuing another manufacturer’s formula and seeking a rebate from the contractor.

Answer: If one form - concentrate or powder - of the primary contract infant formula is unavailable, the State will issue the available form (concentrate or powder) of the primary contract infant formula prior to issuing another company’s infant formula.

55. IFB, Page 10, Section 4.3.c Contractor Product and Service Requirements
a. If a new Contractor is awarded the contract, please describe in detail the State’s transition plan.

Answer: Transition from one contract to another contract requires, at a minimum, information system changes to associate formula benefits to the appropriate contract and rebate amounts. If there is a changeover from one manufacturer to another, additional activities will include information and support for WIC local agencies, WIC participants, and WIC vendors regarding the changes that they will have to make, such as transitioning infants from one formula to another, and changing business ordering and stocking practices to comply with WIC requirements.

b. Please confirm that if a participant comes to a clinic in September to receive 3 months of infant formula benefits, they will receive September benefits for the current contract holder’s formula and October and November infant formula benefits for the new contract holder’s formula.

Answer: Benefits for October and November would be issued under the terms of the contract(s) resulting from this IFB.

- i. If not confirmed, please describe which contract holder's formula will be issued for October, November and December.

Answer: Not applicable.

- c. To avoid confusion, please correct reference to "Column C" as it differs on both pages of the bid sheet—and reference only the headings under which data should be input on the bid sheet.

Answer: See IFB amendment #3, which corrects this reference.

56. IFB, Page 11 Section 4.3.e Contractor Product and Service Requirements

- a. Please revise the effective date of a price increase or decrease to be the first day of the month after the price increase or decrease takes effect to be consistent with when the price change would be reflected at retail shelves.

Answer: This is amended. See IFB Amendment #3 for revised language.

- b. Please confirm that each month's processed food instruments included in the rebate invoices will be divided according to issued month and that any changes in the rebate per can as a result of a wholesale price change or can resize will be applied at the highest effective rebate amount associated with the appropriate issued month. Preparing rebate invoices in this manner will ensure that retail price adjustments and can resizes which affect the rebate per can applied to the invoice will comply with federal law and more accurately correspond to the retail price per can reimbursed to the vendor by the States. For example, consider a food instrument with a first date to use in July which is processed by the State in August. Please confirm that if a wholesale price change goes into effect August 1, the rebate change associated with the wholesale price change would not be applied to this food instrument with a First Day to Use in the month of July as the retail amount reimbursed to the vendor by the State reflected the wholesale price before the price change went into effect.

Answer: This is confirmed.

57. Page 11, Section 4.3. – Paragraph e. states cent-for-cent increases or decreases will take effect on the first day of the month in which the price increase or decrease occurs. We request this section be amended to apply the rebate price increase on the first of the month following the effective date of the wholesale price increase. As currently written, it appears the State will be requesting the higher rebate price per unit for product that was purchased prior to the date of the wholesale price increase. Please confirm this change will be made.

Answer: This is amended. See IFB Amendment #3 for revised language.

58. IFB, Page 11 Section 4.3.f Contractor Product and Service Requirements – Please change this section to read, "Rebates for container sizes of products replacing any form/size of the primary contract infant formula must be calculated to yield the same percentage discount..."

Answer: This section is not amended.

59. IFB, Page 12, Section 4.3.h Contractor Product and Service Requirements
- a. Please change the language to read "...The rebate shall be calculated to yield the same discount percentage to the State as the product which is unavailable"

Answer: This section is not amended.

- b. What processes does the State have in place to ensure that every negotiable food benefit submitted by a vendor to the State for reimbursement was exchanged for authorized infant formula?

Answer: Vendors enter into a contract with the vendor management agency whereby they agree to WIC Program rules, regulations, policies, and procedures as outlined in the contract, including to only sell authorized infant formula. Other processes include but are not limited to:

- Mandatory training for local agencies and vendor management agencies (VMAs) that, in turn, train participants and vendors;
- The exact formula name, form and container size is prescribed to the participant and printed on their shopping list;
- VMAs conduct overt monitoring of vendors; and
- A specialized investigative unit performs overt and covert investigations and audits.

- c. Please confirm that the State would substitute an appropriate alternate brand of the Contractor's product line prior to issuing a non-contract brand.

Answer: If one form - concentrate or powder - of the primary contract infant formula is unavailable, the State will issue the available form (concentrate or powder) of the primary contract infant formula prior to issuing another company's infant formula. The State reserves the right to issue the alternative formula product that best meets the needs of WIC participants.

- d. If not confirmed, please list all of the reasons why the State will not substitute an appropriate alternate brand of the contracted infant formula prior to issuing a non-contract brand.

Answer: See response to question 59.c.

60. Page 12, Section 4.3. – Paragraph h. – Please confirm this paragraph will be invoked only in circumstances in which WIC authorized retailers have timely ordered WIC contract infant formulas and have been unable to obtain product from the manufacturer. We further request the State confirm it will provide appropriate alternate products by the contractor before substituting another manufacturer's products.

Answer: If one form - concentrate or powder - of the primary contract infant formula is unavailable, the State will issue the available form (concentrate or powder) of the primary contract infant formula prior to issuing another company's infant formula. The State reserves the right to issue the alternative formula product that best meets the needs of WIC participants.

61. Page 12, Section 4.3. – paragraph j. – We have the following questions:

- a. Please confirm this provision applies only to disputes involving mathematical or other obvious errors on the invoice.

Answer: This is not confirmed.

- b. Please confirm this provision applies to the State as well – i.e., if the State does not notify the contractor of any dispute or error in the rebate invoice within the specified time period, the State waives its right to receive additional funds resulting from a dispute or under billing error.

Answer: This is not confirmed.

- c. Please confirm the State will only bill the contractor for rebates on containers of infant formula lawfully purchased at authorized retail vendors by WIC participants.

Answer: This is confirmed. Note: “purchase” includes formula received on exchange as described in USDA guidance on the processing of such exchanges. The contractor receives its wholesale value on all such food items, because the returned cans are destroyed in accordance with Federal recommendations.

62. IFB, Page 12, Section 4.3.i Contractor Product and Service Requirements. Please confirm the following:

- a. State will not issue quantities of infant formula in excess of the monthly maximums prescribed by federal law for each WIC participant.

Answer: This is confirmed.

- b. The Contractor will not be required to pay rebates on quantities of infant formula in excess of the federal monthly maximums.

Answer: This is confirmed.

- c. If rebates for quantities in excess of the federal monthly maximums are billed and rebated in error, the amounts associated with the over issuance and redemption will be reimbursed to the Contractor upon discovery.

Answer: The State will make every effort to resolve all disputes between the parties pertaining to any rebate invoice covered by this Agreement. Upon resolution of a dispute, the State will promptly disburse in accordance with prompt payment provisions of Article 11 of the State Finance Law, any funds due the Contractor. All disputes must conform to requirements stipulated in the contract, including but not limited to the requirement that the contractor notify the State in writing “of any intent to dispute or investigate a potential error in the rebate invoice within 30 days of receipt of the invoice.”

- d. If any of above statements are not confirmed, please provide a detailed explanation of why such portion was not confirmed.

Answer: Not applicable.

63. IFB, Page 12, Section 4.3.j Contractor Product and Service Requirements. Please confirm the time limit on disputes does not apply to disputes arising from fraud or other illegal activity that prevents the Contractor from being able to identify the incorrect billing earlier begins when the fraud or illegal activity is detected.

Answer: Disputes arising from allegations of fraud or illegal activity are subject to the New York State Civil Practice Laws and Rules (NYSCPLR) statute of limitations applicable to the type of claim commenced in a court of competent jurisdiction.

64. Page 12, Section 4.3 j.

- a. Will the States please confirm that this stipulation is a reciprocal right for the manufacturer?

Answer: This is not confirmed.

- b. Please confirm that the contractor is permitted to withhold payment if the overbilling is not supported by the agreed upon invoice documentation to substantiate the invoice balance, and the amount in question significantly exceeds the average of the past 3 months of invoices submitted by the state (variance of greater than 100%).

Answer: The Contractor may not withhold rebate payments based on rebate invoices issued by the State under any circumstances.

65. IFB, Page 12, Section 4.3.m Contractor Product and Service Requirements. Please indicate if requesting an electronic receipt of these notifications will suffice in lieu of sending communication in writing, and then validating receipt by email.

Answer: An electronic receipt is sufficient.

66. IFB, Page 12, Section 4.3.n Contractor Product and Service Requirements. Because product purchases and WIC rebates are handled in different systems within companies, please confirm that in the event of a direct purchase and reimbursement, that the State will pay the full price for products purchased directly and then submit a separate invoice for the applicable rebate. If not confirmed, in the event of such emergency situations, will the State agree to work with the contractor to handle the purchasing and invoicing in a manner that is mutually agreeable?

Answer: In the event of formula purchases by the State, the cost to the State will be the national wholesale price in effect on the purchase date for the weight tier of formula purchased, less the rebate in effect on the purchase date.

67. IFB, Page 13, Section 4.4.a New York State Product and Service Requirements. Please confirm the WIC program will also notify the contractor of any changes to the NYS formulary.

Answer: This is confirmed.

68. Pages 12-13, Section 4.4. – New York State Product and Service Requirements – paragraph a. – How soon prior to the contract effective date will the State notify WIC authorized vendors of any changes to the NYS WIC contract formulary? Will the State notify the healthcare community at the same time?

Answer: Transition from one contract to another contract requires, at a minimum, information system changes to associate formula benefits to the appropriate contract and rebate amounts. If there is a changeover from one manufacturer to another, additional activities will include information and support for WIC local agencies, WIC participants, and WIC vendors regarding the changes that they will have to make, such as transitioning infants from one formula to another, and changing business ordering and stocking practices to comply with WIC requirements.

69. Page 13, Section 4.4 e –

- a. Please confirm the State will work with the Contractor to provide data in instances where rebates have been paid for contracted products based on fraudulent transactions that involve infant formula.

Answer: This is not confirmed. As a preliminary matter, the Department cannot divulge data related to any active or emerging fraud investigation or prosecution to its contractors. Additionally, there is no provision for or Federal guidance regarding potential fraud or audit-related recoveries in 7 CFR 246.16a. NYS WIC will carefully review and attempt to resolve documented discrepancies, in consultation with the New York Attorney General where appropriate.

- b. Please confirm the State agrees to discuss with the Contractor appropriate means for addressing payment issues identified through manufacturer audits and/or fraud-related issues directly affecting the manufacturer.

Answer: This is not confirmed. See the response to 69.a. above in regard to fraud-related issues. Furthermore, terms governing timely submission of vendor audit results will be clearly delineated in the infant formula contract and will not be open to negotiation during contract performance.

- c. Please confirm the State will partner with the Contractor on recovery in instances where fraud has been discovered, and it has been further determined the manufacturer was overbilled for infant formula.

Answer: This is not confirmed. Anti-fraud enforcement and recovery, as matters of New York State criminal law, are the sole provenance of the agency and the Attorney General's office. There is no legal role for contract vendors in that process. Additionally, note that there is no provision for infant formula rebate contract language regarding potential fraud/audit-related recoveries in 7 CFR 246.16a.

- d. How many vendors have been disqualified due to fraud issues in each of the last three years?

Answer: Per 7 CFR 246.9, any information that individually identifies a WIC vendor (except for the vendor's name, address, telephone number, website/e-mail address, store type, and authorization status) is confidential and can only be released to the specific entities listed in the regulations. Infant formula contractors are not included in any of those categories.

- e. Please confirm that there is no time limit on disputes arising from fraud or other illegal activity that prevents the Contractor from being able to identify the incorrect billing earlier. If not confirmed, please explain why such a time limit is appropriate.

Answer: Disputes arising from allegations of fraud or other illegal activity are all subject to statutes of limitations described in the New York State Civil Practice Laws and Rules (NYSCPLR) and cannot be waived by contract.

- f. Please explain the State's processes to identify and curb fraud and how the state plans to secure the interests of its Contractor. Specifically, does the state perform compliance buys on infant formula?

Answer: So far as the agency's specific anti-fraud practices and procedures directly impact the legal value of their results for the Attorney General, they are strictly confidential.

- i. If the state has performed compliance buys, please provide high-level results.

Answer: That information is confidential between the agency and the Attorney General's office unless and until results of relevant court actions are made public.

70. IFB Page 13, Section 4.4.e New York State Product and Service Requirements

- a. Monthly data files are necessary in order for the Contractor to validate invoices with accuracy and integrity. Please confirm that the details of all EBT transactions for which rebates are being invoiced through the monthly invoice process are provided each month through an electronic data file including EBT transaction number, family ID or eWIC card number (nothing that would disclose confidential participant information), product description, number of cans redeemed, redemption dollar amount, first date to use, redemption date, infant age range at first date to use or infant date of birth, and feeding method (e.g. Fully Formula Fed, Partially Breastfed), and vendor ID or pseudo vendor ID.

Answer: The State will provide records directly related to the monthly billings that will include the data elements listed in IFB section 4.4.e.

- b. If no unique identifier per family (e.g. pseudo family ID or eWIC card number) is provided and multiple EBT transactions are allowed for one month's worth of benefits, please detail how the Contractor would be able to sum up the total number of infant formula cans redeemed by a single participant for the month to ensure that total cans issued did not exceed the federally regulated monthly maximums.

Answer: Not applicable.

- c. If no unique EBT transaction number is provided, please detail how the Contractor would be able to verify that issuance units being billed in the current month were not billed in a previous month.

Answer: Not applicable.

71. IFB, Page 13, Section 4.4.f New York State Product and Service Requirements

- a. Please confirm that the Contractor will be allowed to audit the records and policies and procedures relevant to the infant formula rebate process.

Answer: This is confirmed, on the condition that the cost of any approved records production aside from the regular documentation provided by NYS WIC to facilitate performance will be borne by the contractor.

- b. Please confirm that documents and/or information regarding policies, procedures and operations of each State's WIC Program and infant formula monthly issuance allotments by brand and can size, infant age category and feeding method will be provided based on the State's open records law.

Answer: This is confirmed.

- c. Please confirm the state will provide the contractor a way to validate, by family, rebates on infant formula were not paid in excess of the federal monthly maximums. If not confirmed, please describe what process is in place for the Contractor to validate issuance/redemption and program compliance.

Answer: The State will provide the contractor with a monthly data file to support the rebate invoice.

72. Page 13, Section 4.4. – paragraph f. – Please confirm the State agrees to refund or credit the contractor for erroneous invoice amounts identified and confirmed through contractor audits.

Answer: The State will make every effort to resolve all disputes between the parties pertaining to any rebate invoice covered by this Agreement. Upon resolution of a dispute, the State will promptly disburse in accordance with prompt payment provisions of Article 11 of the State Finance Law, any funds due the Contractor. All disputes must conform to requirements stipulated in the contract, including but not limited to the requirement that the contractor notify the State in writing “of any intent to dispute or investigate a potential error in the rebate invoice within 30 days of receipt of the invoice.”

73. IFB, Page 14, Section 4.4.g New York State Product and Service Requirements. The preceding paragraphs appear to document the state’s requirements. Please specify “Minimum Qualifications” mentioned in paragraph 1 on page 14 and what information would be required to be submitted in a bid proposal.

Answer: See IFB Amendment #3. This paragraph is deleted in its entirety.

74. IFB, Page 15, Section 5.3 Right to Modify IFB

- a. For equitable time to review, please ensure that bidders will receive at least 10 business days between the issuance of a final bid amendment and the bid submission date.

Answer: Any change to the IFB including changes to the Calendar of Events will be published via amendment to the IFB.

- b. Please clarify the process for contacting the state if there is ambiguity in any amendments, answers to questions and/or modifications to the bid. Specifically, please explain what is meant in this section by “insert BML”.

Answer: See IFB Amendment #3, which amends this section to contain the email address.

- c. Please confirm that a second round of questions will be offered to bidders in an event of ambiguity from the State’s responses to questions.

Answer: This is not confirmed. Any change to the IFB including the addition of a second round of questions will be published via amendment to the IFB.

75. IFB, Page 15, Section 5.4 Payment to the State, Paragraph 3

- a. Please consider changing language around due date of payments to, “Payments will be forwarded to the State by the Contractor via automated clearinghouse transfer within thirty (30) days from invoice receipt.”

Answer: This section is not amended.

- b. If this change cannot be made, please include language necessitating confirmation of payment receipt from the State to the Contractor.

Answer: This section is not amended to add the requested language.

- 76. Page 15, Section 5.4. – Payment to the State – Please confirm the State will prorate the interest amount due by the number of days the payment is late? For example, if payment is received 10 days late, will the interest be calculated as one-third of the 1% additional payment? We request the State amend the solicitation to clarify the interest will be prorated. Doing so will encourage prompt payment by the contractor once it has discovered the payment is overdue.

Answer: Interest shall be paid from the expiration of such 30-day period until such time as payment is received by the State. This section is not amended.

- 77. Page 15, Section 5.4 - If the thirtieth day falls on a Sunday or a banking holiday, please confirm payment made the following business day will not constitute a late payment or a penalty.

Answer: This is confirmed.

- 78. Page 15, Section 5.4 - In order to be a more attractive contract, will the States consider allowing 90 days for invoice payment?

Answer: This section is not amended.

- 79. IFB, Page 16, Section 5.5 Minority & Women-Owned Business Enterprise Requirements
 - a. As stated in the final line of this section, for purposes of this solicitation, DOH hereby establishes an overall goal of 0% for MWBE participation. If 0% is the goal for this IFB, will it be necessary for the Contractor to complete forms #1, #2, #4, and #5 in Attachment 5 of this IFB opportunity respectively titled:
 - i. Form #1 -- New York State Dept of Health MWBE Utilization Plan

Answer: This form is not required.

- ii. Form #2 -- New York State Dept of Health Waiver Request

Answer: This form is not required.

- iii. Form #4 -- New York State Dept of Health M/WBE Staffing Plan

Answer: The State requests all Bidders submit Attachment 5, M/WBE Form #4 as part of the Bid submission package.

- iv. Form #5 – Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement

Answer: The State requests all Bidders submit Attachment 5, M/WBE Form #5 as part of the Bid submission package.

- b. If all forms are not required, please revise Attachment A –Bid Package Checklist to reflect the changes.

Answer: See IFB Amendment #3, which amends and replaces Attachment A.

80. Page 16, Section 5.5-5.6 – Please strike these sections and any corresponding attachments/forms (Attachments 3,5 and 8) that are outlined within these areas as the determination of award is based solely on lowest wholesale monthly net cost and a responsive bid. Please also confirm the state will not provide preferential treatment based on these sections.

Answer: These sections are not amended. The evaluation of the bids will be made in accordance with the criteria outlined in the IFB Section 8 Method of Award.

a. If the state does not strike these sections, please confirm that N/A is an appropriate answer.

Answer: The State requests all Bidders submit Attachment 3 and Attachment 5, M/WBE Forms #4 and #5 as part of the bid submission package.

81. IFB, Page 17, Section 5.7 Sales and Compensating Use Tax Certification. In reference to forms ST-220 CA and ST-220 TD, please confirm that completion of these forms is not required for bid submission, and that only the successful bidder will be required to submit the documents.

Answer: These forms are not required for bid submission. The winning Bidder(s) must file a properly completed Form ST-220-CA with the Department of Health and Form ST-220-TD with the Department of Tax and Finance. These requirements must be met before a contract may take effect.

82. IFB, Page 17, Section 5.8 Contract Insurance Requirement

a. Please confirm the insurance requirements detailed in Appendix X, Section IV are not applicable to an infant formula rebate contract in which the contractor is paying the state.

Answer: This is not confirmed. All contractors must comply with the terms outlined in Attachment 8, New York State Department of Health Contract, Section IV.

b. If not confirmed, please detail why the State would require automotive liability insurance for an infant formula rebate contract.

Answer: The specific language in this provision clarifies that the necessity of automotive liability coverage is required contingent on the contractor's need to deploy commercial vehicles to fulfil its obligations under the contract.

83. Page 18, 5.9 1 – On what grounds would the DOH reserve the right to reject any part or all bids received in response to the IFB?

Answer: While DOH cannot provide a comprehensive response, the exercise of other provisions in this section, e.g., requiring a Bidder to revise a bid (5.9.5) which does not result in acceptable responses could constitute grounds for ultimate bid rejection.

84. Page 18, 5.9 3 – Please confirm there will be 2 awards as a result of this solicitation. One for milk-based formula and one for soy-based formula.

Answer: This is confirmed.

85. IFB, page 18, Section 5.9.3 DOH's Reserved Rights

- a. This item states that the State reserve the rights to "Make an award under the IFB in whole or in part." Federal Regulations that govern infant formula rebate contracts require the State to award the contract based solely on the lowest net cost to the State. Please confirm that the contract will be awarded in whole to the responsive and responsible bidder that submits the lower cost to the State.

Answer: To clarify, DOH does not contemplate offering partial vendor contracts to multiple Bidders, as doing so would indeed be non-compliant with Federal regulations.

- b. If not confirmed, please explain all the reasons why the State would not follow the governing Federal Regulations.

Answer: N/A.

86. Page 18, 5.9 6, 12, 13 – Please strike these sections because they are not pertinent to this bid in accordance with 17 C.F.R. Section 246.16a(c)(5) of the Federal Regulations.

Answer: These sections are not amended.

87. IFB, page 18, Section 5.9.7 DOH's Reserved Rights. This item states that the State reserves the right to amend the IFB specifications to correct errors or oversights, prior to the bid opening. Please add language to allow for a minimum of five (5) business days between the published date of the last amendments and the bid opening date to allow for review and preparation of the final bid submission.

Answer: Any change to the IFB including changes to the Calendar of Events will be published via amendment to the IFB.

88. IFB, page, 18, Section 5.9.12 DOH's Reserved Rights. This item states that the State reserves the right to "negotiate with the successful Bidder within the scope of the IFB..." Please identify what types of items would be the subject of negotiation pursuant to this Section.

Answer: This contingency provision contemplates situations where the successful Bidder's capacity to perform may change in ways that were not foreseeable prior to final bid review.

89. Page 18, Section 5.9. – Paragraph #12 – Please confirm any negotiations with the successful Bidder will not include changes to rebate amounts or prices. What other issues would the State consider appropriate for negotiations with the successful Bidder?

Answer: This contingency provision contemplates situations where the successful Bidder's capacity to perform may change in ways that were not foreseeable prior to final bid review.

90. Page 18, Section 5.9. – Paragraph #15 – We request the State amend this paragraph by changing 365 days to 90 days. Requesting Bidders to maintain a firm price for an entire year is excessively burdensome and unreasonable. We urge the State to amend this section.

Answer: This section is not amended.

91. IFB, page 18, Section 5.9.15 DOH's Reserved Rights. The referenced UCC section in this item provides that the outside limit of an irrevocable offer is 3 months. Please revise this section to change 365 days to 3 months. If not revised, please provide the reasons why the change will not be made and indicate how the 365 days is not inconsistent with the referenced UCC provision.

Answer: This section is not amended. UCC section 2-205 addresses "[a]n offer by a merchant **to buy or sell goods,**" and a contract for rebates on documented sales by retailers to public assistance beneficiaries does not constitute a sale of goods to DOH. Therefore, the 3-month cap on irrevocable offers under 2-205 does not apply to this contract.

92. IFB, Page 20, Section 5.12 State Law Consultant Disclosure Provisions
- a. Please confirm that Forms A and B are not required for completion of the resulting contract since the contractor will not be billing the State, but rather paying rebates to the State.

Answer: State Consultant Services Form A and Form B are not required for this IFB.

- b. If Forms A & B are required for completion of the contract, please specify the time frame when completion and submission of these forms will be necessary

Answer: Not applicable.

- c. If required, can the State also please provide all appropriate responses in the first box of information requested in Form A (State Agency Name, State Agency Department ID, etc) as this information is not included in the IFB.

Answer: Not applicable.

- d. If required, can the State please provide all appropriate responses in the first and second boxes of information requested in Form B (State Agency Details as well as Scope of Contract) as this information is not included in the IFB.

Answer: Not applicable.

93. Page 20, 5.12 - Please confirm that the State Consultant Services Forms are not required to be submitted with the bid. Please confirm that these forms are only required to be submitted by the winning contractor upon award.

Answer: State Consultant Services Form A and Form B are not required for this IFB.

94. Page 20, 5.14 - Protest Procedures

- a. Please confirm all bidders will be notified in the event of a protest on this bid. Please explain how bidders will be notified.

Answer: This is not confirmed. DOH will follow Protest Procedures established under 2 NYCRR section 24 "Contract Award Protest Procedure for Contract Awards Subject to the Comptroller's Approval." These procedures are also memorialized in Chapter XI Section 17 of the Office of the State Comptroller's Guide to Financial Operations (GFO). Available on-line at:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

b. Please explain the process/timeline in the event of a protest.

Answer: The Protest Procedure process and timeline are established under 2 NYCRR section 24 “Contract Award Protest Procedure for Contract Awards Subject to the Comptroller’s Approval.” These procedures are also memorialized 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/>.

95. Page 20, Section 5.14. – Protest Procedures – Please describe the pre-bid protest procedures governing this IFB, including relevant time frames for submitting a protest.

Answer: There are no pre-bid protest procedures governing this IFB.

96. IFB, Page 20, Section 5.14 Protest Procedures IFB, Page 20, Section 5.14 Protest Procedures. In the event of a protest, please confirm that all bidders will be made aware of the protest via email.

Answer: This is not confirmed. DOH will follow Protest Procedures established under 2 NYCRR section 24 “Contract Award Protest Procedure for Contract Awards Subject to the Comptroller’s Approval.” These procedures are also memorialized in Chapter XI Section 17 of the Office of the State Comptroller’s Guide to Financial Operations (GFO). Available on-line at: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

97. Page 21, Section 5.16. – Piggybacking – Please confirm this provision does not apply to this WIC Infant Formula Rebate solicitation. This provision could significantly expand the scope of the contract and does not permit Bidders the opportunity to meaningfully evaluate its obligations under this contract.

Answer: This is not confirmed. New York State Finance Law Section 163(10)(e) 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. Therefore, no contract expansion can occur without such consent.

98. IFB, Page 21, Section 5.16 Piggybacking

a. Please confirm that no other agencies outside of WIC will have access to the completed contract submitted by the Contractor in this IFB.

Answer: This is not confirmed. New York State Finance Law Section 163(10)(e) 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. Therefore, access by agencies outside of WIC cannot occur without such consent.

b. If no other agencies will have access to this contract, please consider removing this section from the IFB.

Answer: This section is not amended.

99. Page 21, Section 5.17 – Encouraging Use of New York Businesses in Contract Performance – Please confirm Attachment 6 does not have to be completed and submitted with the bid. We note the use of the word “should” and also request the State clarify Bidders can submit this Attachment upon or prior to award.

Answer: The State requests all Bidders submit Attachment 6 as part of the bid submission package.

100. IFB, Page 21, Section 5.17 Encouraging Use of New York Businesses in Contract Performance
a. Please confirm that Attachment 6, referenced in this section, is not necessary for bid submission, as no subcontractors will be used for the purpose of executing this contract.

Answer: The State requests all Bidders submit Attachment 6 as part of the Bid submission package.

b. Because this is an infant formula rebate contract and federal law requires that it be awarded to the vendor offering the lowest net cost to the State, please confirm that, in accordance with governing Federal law, this bid will be awarded based solely on the lowest net cost to the State as defined in the Federal WIC regulations and that no preferences will be applicable

Answer: The evaluation of the bids will be made in accordance with the criteria outlined in the IFB Section 8 Method of Award.

101. IFB, Page 22, Section 5.20 Executive Order 177 Prohibiting Contracts with Entities that Support Discrimination. Please advise if completion of Attachment 11 will fulfill the requirements for this section or if the Contractor should issue an additional statement acknowledging compliance upon bid submission.

Answer: The State requests all Bidders submit Attachment 11 as part of the Bid submission package. No additional documents are needed.

102. Page 22, Section 6 – Please confirm that only form #4 and #5 of Attachment 5 need to be completed (as indicated on Page 16 Section 5.6 and Attachment A-Bid Package Checklist) and that Attachment 5 is not required in its entirety.

Answer: This is confirmed.

103. Page 22, Section 6.1.1 –

a. Is a Certificate of Incumbency enough to prove that the person signing the bid is an authorized company representative?

Answer: DOH does not require that a Certificate of Incumbency be submitted along with the bid but may request such a Certificate to verify that the signatory is an authorized company representative before a contract is finalized.

b. Should the Certificate of Incumbency be included in the Bid Submission?

Answer: A Certificate of Incumbency is not required as part of the bid submission package.

104. Page 22, Section 6.1.2 - Is the entire Pediatric Wholesale Price list to be included with the IFB or are the products being bid enough?

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

105. Page 22, Section 6.1.2. – Would the State accept a National Wholesale Price List that details only the full truckload price for each of the formulas being bid? The full truckload price is the only relevant price for WIC rebate contracts.

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

106. IFB, Page 22, Section 6.1.2 Mandatory Bid Requirements. Please advise if the bidder's entire price list is required or just the products that are being bid.

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

107. Page 22, Section 6.1.3 c - Please confirm if a bidder intends to submit both a milk and soy-based bid (c) that the milk and soy bid sheets can be submitted in the same bid proposal.

Answer: Bidders responding to both milk-based infant formula and soy-based infant formula must submit separate bid proposals.

108. Page 24, Section 6.2.4. – EEO Forms – Please confirm Attachment 5 does not have to be completed and submitted with the bid. We request the State clarify Bidders can submit this Attachment upon or prior to award.

Answer: The State requests all Bidders submit Attachment 5, M/WBE Forms #4 and #5 as part of the bid submission package. No additional documents are needed.

109. Page 25, Section 7- Bid Submission

- a. Please confirm the following elements will be read aloud at the bid opening: company name, product brand name, unit size, reconstituted ounces per unit, wholesale price per unit, rebate bid per unit, net cost per unit, percent rebate, and total monthly net cost.

Answer: At the bid opening, bidder company names will be announced and the following information from the bid sheets will be read aloud:

- Page 1: physical form, product name, UPC code, unit size, reconstituted ounces per unit, lowest wholesale full truckload price per unit, rebate bid per unit, net cost, and percent rebate.
- Page 2: total monthly units, total net cost, and the total net cost per month for all physical forms on the bid sheet.

- b. Please confirm that bids will be publicly opened at 2:15 PM ET on March 4, 2021.

Answer: See IFB Amendment #2 for revised Calendar of Events.

110. Page 26, Section 7.1- Bid Opening- Due to the current pandemic and limited travel, will the state please consider providing a Web-ex or other virtual media invitation in addition to the live opening, so all interested bidders are able to participate?

Answer: See IFB Amendment #2 for revised bid opening procedure.

111. Page 24, Section 7.1. – Bid Submission – Does NYS have the ability to receive electronic bids that are downloaded directly to the NYS procurement website? If yes, given the uncertainties surrounding COVID, issues with mail delivery, etc. would the State consider permitting electronic submission of bids to a secure website?

Answer: Bids must be submitted by U.S. Mail, by courier/delivery service (e.g., FedEx, UPS, etc.) or by hand.

112. IFB, Page 24, Section 7.1 Bid Submission. Please confirm if 2 electronic copies are necessary if 4 originals and 4 Copies are included in the bid submission or if flash drives/electronic copies are only necessary for electronic submission of the bid.

Answer: Bidders must submit two (2) dedicated flash drives or CDs, four (4) paper originals, and four (4) paper copies.

113. IFB, Page 24, Section 7.1.1 Bid Submission

- a. Please provide a detailed explanation of what constitutes an “appropriate header and footer” on each page of the bid submission.

Answer: An appropriate header should include the IFB# and description (i.e. IFB # - 20051, WIC Infant Rebate System). An appropriate footer should include vendor name and page number.

- b. The submitted size of the second page of the bid sheets (Attachments C & D) is larger than the requested size of 8.5” x 11” copy paper. If this size is required for all forms within the bid submission, please re-size and re-issue Attachments C & D in an 8.5” x 11” page format.

Answer: The second page has been reformatted to 8.5” x 11”. See IFB Amendment #3, which amends and replaces Attachments C and D.

- i. If the second page cannot be reformatted to 8.5” x 11”, please confirm that it is acceptable to submit it on a larger size paper.

Answer: Not applicable.

114. IFB, Page 25, Section 7.1.6 Bid Submission

- a. Please provide a contact person that can confirm receipt of the bid at the time of bid submission.

Answer: To confirm receipt, Bidders should ensure that their delivery service obtains the signature of the person accepting the bid submission, and relays that information to the Bidder. The central phone number for the Bureau of Supplemental Food Programs is (518) 402-7093.

- b. Is there a back-up contact in place in the event that the confirming party is not available at the time of the bid's arrival?

Answer: There is no backup contact. To confirm receipt, Bidders should ensure that their delivery service obtains the signature of the person accepting the bid submission, and relays that information to the Bidder. The central phone number for the Bureau of Supplemental Food Programs is (518) 402-7093.

115. IFB, Page 26, Section 7.1.6 Bid Submission, Paragraph 1

- a. With all bid participants residing out of state, please provide adequate time between the announcement of a virtual bid opening and the bid opening date itself, accommodating for at least 10 business days to make or cancel travel arrangements.

Answer: See IFB Amendment #2 for revised Calendar of Events and bid opening procedure.

- b. In the event that the decision is made for the bid opening to be virtual, please provide a back-up phone number to dial in to the opening as a precaution in the event of unforeseen malfunctioning of virtual meeting tools.

Answer: The Department will provide guidance in the event of unforeseen malfunctioning of the Department's virtual meeting tools.

116. Page 25, Section 7.1.3. – Is blue ink a requirement or would Bidders be permitted to sign in black ink?

Answer: Where signatures are required, bid documents designated as originals should have a handwritten wet ink signature and should be signed in blue ink.

117. Page 25 – Bid Opening – We have the following additional questions:

- a. With respect to the second to last paragraph on this page, we request the State agree to permit Bidders to change the persons registered for the bid opening if the date is changed or the in-person public bid opening is modified due to COVID issues.

Answer: Bidders must register all representatives attending the bid opening by the registration deadline. If a change to one or both registered representatives becomes necessary, the Bidder must provide a final list of its representatives to the Department at least 24 hours prior to the commencement of the bid opening. See IFB Amendment #2 for revised Calendar of Events and bid opening procedure.

- b. We further request ample time be provided to Bidders and additional flexibility provided to determine which representatives of the Bidders can attend the bid opening. With potentially changing dates and circumstances, the specific individuals who might attend can change. Please confirm the State will provide ample notice to bidders and additional flexibilities on who may attend the bid opening.

Answer: See response to question 117.a.

- c. Would the State also consider providing a dial-in number for those bidders who are unable to attend the bid opening in person?

Answer: See IFB Amendment #2. This bid opening will be done virtually. Registered representatives will receive a WebEx or other virtual media invitation for the bid opening.

- d. Please confirm the State will provide registration details if a Web-Ex or other virtual bid opening is utilized. Please confirm the State will require all Bidders to confirm receipt of Web-Ex details prior to moving forward with the Bid Opening.

Answer: See IFB Amendment #2. This bid opening will be done virtually. Registered representatives will receive a WebEx or other virtual media invitation for the bid opening. The State will make every effort to ensure Bidder receipt of meeting details.

- e. Please confirm the State will read aloud all the relevant information on page 1 and page 2 of the Bid Sheet, including the following information contained on page 1 of the Bid Sheet: Product Name Being Bid, UPC Code, the Unit Size, Reconstituted Ounce Per Unit, Lowest Wholesale Full Truckload Price Per Unit, Rebate Price Per Unit, Net Cost Per Unit, and Percent Rebate, and on page 2 the corresponding data populated in columns (C), (J), (K), (L), (M), and (N).

Answer: At the bid opening, bidder company names will be announced and the following information from the bid sheets will be read aloud:

- Page 1: physical form, product name, UPC code, unit size, reconstituted ounces per unit, lowest wholesale full truckload price per unit, rebate bid per unit, net cost, and percent rebate.
- Page 2: total monthly units, total net cost, and the total net cost per month for all physical forms on the bid sheet.

118. IFB, Page 26, Section 8 Method of Award, Paragraph 4

- a. This paragraph should be removed since all bids will be opened and read aloud at a public bid opening. It would be unfair to allow bidders to submit best and final pricing after being made aware of prices submitted by other bidders.

Answer: This section is not amended.

- b. If this section is not removed, please explain the steps the State will take to prevent any unfairness.

Answer: In the event of a true tie, only those Bidders tied would be offered an opportunity to submit a lower bid. A second public bid opening would be conducted, whereas all Bidders could attend, but only the Bidders initially tied would have their best and final bids read.

119. Page 26, Section 8. – Method of Award – How will “past experience” be used in selecting a Bidder for award in the event of a tie bid. Please confirm the State will not award to a Bidder based on past experience if Bidders submit bids offering the identical lowest net cost to the State. Such a process would violate the federal regulations and would subject this solicitation and/or the resulting award to a bid protest. We urge the State to delete the reference to “past experience” as all three likely bidders to this solicitation have longstanding experience with WIC rebate contracts and have demonstrated ability to meet the requirements of this contract.

Answer: This section is not amended. The evaluation of the bids will be made in accordance with the criteria outlined in the IFB Section 8 Method of Award.

120. Page 27, Section 8.3 –

- a. Will the State post a notification/intent to award prior to the notification of award on July 1, 2021?

Answer: Bid opening results will be Posted in the New York State Contract Reporter.

- b. Please explain how the State will notify bidders that an Award has been made.

Answer: The Department will provide written notification to all awarded and non-awarded Bidders.

- c. Will the final award be posted to the website? Please provide the exact link where the award will be posted.

Answer: No.

121. Page 27, Section 9- Please confirm that Attachment 10 is not required as part of a responsive bid.

Answer: This form is not required. See IFB Amendment #3, item 10 on the list of Attachments is deleted.

122. Page 27, Section 9 – Attachments – Please confirm #10 Diversity Practices Questionnaire does not have to be completed and submitted with the bid. We note this Attachment is not included in the Checklist in Attachment A. Please clarify Bidders can submit this Attachment upon or prior to award.

Answer: This form is not required. See IFB Amendment #3, item 10 on the list of Attachments is deleted.

123. Attachment 10, Diversity Practices Questionnaire

- a. Is completion of this form required for the bid submission?

Answer: This form is not required. See IFB Amendment #3, item 10 on the list of Attachments is deleted.

- b. If form is required, please add the document to Attachment A – Bid Package Checklist.

Answer: Not applicable.

124. Attachment 8

- a. Is Attachment 8 required for bid submission in full or in part?

Answer: Attachment 8 is not required.

- b. If any facet of Attachment 8 is required to be completed upon bid submission, please specify these parts in Attachment A—Bid Package Checklist.

Answer: Not applicable.

125. Attachment 8, Appendix X, Part III, Page 4, Item F

- a. Please consider extending minimum notice of 30 days, as this is a very aggressive time frame to accommodate market distribution in the event of contractor ownership change.

Answer: This section is not amended.

- b. Please allow contractor termination rights for contractors with a one (1) year notification. If not allowed, please describe all the reasons why the State is allowed to terminate the contract, but the contractor is not afforded the same rights.

Answer: This is not amended.

126. Attachment 8, Appendix X, Part IV, Pages 8-9, Part C, Specific Coverages and Limits. Please advise if the Workers' Compensation, Disability Benefits and Commercial General Liability forms are required in the contract, as all 3 items indicate insurance coverage for work performed in the state of New York and none of the potential bidders reside in the State of New York.

Answer: The successful Bidder must comply with the terms outlined in Attachment 8, New York State Department of Health Contract, Section IV, Part C - Specific Coverages and Limits. Proof of insurance requirements are applicable based on the necessity of contractor performance in New York, not on the contractor's state of incorporation or corporate residence.

127. Attachment 8, Appendix X, Part IV, Page 10, Number 4, Commercial Automobile Liability

- a. Please confirm the insurance requirements detailed in this section are not applicable to an infant formula rebate contract in which the contractor is paying the State.

Answer: This is not confirmed. All contractors must comply with the terms outlined in Attachment 8, New York State Department of Health Contract, Section IV.

- b. If not confirmed, please detail why the State would require automotive liability insurance for an infant formula rebate contract.

Answer: The specific language in this provision clarifies that the necessity of automotive liability coverage is required contingent on the contractor's need to deploy commercial vehicles to fulfil its obligation under the contract.

128. Attachment 8, Appendix X, Page 11, Part V, Conflicts of Interest

- a. Please confirm that submission of Attachment 4 (Vendor Assurance of No Conflict of Interest or Detrimental Effect) is required for bid submission since this section states "prior to execution of this Contract."

Answer: The State requests all Bidders submit Attachment 4 as part of the bid submission package.

- b. Will previous submission of Attachment 4 be sufficient acknowledgement for the terms set forth in Appendix X, Part V of the bid contract?

Answer: Previous submission of Attachment 4 is not sufficient.

129. IFB, Page 27, Section 9 Attachments. In the numbered links for attachments included in this IFB, the list skips number 7 and 9. Please confirm that these items are numbered correctly and that nothing has been inadvertently left off this list.

Answer: Items 7 and 9 were intentionally excluded from the list of attachments.

130. IFB, Page 28, Attachment A, Bid Package Checklist

- a. Please advise if a completed checklist will need to be submitted with the entire bid packet.

Answer: A completed checklist is not required as part of the bid submission package.

- b. If a copy of the completed checklist is required, please ensure that it is added to the required documents in the bid checklist, itself.

Answer: Not applicable.

- c. Please confirm that the checklist is complete and that no other documents are required in order to be considered a responsive and responsible bid submission.

Answer: This is confirmed. See IFB Amendment #3 for REVISED Attachment A.

131. Attachment A – Bid Package Checklist

- a. Please confirm that only the documents listed on this checklist are required to be a responsive bid.

Answer: This is confirmed.

- b. Please specify all the pages of the bid document that need to be notarized.

Answer: Not applicable.

- c. Please confirm a copy of the IFB is not required to be submitted as part of a bid response.

Answer: This is confirmed.

- d. Please confirm that issued addenda are not required to be returned with the bid response.

Answer: Only amended or revised forms need to be submitted as part of the Bidder's proposal. If an amended form is provided, it must be used in place of earlier versions of the form issued with the IFB.

132. Page 28, Attachment A - §6.2.6 Freedom of Information – Statement of Bid Redactions – Please confirm Bidders are not required to check this box and that no other actions are necessary if a Bidder is not requesting confidentiality in any portions of its bid.

Answer: This is confirmed.

133. IFB, Page 29, Attachment B, Instructions for Completing Bid Sheets

- a. Will it be required to submit 4 handwritten signed originals and 4 copies of each bid sheet in addition to the 4 originals and 4 copies that will already be included in the 8 total bid packets that are required for bid submission?

Answer: No.

- b. Will a Notary stamp be required with the hand-written signatures on each bid sheet?

Answer: No.

- c. Will an “appropriate header/footer” as referenced in section 7.1.1 of this IFB also be required on the milk and soy bid sheets?

Answer: No.

134. Attachment C – Milk-Based Formula Bid Sheet-please expand column K

Answer: See IFB amendment #3, which revises Attachment C.

135. Attachment D – Soy-Based Formula Bid Sheet- please expand column K

Answer: See IFB amendment #3, which revises Attachment D.

136. IFB, Page 33, Attachment G Bidder’s Certified Statements. Please advise if it will be required to include a Certificate of Good Standing with the bid submission, or if there will otherwise be an appropriate way to validate good standing in the State.

Answer: A Certificate of Good Standing is not required. The State requests all Bidders submit Attachment 1 and Attachment 3 as part of the Bid submission package.

137. Appendix A – Section 6 – Wage and Hours Provisions – Page 66 – Please strike this section as this is not a public work contract and therefore does not apply.

Answer: This section is not amended. Appendix A is required in its entirety for all State contracts.

138. Appendix A – Section 18 – Prohibition on Purchase of Tropical Hardwoods – Page 68 – Please strike this section as this section does not apply to this contract.

Answer: This section is not amended. Appendix A is required in its entirety for all State contracts.

139. Appendix A – Section 23 – Compliance with Consultant Disclosure Law – Page 69 – Please strike this section as this section does not apply to this contract.

Answer: This section is not amended. Appendix A is required in its entirety for all State contracts.

140. Appendix M- Participation by Minority and Women-Owned Business Enterprises- Please refer to question 19 and strike this section as the contract award should be determined by the lowest bid price and a responsive bid.

Answer: This section is not amended.

141. Page 4 of the New York State Department of Health Contract – Section III. Term and Termination – Please amend paragraph F. by requiring 180 days’ notice if the State cancels the contract without cause. The State will need this amount of time to rebid for a new contract and such termination notice would be fair to both parties.

Answer: This section is not be amended.

142. Appendix F – Technology Terms and Conditions – Please confirm if this appendix is applicable to this IFB. If confirmed, please state how this applies to the contract.

Answer: Appendix F is not applicable to any contract(s) resulting from this IFB.

143. Appendix H – Federal Health Insurance Portability – Please confirm if this appendix is applicable to this IFB. If confirmed, please state how this applies to the contract.

Answer: Appendix H is not applicable to any contract(s) resulting from this IFB.

144. Given the current COVID-19 situation and the changing status of workplace closings and other restrictions, please confirm bidders may use electronic signatures and/or electronic notarization on any or all of the required bid forms.

Answer: Where signatures are required, bid documents designated as originals should have a handwritten wet ink signature and should be signed in blue ink.

145. Please confirm bidders will have the opportunity to review all the bids submitted prior to issuance of a notification of award.

Answer: Bidders may participate in the bid opening.

146. Has the State identified any instances of fraud, either by authorized vendors or by WIC participants in the last five years? If yes, what actions were taken in response to these findings?

Answer: Yes. The agency’s actions were mandated by Federal and State regulations governing the WIC program and by New York State law, in consultation with the Attorney General.

147. We request the State agree to notify the contractor if the State or other State or Federal governmental entities have identified fraud potentially affecting the billing of rebates to the contractor.

Answer: The request is noted, however, the vendor should expect that no such notification will take place unless and until all proceedings related to fraud investigations and/or legal actions are completed to the satisfaction of the Attorney General.

148. How many vendors have been disqualified in the last three years?

Answer: Per Federal regulations (7 CFR 246.9), any information that individually identifies a WIC vendor (except for the vendor’s name, address, telephone number, website/e-mail address, store type, and authorization status) is confidential and can only be released to the specific categories of people listed in the regulations. Infant formula contractors are not included in any of those categories.

149. How many vendors have been disqualified based on fraudulent transactions or other instances of fraud?

Answer: Per Federal regulations (7 CFR 246.9), any information that individually identifies a WIC vendor (except for the vendor's name, address, telephone number, website/e-mail address, store type, and authorization status) is confidential and can only be released to the specific categories of people listed in the regulations. Infant formula contractors are not included in any of those categories.

150. Does New York WIC conduct inventory audits of its WIC retail vendors directed specifically at infant formula, the highest priced WIC-approved food?

Answer: Yes, the State conducts inventory audits of its WIC retail vendors directed specifically at infant formula.

151. If inventory audits are conducted, do these audits determine whether infant formula purchased by WIC retail vendors is only purchased from authored wholesalers and distributors?

Answer: Yes, inventory audits are used to determine whether infant formula purchased by WIC retail vendors is only purchased from authorized wholesalers and distributors.

152. Do these audits determine whether purchases of infant formula by WIC retail vendors match its redemption history (i.e., address trafficking of WIC EBT cards)? For example, would the State's inventory audit identify instances in which a WIC retail vendor has documentation for 100 units of formula purchased in a month but submitted redemption requests to the State for 2,000 units?

Answer: Yes, inventory audits are used to determine whether purchases of infant formula by WIC retail vendor match redemption history.

153. Separate from current methods for identifying high-risk vendors, other States now utilizing an EBT system have identified routine reports that can be effective in identifying WIC fraud and/or trafficking in WIC Food Instruments. Has New York WIC identified specific reports that can be utilized to detect fraudulent activity?

Answer: Yes, the State has identified specific reports that can be utilized to detect fraudulent activity.

154. What are the top 5 retail chains in each of the States in terms of total WIC dollar volume?

Answer: Per Federal regulations (7 CFR 246.9), any information that individually identifies a WIC vendor (except for the vendor's name, address, telephone number, website/e-mail address, store type, and authorization status) is confidential.

155. We request the State's responses to bidders' questions be incorporated into the contract resulting from this bid. We further request that such responses take precedence over other contract documents when there is a conflict, ambiguity or dispute.

Answers: These questions and answers will be attached as an appendix to the contract resulting from this bid. They are provided for clarification only. No responses to these questions shall be construed as modifying or superseding contract terms.

156. Please confirm all bidders will be notified if a protest is filed either prior to the bid proposal due date or after issuance of a notification of award.

Answer: This is not confirmed. DOH will follow Protest Procedures established under 2 NYCRR section 24 “Contract Award Protest Procedure for Contract Awards Subject to the Comptroller’s Approval.” These procedures are also memorialized in Chapter XI Section 17 of the Office of the State Comptroller’s Guide to Financial Operations (GFO). Available on-line at:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

157. Will all bidders be provided copies of any protests that are filed, as well as the State’s response? We request all bidders be provided with such documents, or alternatively that all such documents be posted with the other solicitation documents.

Answer: All Bidders will not be provided copies of protests that are filed. DOH will follow Protest Procedures established under 2 NYCRR section 24 “Contract Award Protest Procedure for Contract Awards Subject to the Comptroller’s Approval.” These procedures are also memorialized in Chapter XI Section 17 of the Office of the State Comptroller’s Guide to Financial Operations (GFO). Available on-line at: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.