NEW YORK STATE DEPARTMENT OF HEALTH

An Invitation for Bid for

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

IFB No. 1305280407

WIC INFANT CEREAL REBATE SYSTEM

Schedule of Key Events

IFB Release Date	July 10, 2013
Deadline for Submission of Questions (by 5:00 pm)	July 30, 2013
Written Questions and Answers Release Date	August 13, 2013
Bid Due Date (by 2:00 pm)	August 27, 2013
Public Bid Opening (by 2:15 pm)	August 27, 2013
Estimated Award Selection Date	September 17, 2013
Anticipated Contract Start Date	November 1, 2013
For checks valid on or after:	February 1, 2014

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

DESIGNATED CONTACTS:

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

Joe Zeccolo Grants and Procurement Unit New York State Department of Health Room 2756, Corning Tower, Empire State Plaza Albany, New York 12237

Permissible Subject Matter Contacts:

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

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Bureau of Supplemental Food Programs
Division of Nutrition
NYS Department of Health
150 Broadway, Suite 650
Albany, NY 12204
Email: WICIFBS@health.state.ny.us

Caroline Robinson
Bureau of Supplemental Food Programs
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NYS Department of Health
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Albany, NY 12204
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For further information regarding these statutory provisions, see the Lobbying Statute summary in Section E, 10 of this solicitation.

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A. INTRODUCTION

The New York State (NYS) Department of Health (DOH) is seeking to maximize the number of participants served by the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) with available federal and state funds. NYS WIC distributes infant cereal through the retail purchase system and is therefore requesting rebates on infant cereal offered to WIC participants to reduce program costs.

The purpose of this Invitation for Bids (IFB) is to implement a system that lowers the cost of retail infant cereal purchases by NYS WIC participants. A rebate contract will be awarded for infant cereal as a result of this IFB.

B. BACKGROUND

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

The New York State WIC program provides infant cereal to eligible participants through a retail purchase system. This uniform delivery system is utilized statewide through contracts with approximately 4,300 retail grocery stores and pharmacies that agree to accept WIC checks issued for specified authorized foods. All contracted stores must comply with federal requirements set forth in 7 CFR, Part 246.12 and state regulations in 10 NYCRR Part 60-1. The contract with the vendor specifies the responsibilities of both the State program and vendors and outlines sanctions for violations. Vendors are reviewed for compliance on a continual basis.

WIC checks are issued by local WIC agencies at clinic sites throughout the state to certified eligible participants or participants' caregivers. Checks may be issued for up to a three-month period, and may be issued up to 30 days before the first "not good before" date on the checks. Infant cereal checks will specify the quantity, container size and brand name of the infant cereal that may be purchased at an authorized retail vendor within the 30-day timeframe noted on the check. After a vendor accepts a WIC check, it is processed through the Federal Reserve System to the WIC program's banking contractor for payment. A series of pre-payment edits are performed by the contract bank on each check to ensure that specific requirements are met. Checks failing these edits are not paid by the NYS WIC program.

Table I on the next page depicts the NYS WIC program's caseload over a recent sixmonth period, with detail provided on the number of infants eligible to receive WIC infant cereal.

TABLE I – NYS WIC Caseload Statistics

MONTH	TOTAL CASELOAD	ALL INFANTS	ALL INFANTS OVER SIX MONTHS OLD	FBF* INFANTS OVER SIX MONTHS OLD
January 2012	516,822	119,888	57,508	3,751
February 2012	521,163	119,586	58,923	3,851
March 2012	526,093	119,620	59,475	3,937
April 2012	528,036	119,374	60,340	3,961
May 2012	531,519	119,364	60,432	4,013
June 2012	532,251	118,526	59,959	4,023
Six-Month Average	525,981	119,393	59,440	3,923

^{*}FBF = fully breastfeeding

The average monthly number of 8-ounce containers of infant cereal redeemed during January – June 2012 is 143,339. No assurance is given that this amount of infant cereal is predictive of future redemption amounts.

The contract expected to be awarded as a result of this IFB will cover WIC checks for infant cereal with "not good before" dates beginning February 1, 2014. The new contract will provide for five (5) years of cereal issuance ("not good before" dates through January 31, 2019), plus a final three-month extension at the sole discretion of New York State. The contract start date will be three months prior so that a contract will be executed by the time that February 1, 2014 checks for the contract cereal begin to be printed (November 1, 2013).

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

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

C. SPECIFICATIONS

TERMINOLOGY

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

"Contract start date" refers to the date on which the DOH and contractor enter into an agreement regarding the issuance of WIC checks printed with specific future "not good before" dates. The desired contract start date is November 1, 2013.

"Contract effective date" refers to the earliest "not good before" date on checks printed under the terms of the awarded contract. The desired contract effective date is February 1, 2014. WIC checks with February 1, 2014 "not good before" dates may be printed and distributed to WIC participants as early as November 1, 2013.

"Issue date" is the "not good before" date printed on the WIC check.

"Issue month" is the month in which the WIC check's "not good before" date falls.

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

"Redemption date" is the date on which the vendor receives payment for a WIC check accepted at the vendor's retail store.

"Redemption month" is the month in which the redemption date falls.

"WIC eligible infant cereal" is all infant cereal that meets federal regulatory criteria, regardless of whether the food is issued by any state WIC agency.

USE OF WIC SERVICE MARKS

By submitting a bid in response to this IFB, the bidder indicates that:

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

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

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

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

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

3. BIDDER QUALIFICATIONS/CERTIFICATIONS

The winning bidder must be an infant cereal manufacturer. The bidder winning the infant cereal award shall enter into a contract to provide a rebate on all federally-WIC-eligible infant cereals manufactured by the bidder at any time during the contract period that NYS WIC chooses to issue.

Cereal Varieties

The winning bidder must manufacture, throughout the duration of the contract, a minimum of four (4) types of dry, plain infant cereal, including single grain rice and single grain oatmeal, plus a m inimum of two additional varieties, in 8-ounce containers. A ll infant cereals must meet federal, state and local regulations governing cereal, and must contain a m inimum of 45 m illigrams of iron per 100 grams of dry cereal. Infant cereals containing infant formula, milk, fruit, or other noncereal ingredients are not allowed. Containers with individual serving packets will not be considered.

Product Quality

Each bidder's products must be the same as furnished to the general trade, and meet or exceed all federal, state and industry standards and requirements.

Each bidder must have a product recall program that provides for immediate notification to all direct purchasers of the company's products.

Kosher Certification

Any product designated as "Kosher" must comply and be I abeled with a common accepted Kosher symbol as identified by the Chicago Rabbinical Council and listed on their website: http://www.crcweb.org/agency_list.php and must meet all the requirements of that certification.

Manufacturing Capacity

Only those companies that can produce 100 per cent of the NYS WIC infant participants' maximum issuance amount of infant cereal as stated herein this IFB can bid. This capacity will be required to be maintained for the duration of the contracts.

The maximum amount of infant cereal that could be provided to the participant mix shown in Table I of this IFB is 178,320 containers per month. Maximum issuance amounts are higher than actual redemption amounts, however this higher capacity is required to accommodate potential caseload increases or program expansions during the contract period.

Each bidder shall provide evidence that it has continually operated, for at least the past three years, an organization capable of performing the work described in this IFB for each type of infant food on which it bids. The preferred documentation is the submission of a Dun & Bradstreet Business Information Report. If the required business experience is not proven through the submission of a Dun & Bradstreet Business Information Report, then Bidder must provide, to the satisfaction of DOH, some other of evidence that it meets this requirement.

Distribution Capability

Only those companies that are capable of distributing their infant cereal, directly or via wholesalers/distributors, to retail outlets throughout New York State can bid. This capability will be required to be maintained for the duration of the contracts.

Table II on the next page shows the distribution of all infant WIC participants and WIC-approved vendors across the state as of June 2012.

TABLE II - Regional* Distribution of Eligible Infants and WIC Vendors

Category	Capital/ Central (#)	Capital/ Central (%)	Western (#)	Western (%)	Metropolitan (#)	Metropolitan (%)
Total Infant WIC Participation per Region	16,682	14.1%	13,636	11.5%	88,208	74.4%
WIC Vendors per Region	552	12.8%	347	8.0%	3415	79.2%

^{*}See Attachment 14 - New York State WIC Program Regions

Each bidder shall provide evidence that it has, or can readily achieve (i.e. no later than 60 days after the contract start date), a distribution network that covers all of New York State. The preferred documentation is the submission of a list of all of the bidder's direct customer accounts (including name and address) that supply retail grocery stores in New York State. If the required distribution network is not proven through the submission of a customer account listing, then the bidder must provide additional evidence that it meets this requirement.

4. COMPETITIVE BID REBATE SYSTEM - CONTRACTOR

The contractor for infant cereal shall:

- a. Produce infant cereal in eight(8)-ounce containers in sufficient variety and amounts to meet WIC requirements, as described in section C.3., "Bidder Qualifications/ Certifications," for purchase with food instruments issued during the contract period. The infant cereal specified on the Infant Cereal Bid Sheet (Attachments 8), hereafter known as the bid cereal, must be in production and listed on the bidder's national wholesale price list as of the date of the bid submission.
 - If, for an infant cereal produced by the contractor and approved by the NYS WIC program, there are any changes to container size, container label, or product ingredients occurring during the contract period or the subsequent redemption period of checks issued during the contract period, the change must be communicated to the DOH at least 90 days before the change becomes effective. Discontinuation of any food produced by the contractor and approved by the NYS WIC program that occurs during the contract period or the subsequent redemption period of checks issued during the contract period must be communicated to the DOH at least 90 days before the cessation of production. If information about a planned change is considered by the contractor to potentially cause substantial injury to the contractor's competitive position if it became public, the contractor should designate which information is confidential and the DOH will maintain the information in a confidential manner.

If the contractor introduces a new federally WIC eligible infant food during the contract period, an announcement of such must be communicated to the DOH as soon as is practical for the contractor prior to inviting orders for the product.

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

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

- c. Remit to the DOH a rebate per container for all infant cereal produced by the contractor prior to or during the contract period and issued by the New York State WIC program during the contract period. The DOH is entitled to a rebate payment for all WIC food instruments for such infant cereal issued to WIC infants during the term of the contract and redeemed according to WIC program procedures. Samples of past rebate invoices for infant cereal are provided in Attachment 15. The initial rebate for each such food approved for issuance by the New York State WIC program as of the contract effective date will be computed by the DOH as follows:
 - i. Identify the discount percentage bid using Column C from the Bid Sheet (Attachment 8).
 - ii. Multiply the lowest national wholesale price per unit (at the time of bid submission) for a full truckload of each infant cereal product approved by the Department by the discount percentage. The results will be the initial rebates for each infant cereal product.

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

- d. Remit to the DOH a rebate per container for all infant cereal newly approved for issuance by the NYS WIC program on or after the contract effective date. The DOH reserves the right to determine whether any of the infant cereals produced by the contractor at the time of bid submission or any new infant cereal introduced by the contractor during the term of the contract will be approved for use in the New York State WIC program. In the event that an existing or new infant cereal is approved by the New York State WIC program during the contract term, the rebate for the added product will be computed as follows:
 - i. Identify the discount percentage in effect for the infant cereal named on the bid sheet (Attachment 8) as of the date that the DOH approves the new infant cereal product. The discount percentage is the rebate amount for the infant cereal on the bid sheet as of the date of approval of the new product, divided by the truckload wholesale price for the infant cereal on the bid sheet as of the date of approval of the new product.
 - ii. Apply the relevant discount percentage to the lowest truckload wholesale price of the newly-approved product in effect at the time that the Department approves the cereal. The result will be the rebate for the newly-approved infant cereal.

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

- e. Remit to the DOH a revised rebate per container when the contractor changes its lowest national wholesale price for a full truckload of a Department-approved infant cereal. When the contractor increases its lowest national wholesale price for a full truckload of an appr oved infant cereal, the rebate will automatically increase for each affected infant cereal product on a cent-for-cent basis. When the contractor decreases its lowest national wholesale price for a full truckload of an appr oved infant cereal, the rebate will automatically decrease for each affected infant cereal product on a cent-for-cent basis. Cent-for-cent increases or decreases in rebate amounts will take effect on the first day of the month in which the price increase or decrease occurs. The new rebate amount will apply to all redemptions occurring on or after the effective date of the rebate change. Any increase or decrease in the lowest national wholesale price for a full truckload of the bid cereal between the date of bid submission and the effective date of the contract will be added to or subtracted from the initial rebate amount for the bid formula.
- f. Notify the DOH of any wholesale price changes by telephone or electronic mail on the day the price adjustment is released to the contractor's regular customers, or another earlier date, as agreed to by the contractor and the DOH.
- g. Rebate the DOH for the infant cereal products on each redeemed food instrument used to purchase another company's infant cereal product when the entire line of the contractor's approved infant cereals has a factory backorder of three calendar days or more and another company's infant cereal will need to be substituted to provide the participant(s) with his/her monthly prescription. The rebate shall be calculated to yield the same net wholesale cost per container to the DOH as the product which is unavailable.

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

h. Make rebate payments to the DOH, based on the food instrument redemptions reported by the DOH. Invoices shall reflect, for each approved type of infant cereal, the name of the cereal, the applicable per-container rebate amount and the total number of containers redeemed within the invoice period. Invoices are supported by electronic data files maintained by the DOH and subject to audit.

Payments will be forwarded to the DOH by the contractor via wire transfer within thirty (30) days of the earliest postmark, fax or electronic transmission date of the invoice according to the wire transfer specifications that will be provided by the DOH with each invoice. If payment is not forwarded to the DOH within 30 days of the date

of the invoice, the contractor shall pay the DOH, in addition to the amount due, interest at a rate of one (1) percent per month, or portion thereof, on the unpaid balance from the expiration of such 30-day period until such time as payment is received by the DOH.

i. Notify the DOH, in writing, of any intent to dispute or investigate a potential error in the rebate invoice within 30 days of receipt of the invoice. After this 30-day period, any requirement to return funds to the contractor as a result of a dispute or over billing error is waived. Payments cannot be withheld by the contractor in the event of a dispute or billing error. The contractor may not withhold rebate payments based on rebate invoices issued by the DOH under any circumstances.

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

- j. Be totally and exclusively responsible for all costs related to the contractor's request for audits, inspections, and reviews of WIC program records created solely for this purpose, outside of the usual documents required to support invoices reflecting redeemed instruments. Access to actual or imaged food instruments or other confidential records shall be subject to federal and DOH confidentiality requirements.
- k. Meet with DOH biennially or more frequently as determined by either party. The location shall be in the offices of the Division of Nutrition or, at the discretion of DOH, by conference call.
- I. Address correspondence and communications regarding this contact according to the instructions provided in Appendix G of the contract (see Attachment 12). All communications regarding wholesale price increases, can size changes, reformulations, new products, or cessations in the production of any cereal must be in writing and the contractor must telephone or use electronic mail to confirm the DOH's receipt of the communication.
- m. Agree to fully indemnify and save harmless the DOH, as well as its officers, agents and employees without limitation from suits, actions, damages and costs of every name and description arising out of the acts or omissions of Contractor, its officers, employees, subcontractors, partners, or agents, in any performance under this contract, including but not limited to personal injury caused by use of contractor's cereal furnished pursuant to this contract, provided that the DOH shall give Contractor written notice of any action, claim, or other suit within 30 days of receiving notice of such action, claim, or other suit. Further, the Contractor shall be given the opportunity to take over, settle or defend itself in such action, claim or suit at Contractor's sole expense, together with reasonable cooperation from the DOH in the defense of any such action, also at the Contractor's expense.

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

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

COMPETITIVE BID REBATE SYSTEM – NEW YORK STATE

New York State shall:

- a. Supply the successful bidder with a list of currently authorized WIC vendors. The list will include the store name and address of each authorized vendor; no other information regarding WIC vendors will be provided for this list or for any other purpose. The Department will also notify all authorized WIC retail outlets to inform them of any change to approved infant cereals.
- b. Print contract brand infant cereal on WIC infant food instruments, with two possible exceptions. In the circumstances described in Section C.4.g. of this IFB, it may be temporarily necessary to print non-brand-specific infant food instruments. The state also reserves the right to issue a non-contract-brand food if the contract brand does not have kosher certification and the participant follows kosher dietary practices.
- c. Prepare invoices for the contractor's rebate payment; the invoice shall contain the infant cereal types, quantities and rebate amounts used to calculate the monthly rebate payment. The state shall transmit the invoice to the contractor via electronic mail or fax, followed by hard copy sent via a tracked mail carrier. Invoices will be prepared on an appr oximately monthly basis for the prior month's redemptions. Supplemental invoices will be prepared if ongoing state data system maintenance activities identify additional or corrected amounts.
- d. Upon resolution of a dispute, disburse in accordance with prompt payment provisions of Article 11 of the State Finance Law, any funds due the contractor.

e. Supply upon request records directly related to the monthly billings to the contractor for review. This review shall be limited to books, records, and documents related to the generation of monthly invoices and shall include and be limited to the following data elements for each food type:

Check Number
Type of Infant Cereal
Issue Date
Redemption Date
Number of Containers on Check

Each contractor may audit the books, records and documents of New York State that relate to the generation of monthly invoices. New York State shall retain all records for a minimum of three years. Individual applicant and/or participant records are confidential and exempt from audit by the contractor in accordance with 7 CFR Part 246 of the Federal Regulations for the Special Supplemental Food Program for Women, Infants and Children. Vendor confidentiality will also be maintained as noted in section C.5.a. of this IFB.

- g. Meet with the contractor biennially or more frequently as determined by either party. The location shall be in the offices of the Division of Nutrition or, at the discretion of the state, by conference call.
- COMPETITIVE BID REBATE SYSTEM CONTRACTOR AND NEW YORK STATE

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

D. BID REQUIREMENTS

1. BID SUBMISSION INSTRUCTIONS

IMPORTANT NOTICE TO POTENTIAL BIDDERS:

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

Bids must be enclosed in two separate, <u>sealed</u> envelopes and should be marked "BID ENCLOSED" and labeled with the BID NUMBER and the BID OPENING DATE on the outside of the envelope. One envelope is to be labeled "Technical Response" and one envelope is to be labeled "Cost Proposal." The required contents of the two envelopes are listed below. The two bid envelopes are to be packaged together, and delivered to:

Bureau of Supplemental Food Programs
Division of Nutrition
NYS Department of Health
150 Broadway, Suite 650
Albany, NY 12204-2719
ATTENTION: James Featherstone / Bid Enclosed

All items identified as '**MANDATORY**' must be included with the bid submission package. Failure to provide any of the mandatory items will result in disqualification of the bid.

Contents of the "Technical Response" Envelope:

- Two (2) signed originals and three (3) copies of the "Cover Sheet" (Attachment 5)
- Two (2) signed originals, including the required attachments to the form (MANDATORY) and three (3) copies of the "Technical Certifications Form" (Attachment 6), including the required attachments to the form
- Two (2) signed originals and three (3) copies of the "Vendor Responsibility Attestation" (Attachment 1) or completed "Vendor Responsibility Questionnaire" (Attachment 13)
- Labels/Nutrition Panels Bidders should include five (5) sets of package flats/label OR label images (including nutrition panels) for all WIC-eligible infant cereals.
- Two (2) signed originals and three (3) copies of the Checklist for Bidders (Attachment 15)

Contents of the "Cost Proposal" Envelope:

- Two signed originals (MANDATORY) and three copies of the "NYS Department of Health Lobbying Form" (Attachment 4)
- Two signed originals and three copies of the "Cover Sheet" (Attachment 5)
- Two signed originals (MANDATORY) and three copies of the completed and signed Bid Sheet – Infant Cereal (Attachment 8).

The bid sheet will be reviewed for completeness and signature, and to determine the lowest total net wholesale cost to the state. The bid sheets must be signed by a company representative with authority to commit the company to the bid package. Instructions for completing the bid sheet are provided as Attachment 7.

- Two signed originals (MANDATORY) and three copies of the "M/WBE Utilization Plan (Attachment 11)
- National Wholesale Price List Bidders must include their national wholesale price list(s) for all WIC-eligible infant cereals showing all weight tiers available effective the date of bid submission (MANDATORY) and four copies of this price list.

NOTICE TO NON-BIDDERS:

If your company elects NOT to submit a bid, you are requested to complete and return a copy of the "No-Bid Form" (Attachment 10) to the address above.

2. EVALUATION & SELECTION METHOD

At the discretion of the Department of Health, all bids may be rejected.

The State will award the infant cereal contract to the responsible and responsive bidder who offers the lowest total monthly Net Wholesale Cost for infant cereal.

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

- Past experience
- References

The Department of Health will issue a contract to the successful bidder(s) after the selection process. Contract(s) issued by DOH are subject to Office of the State Comptroller (OSC) approval.

In order to be considered responsible and responsive, the bid must include all Invitation for Bid (IFB) required documents and meet the minimum qualifications as stated below. Bids that do not meet the minimum qualifications will not be considered for award.

E. ADMINISTRATIVE

1. ISSUING AGENCY

This IFB is a solicitation issued by the New York State Department of Health. The Department is responsible for the requirements specified herein and for the evaluation of all bids.

2. INQUIRIES

Any questions concerning this solicitation should be submitted in writing by 5:00PM on the date indicated on the cover of this IFB. Questions should reference the IFB number on the cover page of this IFB, and be submitted via an email to WICIFBS@health.ny.gov or by delivery to the following address:

James Featherstone
Bureau of Supplemental Food Programs
Division of Nutrition
NYS Department of Health
150 Broadway – Suite 650
Albany, New York 12204-2719

Telephone calls regarding this IFB will not be accepted. A copy of the questions and answers, as well as any IFB updates and or modifications related to this IFB will be posted on the Department of Health's website at http://www.health.ny.gov/funding/ by the date indicated on the cover of this IFB.

3. BIDDERS' CONFERENCE

No bidders' conference will be held as part of this procurement.

4. SUBMISSION OF BIDS

Prepare your bid on the attached forms. Print the name of your company on each page of the bid in the block provided.

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

As stated in Section D, the Technical Response and the Cost Proposal are to be <u>sealed</u> in <u>separate</u> envelopes/packages. The sealed envelopes are to be marked "BID ENCLOSED" and labeled with the BID NUMBER and the BID OPENING DATE on the outside of the envelope. One envelope is to be labeled "Technical Response" and one envelope us to be labeled "Cost Proposal."

Interested vendors should submit two (2) originals and three (3) signed copies of their bid no later than **2:00PM** on the date indicated on the cover of this IFB to the following address:

Bureau of Supplemental Food Programs
Division of Nutrition
NYS Department of Health
150 Broadway, Suite 650
Albany, NY 12204-2719
ATTENTION: James Featherstone / Bid Enclosed

Bidders assume all risks for timely, properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of bids to DOH **prior to** the date of the bid opening. Bidders must allow extra time to comply with the security procedures in effect at the Riverview Center building when hand delivering bids or delivering by independent courier services. **LATE BIDS will be rejected. E-**

The Lobbying Form (Attachment 4) must be filled out in its entirety.

mail bid submissions are not acceptable and will not be considered.

- The responsible corporate officer for contract negotiation must be listed on the Lobbying Form. This document must be signed by the responsible corporate officer.
- All evidence and documentation requested under Section D, Bid
 Requirements must be provided at the time the proposal is submitted.

Manufacturers choosing not to bid are asked to submit a No-Bid form (Attachment 10 of this IFB) to the above address by the Bid Due date and time indicated on the cover of this IFB.

a. PUBLIC BID OPENING

Bid packages will be opened on the date and time indicated on the cover of this IFB in the offices of the Division of Nutrition (Riverview Center.

150 Broadway Suite 650, Albany, NY 12204-2719). Bidders are welcome to send up to two representatives to witness the package openings. There will be at least two representatives from the State present at the opening.

At the opening, the bidders' company names will be announced, the cost proposal envelopes will be opened, and the amounts will be read aloud. No other information will be opened or shared. The contract **will not** be awarded at the time of the bid opening. The following steps must be completed by the Bureau of Supplemental Food Programs after the bid opening and before a written award is made:

- Verification of all calculations on the Bid Sheets.
- Opening and pass/fail review of the bidders' technical proposals.
- Review of Bid Forms and Vendor Responsibility Attestation forms for completeness and signature.
- Submission of documentation of the contractor selection process to State executive staff and receipt of their approval.

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

The offer of pricing information is voluntary but every offer shall be firm and not revocable for a period of 365 days or until released by the state, whichever occurs first.

5. THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO

- a. Reject any or all proposals received in response to the IFB;
- b. Withdraw the IFB at any time, at the agency's sole discretion;
- c. Make an award under the IFB in whole or in part;
- d. Disqualify any bidder whose bid fails to conform to the requirements of the IFB;
- e. Seek clarifications and revisions of proposals;
- f. Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the IFB;

- g. Prior to the **bid opening**, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- h. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent IFB amendments;
- i. Change any of the scheduled dates;
- j. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- k. Waive any requirements that are not material;
- I. Negotiate with the successful bidder within the scope of the IFB in the best interests of the state;
- m. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- n. Utilize any and all ideas submitted in the proposals received;
- o. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 365 days from the bid opening; and,
- p. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.

6. PAYMENT

The contractor shall make monthly rebate payments to the State, based on the food instrument redemptions reported by the State.

Invoices shall reflect the total number of containers of each type of infant cereal redeemed within during the preceding calendar month, with a breakdown of the months in which the infant cereal checks were issued. Each total will be multiplied by the applicable rebate amount. The products of these calculations will be summed to arrive at the total invoice amount.

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

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

7. TERM OF CONTRACT

It is the intention of the State to enter into a contract for a term of five (5) years as stated on the Invitation for Bid except that the commencement and termination dates appearing on the Invitation for Bid may be adjusted by the State for any resulting contract for up to two calendar months, by indicating such change on the Contract Award Notification. The contract dates may be adjusted forward beyond two months only with the approval of the successful bidder. If, however, the bidder is not willing to accept an adjustment of the contract dates beyond the two month period, the State reserves the right to proceed with an award to another bidder.

This agreement may be canceled at any time by the Department of Health giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

Prices or discounts quoted are to be firm for the entire period of the contract. Price escalation or discount reduction will <u>not</u> be allowed and is specifically excluded from the terms and conditions of the Invitation for Bid, its specifications and subsequent contract award. Price decreases or discount increases are permitted at any time.

8. DEBRIEFING

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

9. PROTEST PROCEDURES

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

10. VENDOR RESPONSIBILITY QUESTIONNAIRE

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire (Attachment 13). To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at https://portal.osc.state.ny.us. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Bidders must also complete and submit the Vendor Responsibility Attestation (Attachment 1).

11. LOBBYING STATUTE

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

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

- g. expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal–State Agreements, and procurement contracts;
- h. modifies the governance of the New York State Commission on Public Integrity
- i. provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
- j. increases the monetary threshold which triggers a lobbyists obligations under the Lobbying Act from \$2,000 to \$5,000; and
- k. establishes the Advisory Council on Procurement Lobbying.

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

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

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

12.ACCESSIBILITY OF STATE AGENCY WEB-BASED INTRANET AND INTERNET INFORMATION AND APPLICATIONS

Any web-based intranet and internet information and applications development, or programming delivered pursuant to the contract or procurement will comply

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

13.INFORMATION SECURITY BREACH AND NOTIFICATION ACT

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Notification of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after measures are taken to determine the scope of the breach and to restore integrity; provided. however, that notification may be delayed if law enforcement determines that expedient notification would impede a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: the Attorney General, the Office of Cyber Security & Critical Infrastructure Coordination (CSCIC) and the Consumer Protection Board (CPB). Information relative to the law and the notification process is available at: http://www.dhses.ny.gov/ocs/incident-reporting

14. NEW YORK STATE TAX LAW SECTION 5-A (ATTACHMENTS 2 AND 3)

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

for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

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

Contractor must complete and submit directly to the New York State Taxation and Finance, Contractor Certification Form ST-220-TD attached hereto (Attachment 3). Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new form (ST-220-TD) must be filed with DTF.

Contractor must complete and submit to the Department of Health the form ST-220-CA attached hereto (Attachment 2), certifying that the contractor filed the ST-220-TD with DTF. Failure to make either of these filings may render an offerer non-responsive and non-responsible. Offerers shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

15. PIGGYBACKING

New York State Finance Law section 163(10)(e) (see also http://www.ogs.state.ny.us/procurecounc/pdfdoc/pgbcl288.pdf) 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.

16. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY AND WOMAN OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

NEW YORK STATE LAW

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

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

Business Participation Opportunities for MWBEs

For purposes of this solicitation, New York State Department of Health hereby establishes an overall goal of N/A% for MWBE participation, N/A% for Minority-Owned Business Enterprises ("MBE") participation and N/A% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and C ontractor agrees that New York State Department of Health may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: http://www.esd.ny.gov/mwbe.html.

For guidance on how New York State Department of Health will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and New York State Department of Health may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract ("Bidder") agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Bidders are required to submit a MWBE Utilization Plan on Form #1 with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to New York State Department of Health.
- B. New York State Department of Health will review the submitted MWBE Utilization Plan and advise the Bidder of New York State Department of Health acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the DOH, address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by New York State Department of Health to be inadequate, New York State Department of Health shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #2. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. New York State Department of Health may disqualify a Bidder as being non-responsive under the following circumstances:
 - a) If a Bidder fails to submit a MWBE Utilization Plan;
 - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - c) If a Bidder fails to submit a request for waiver; or
 - d) If New York State Department of Health determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to New York State Department of Health, but must be made prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report on Form #3 to the New York State Department of Health address, phone and fax information, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and

improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan (Form #4) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the New York State Department of Health, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

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

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

17. APPENDIX A, STANDARD CLAUSES FOR ALL NYS CONTRACTS (ATTACHMENT 12)

Standard Clauses for New York State Contracts, dated December 2012, attached hereto, is hereby expressly made a part of this Invitation for Bid document as fully as if set forth at length herein. Please retain this document for future reference. The contractor agrees to comply with Appendix A, Standard Clauses for New York State Contracts.

18. REGULATORY COMPLIANCE

Environmental: If the payments pursuant to the contracts are expected to exceed \$100,000, the bidder must comply with Section 306 of the Clean Air Act (42 U.S.C. 1857{L}, Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40

C.F.R. Part 15), which prohibit the use of pollutants under non-exempt Federal contracts, grants or loans of facilities included on the EPA list of Violating Facilities. Violations are to be reported to the applicable Federal agency and to the U.S.E.P.A. Assistant Administrator for Enforcement (EN-329).

Anti-Kickback: The bidder must comply with the provisions of the "Anti-Kickback" section of the Copeland Act (18 U.S.C. Section 874) which prohibits "kickbacks" from public works employees and applies to any contract assisted in whole or in part by loans or grants from the Federal Government, except those contracts where the only federal assistance is a loan guarantee. Violators are subject to a fine or imprisonment of not more than five years, or both.

19. NON-COLLUSIVE BIDDING CERTIFICATION (REFERENCE: STATE FINANCE LAW SECTION 139-D AND APPENDIX A, CLAUSE 7)

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

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

20. CONFIDENTIALITY/FREEDOM OF INFORMATION LAW

During the evaluation process, the content of each bid/proposal will be held in confidence and details of any bid/proposal will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process.

SHOULD YOU FEEL YOUR FIRM'S BID/PROPOSAL CONTAINS ANY SUCH TRADE SECRETS OR OTHER CONFIDENTIAL OR PROPRIETARY INFORMATION, YOU MUST SUBMIT A REQUEST TO EXCEPT SUCH INFORMATION FROM DISCLOSURE. SUCH REQUEST MUST BE IN WRITING, MUST STATE THE REASONS WHY THE INFORMATION

SHOULD BE EXCEPTED FROM DISCLOSURE AND MUST BE PROVIDED AT THE TIME OF SUBMISSION OF THE SUBJECT INFORMATION.

REQUESTS FOR EXEMPTION OF THE ENTIRE CONTENTS OF A BID/PROPOSAL FROM DISCLOSURE HAVE GENERALLY NOT BEEN FOUND TO BE MERITORIOUS AND ARE DISCOURAGED. KINDLY LIMIT ANY REQUESTS FOR EXEMPTION OF INFORMATION FROM DISCLOSURE TO BONA FIDE TRADE SECRETS OR SPECIFIC INFORMATION, THE DISCLOSURE OF WHICH WOULD CAUSE A SUBSTANTIAL INJURY TO THE COMPETITIVE POSITION OF YOUR FIRM.

21. SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

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

22. IRAN DIVESTMENT ACT

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

During the term of the Contract, should the Department of Health receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Department of Health will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Department of Health shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

The Department of Health reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

F. APPENDICES

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

- APPENDIX A Standard Clauses for All New York State Contracts
- APPENDIX B New York State Office of General Services General Specifications
- □ APPENDIX C The "Invitation for Bids" Document
- APPENDIX C-1 Proposal
 The bidder's proposal (if selected for award), including any Bid Forms and all proposal requirements.
- □ APPENDIX D General Specifications
- APPENDIX E

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

- Workers' Compensation, for which one of the following is incorporated into this contract as **Appendix E-1**:
 - CE-200, Affidavit For New York Entities And Any Out-Of-

State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR

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

CONFLICT OF TERMS AND CONDITIONS

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

- 1. Appendix A (Standard Clauses for New York State Contracts)
- 2. Appendix C (The "Invitation for Bids" document)
- 3. Any added Contract/Clarification Documents
- 4. Appendix C-1 (The selected bidder's proposal)
- 5. Appendix D (NYS DOH General Specifications)
- 6. Appendix G Notices
- 7. Appendix M

G. ATTACHMENTS

Attachment 1	Vendor Responsibility Attestation
Attachment 2	Form ST220-CA: Contractor Certification to Covered Agency
Attachment 3	Form ST-220-TD: Contractor Certification to NYS Tax and Finance
Attachment 4	Lobbying Form
Attachment 5	Vendor Cover Sheet
Attachment 6	Technical Certifications Form
Attachment 7	Instructions for Completing Bid Sheets
Attachment 8	Bid Sheet – Infant Cereal
Attachment 9	No-Bid Form
Attachment 10	M/WBE Utilization Plans
Attachment 11	Sample Contract Language and Appendices
Attachment 12	Vendor Responsibility Questionnaire – For Profit Business Entity
Attachment 13	NYS WIC Program Regions
Attachment 14	Checklist for Bidders
Attachment 15	Sample Infant Cereal Rebate Invoices

ATTACHMENT 1 – VENDOR RESPONSIBILITY ATTESTATION

Vendor Responsibility Attestation

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

Choose	one:
	An on-line Vender Responsibility Questionnaire has been updated or created at OSC's website: https://portal.osc.state.ny.us within the last six months.
	A hard copy Vendor Responsibility Questionnaire is included with this proposal/bid and is dated within the last six months.
	A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.
Signatui	re of Organization Official:
Print/typ	pe Name:
Title:	
Organiz	ation:
Date Sic	med:

ATTACHMENT 2 – FORM ST-220-CA: CONTRACTOR CERTIFICATION TO COVERED AGENCY
An electronic fill-in version of the NYS Taxation and Finance Contractor Certification Form ST-220-CA can be found at:
http://www.tax.ny.gov/forms/form_number_order_st_y.htm

ATTACHMENT 3 – FORM ST-220-TD: CONTRACTOR CERTIFICATION TO NYS TAX AND FINANCE
An electronic fill-in version of the NYS Taxation and Finance Contractor Certification Form ST-220-TD, can be found at:
An electronic fill-in version of the NYS Taxation and Finance Contractor Certification Form ST-220-TD, can
An electronic fill-in version of the NYS Taxation and Finance Contractor Certification Form ST-220-TD, can be found at:
An electronic fill-in version of the NYS Taxation and Finance Contractor Certification Form ST-220-TD, can be found at:
An electronic fill-in version of the NYS Taxation and Finance Contractor Certification Form ST-220-TD, can be found at:
An electronic fill-in version of the NYS Taxation and Finance Contractor Certification Form ST-220-TD, can be found at:
An electronic fill-in version of the NYS Taxation and Finance Contractor Certification Form ST-220-TD, can be found at:
An electronic fill-in version of the NYS Taxation and Finance Contractor Certification Form ST-220-TD, can be found at:
An electronic fill-in version of the NYS Taxation and Finance Contractor Certification Form ST-220-TD, can be found at:

ATTACHMENT 4 – LOBBYING FORM

NEW YORK STATE DEPARTMENT OF HEALTH

LOBBYING FORM

PR	OCUREMENT TITLE:		FAU #	_
	lder Name: lder Address:			
Bic	lder Fed ID No:			
A.	(Name of Offerer/Bidder)	hereby	submits the enclosed bid.	
В.	Affirmations & Disclosures	related to State Fina	nnce Law §§ 139-j & 139-k:	
		-	grees to comply with the procedures or vided below) as required by State Fin	-
	restrictions on communications be An Offerer/bidder is restricted from award and approval of the Proc ("restricted period") to other than set forth in State Finance Law §13 this <i>Invitation for Bid, Invitation</i> certain information when contact Offerer/bidder pursuant to these to award and in the event of two find	etween the Department of m making contacts from curement Contract by designated staff unless 39-j (3) (a). Designated for Bid, or other solidited during the restricted two statutes. Certain fidings within a 4 year perinformation about these	vitation for Bid or Invitation for Bid includes of Health (DOH) and an Offerer during the parties the earliest notice of intent to solicit bids/protected by the DOH and, if applicable, Office of the it is a contact that is included among certain distaff, as of the date hereof, is/are identified by the bid by the bid period and make a determination of the findings of non-responsibility can result in responsibility the Offerer/bidder is debarred from obtain the proof of the found on the Office default Advisory Council.html	procurement process. opposals through final e State Comptroller a statutory exceptions d on the first page of so required to obtain responsibility of the rejection for contract taining governmental
		to the Procurement Yes	g of non-responsibility regarding the i Contract in the previous four years? (
	1a. Was the basis for the §139-j (Please circle No		onsibility due to a violation of State	Finance Law
			consibility due to the intentional provital Entity? (Please circle):	sion of false or
	No	Yes		

1c. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.
Governmental Entity:
Date of Finding of Non-responsibility:
Basis of Finding of Non-Responsibility:
(Add additional pages as necessary)
2a. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle): No Yes
2b. If yes, please provide details below.
Governmental Entity:
Date of Termination or Withholding of Contract:
Basis of Termination or Withholding:
(Add additional pages as necessary)

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

	Bidder agrees to pro award as indicated	ovide the following documentation either with their submitted bid/proposal below:
With Bid	Upon Award	
		 A completed N.Y.S Taxation and Finance Contractor Certification Form ST- 220.
		2. A completed N.Y.S. Office of the State Comptroller Vendor Responsibility Questionnaire (for procurements greater than or equal to \$100,000)
N/A 3. A completed State Consultant Services Form A, Contractor's Planned Employment from Contract Start Date through End of Contract Term		
	(Officer Signature)	(Date)
	(Officer Title)	(Telephone)
		(e-mail Address)

ATTACHMENT 5 – VENDOR COVER SHEET

Vendor Cover Sheet

Name of Company		Federal Tax ID Number	
Company Address	Invoice Address		
Name of Company Official Submitting Bid (Print or Type)	Title		
Authorized Signature		Date	
Phone		Extension	
Toll Free Phone	Extension		
Fax	Extension		
E-Mail Address			
Company Web Site			
Person or Persons to Contact for Contract Administration	:		
Name (s)			
Phone		Extension	
Toll Free Phone		Extension	
Fax		Extension	
E-Mail Address (es)			

ATTACHMENT 6 – TECHNICAL CERTIFICATIONS FORM

NEW YORK STATE DEPARTMENT OF HEALTH Invitation for Bids WIC Infant Cereal Rebate System

TECHNICAL CERTIFICATIONS FORM

NAME OF BIDDER:	:	

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

Bidders may not alter any of the language included in this attachment. Agreement to all of these terms is mandatory. Failure to agree to these terms will result in disqualification of the bid submission.

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

- 1. Is an infant cereal manufacturer.
- 2. Produces a minimum of four (4) types of dry, plain infant cereal, including single grain rice and single grain oatmeal, plus a minimum of two additional varieties, in 8-ounce containers. All infant cereals meet federal, state and local regulations governing cereal, and contain a minimum of 45 milligrams of iron per 100 grams of dry cereal.
- 3. Produces infant cereal in a manner that meets or exceeds all federal, state and industry standards and requirements.
- 4. Affirms that the infant cereal is the same as is furnished to the general trade.
- 5. Has a product recall program that provides for immediate notification to all direct purchasers of the company's products.
- 6. Labels as "Kosher" only those products that comply with the standards associated with a common accepted Kosher symbol as identified by the Chicago Rabbinical Council.
- 7. Can produce infant cereal in sufficient quantity to serve 100 percent of New York State WIC participants' maximum infant cereal issuance. *Documentation that the bidder operates an organization capable of doing this work must be attached see end of this attachment.*
- 8. Can distribute infant cereal, directly or via wholesalers/ distributors, to retail outlets throughout New York State. *Documentation of a statewide distribution network must be attached see end of this attachment.*
- 9. Guarantee availability of NYS WIC-approved contract infant cereal to all of the program's authorized vendors through currently used marketing channels or practices, or make such distribution changes as are needed to guarantee availability.

- 10. Agrees to provide a rebate on all WIC-eligible infant cereal manufactured by the bidder, approved by the NYS WIC program, and covered under the contract resulting from this IFB.
- 11. Certifies, along with each person signing on behalf of the company, under penalty of perjury, that to the best of their knowledge and belief:
 - A. This bid has been arrived at independently without collusion aimed at restricting competition;
 - B. The bidder has not disclosed, and will not knowingly disclose, the company's intent to bid (or not bid) and the amounts (rebate amount and percent discount) and formula name(s) included in this bid prior to the bids due date and time indicated on the cover of this IFB;
 - C. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
- 13. Accepts as lawful and binding, and will abide by, the bid submission requirements and rules, and the procurement procedures, processes, and specifications identified in the IFB, including any IFB addenda and all appendices to this IFB.

Name of Business	Signature
Address	Typed Copy of Signature
City, State, Zip	

ATTACH THE FOLLOWING DOCUMENTATION:

□ Documentation of Business Experience

SIGNATURE

Each bidder shall provide evidence that it has continually operated, for at least the past three years, an organization capable of performing the work described in this IFB for each type of infant food on which it bids. The preferred documentation is the submission of a Dun & Bradstreet Business Information Report. If the required business experience is not proven through the submission of a Dun & Bradstreet Business Information Report, then Bidder must provide to the satisfaction of DOH, some other form of evidence that it meets this requirement.

□ Documentation of Distribution Capability

Each bidder shall provide evidence that it has, or can readily achieve (i.e. no later than 60 days after the contract start date), a distribution network that covers all of New York State. The preferred documentation is the submission of a list of all of the bidder's direct customer accounts (including name and address) that supply retail grocery stores in New York State. If the required distribution network is not proven through the submission of a customer account listing, then the bidder must provide additional evidence that it meets this requirement.

ATTACHMENT 7 – INSTRUCTIONS FOR COMPLETING BID SHEETS

NEW YORK STATE DEPARTMENT OF HEALTH INSTRUCTIONS FOR COMPLETING BID SHEETS

As part of their bid packages, bidders must include:

• 2 originals and 3 copies of a completed and signed Bid Sheet – Infant Cereal (Attachment 8)

Bidders must use the Microsoft Excel spreadsheet file provided by the NYS Department of Health as part of this solicitation to prepare their Bid Sheets. No other format will be considered. Failure to use the format provided by the NYS Department of Health will result in disqualification of the bid.

On the bid sheet, bidders must:

- Complete the company identification information at the top of the sheet.
- Indicate the name of the bid infant cereal food on the 'Product Name" line under the
 company identification information. If the bidder's WIC-eligible cereals have varying
 wholesale prices, the least expensive food should be listed. For example, if a
 manufacturer produces several kinds of WIC-eligible infant cereal, and charges a lower
 wholesale price for rice cereal than for oatmeal, barley, wheat, mixed-grain etc. cereal, "
 'Brand' Rice Cereal" should be indicated on the 'Product Name' line.
- In column (A) of the table, enter the lowest wholesale cost per container for a full truckload of the infant cereal listed on the 'Product Name" line or lines. Please include four (4) decimal places.
- In column (B) of the table, indicate a rebate amount per container for the infant or cereal
 on which your company is bidding. Include four (4) decimal places. The rebate is the
 dollar amount per container that will be returned to the State under the terms of the
 contract awarded as a result of this IFB.
- Column (E) is pre-filled. The Microsoft Excel files will calculate columns (C), (D), and (F) of the table.
- Print a hard copy of the sheet.
- Have the sheet signed by a company representative with authority to commit the company to the bid package.
- Include 2 originals and 3 copies of the signed sheet in the Cost Proposal Envelope of the bid package.

ATTACHMENT 8 – BID SHEET - INFANT CEREAL

BID SHEET - INFANT CEREAL

NEW YORK STATE WIC PROGRAM Invitation for Bids for WIC Infant Foods Rebate System							
Product Name - Lowest Wholesale C	ost Federally	WIC-Eligible Cereal:	:				
		l A	В	С	D	E	F
		, ,		Rebate Bid		Estimated	·
		Wholesale Cost per		Divided by TL	Net Wholesale	Number of	
		Container for Full	Rebate Bid per	Wholesale (%	Cost per	Containers	Total Net
	Container	Truckload (4	Container (4	with 2 decimal	Container (4	Purchased per	Wholesale Cost
Type of Baby Food	Size	decimal places)	decimal places)	places)	decimal places)	Month	per Month
Type of Baby 1 ood	Size	decimal places)	decimal places)	[B / A]	[A – B]	Wienu	[D x E]
Infant Cereal	8 ounce	\$0.0000	\$0.0000		\$0.0000	143,300	
Grand Total - Net Wholesale Cost to the	ne State						\$0.0000
CERTIFICATION							
The bidder hereby certifies that this co Invitation for Bids.	mpany agrees	s to provide services	s and/or items at	the prices quoted	according to the	terms outlined i	n this
Signature of Company Representative				Title:			
Printed Name:				Date:			

ATTACHMENT 9 – NO-BID FORM

NEW YORK STATE DEPARTMENT OF HEALTH

NO-BID FORM

PROCU	JREMENT TITLE:	FAU #	
Bidde below	ers choosing not to bid are requex:	uested to complete the p	portion of the form
	We do not provide the requested services.	. Please remove our firm from y	our mailing list
	We are unable to bid at this time because:	:	
			_
			_
	☐ Please retain our firm on your mailing	g list.	_
		(Firm Name)	
	(Officer Signature)		(Date)
	(Officer Title)		(Telephone)
		(e-mail Address)	

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

ATTACHMENT 10 – M/WBE UTILIZATION PLAN

New York State Department of Health M/WBE Procurement Forms

The following forms are required:

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

M/WBE Form#1: Bidder's M/WBE Utilization Plan

M/WBE Form#2: M/WBE Waiver Request

M/WBE Form#3: QUARTERLY UPDATE - M/WBE CONTRACTOR

COMPLIANCE & PAYMENT Report

M/WBE Form#4: M/WBE Staffing Plan

M/WBE Form#5: Equal Employment Policy Statement - Sample

M/WBE Form#6: M/WBE Workforce Employment Utilization Report

- M/WBE Form #1 -

New York State Department of Health

BIDDER/CONTRACTOR M/WBE UTILIZATION PLAN

Bidder/Contractor Name:			
	Telephone No.		
Vendor ID:			
	RFP/Contract No.		
RFP/Contract Title:			
Description of Plan to Meet M/WBE Goals			
Description of Flan to meet my MDL dods			
DDO IECTED M/MDE LIGAGE			

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

New York State Department of Health BIDDER/CONTRACTOR PROPOSED M/WBE UTILIZATION PLAN MINORITY OWNED BUSINESS ENTERPRISE (MBE) INFORMATION

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

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

New York State Department of Health BIDDER/CONTRACTOR PROPOSED M/WBE UTILIZATION PLAN WOMEN OWNED BUSINESS ENTERPRISE (WBE) INFORMATION

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

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

- M/WBE Form #2 - New York State Department of Health

M/WBE UTILIZATION WAIVER REQUEST

Bidder/Contractor Name:	
	Telephone No.
Vendor ID:	
	RFP/Contract No.
RFP/Contract Title:	
Explanation why Bidder/Contractor this project.:	r is unable to meet M/WBE goals for
Include attachments below to evidence g	ood faith efforts:
	rade and MWBE-oriented publications and dates of
	cipation as a subcontractor/supplier and copies of such
solicitation.	
	pearing in the Empire State Development MWBE direc
	oof of dates or copies of the solicitations and copies of
·	cribe specific reasons that responding certified MWBE
were not selected.	
	cuments/plans/specifications made available to certifie
	participation and steps taken to structure the scope of
for the purpose of subcontracting with or obtain	
	between the contractor and certified MWBEs for the
purposes of complying with the MWBE goals o	
	re-award or other meetings attended by contractor, if a
	m OGS determined were capable of fulfilling the MWBI
goals set in the contract.	
Attachment F. Other information deemed relev	
Section 4: Signature and Contact Information	
	actor certifies that a good faith effort has been made to
· · · · · · · · · · · · · · · · · · ·	MWBE requirements set forth under the contract. Failu
•	y result in a finding of noncompliance, non-responsibilit
and a suspension or termination of the contrac	t.
Submitted by .	Title•
Submitted by :	Title:
Signature	

- M/WBE Form #3 -

New York State Department of Health QUARTERLY UPDATE M/WBE CONTRACTOR COMPLIANCE & PAYMENT REPORT

Contractor Name:			L Carrier of Na
Contract Title:			Contract No.
TOTAL DROJECTED MANDE USAGE (from	original M/M	/DE Hillizati	on Dian)
TOTAL PROJECTED M/WBE USAGE (from	%	Amount	on Fian)
Total Dollar Value Contract	100	\$	
	100	•	
2. Planned MBE Goal Applied to the Contract		\$	
3. Planned WBE Goal Applied to the Contract		\$	
4. M/WBE Combined Totals		\$	
ACTUAL M/WBE USAGE* AS OF		(insert date)	
ACTUAL III/WEL COAGE ACCT	%	Amount	
Total Dollar Value Completed to date	100	\$	
2. MBE Utilization to date		\$	
		·	
3. WBE Utilization to date		\$	
4. M/WBE Combined Utilization to date		\$	
* Report usage from contract start date to quarte	erly end-date	inserted abo	ve.
Explain any deficiencies in atta	ining M/W	BE goals	in the space below
Submitted by		Title:	
Submitted by :		ттсте:—	
Signature			

- M/WBE Form #4 -

New York State Department of Health M/WBE STAFFING PLAN

Check applicable cate	gories:	Pro	oject St	taff	Consul	tants	
	□sı	ubconti	ractors				
Contractor							
Address							-
STAFF	Total	Male	Female	Black	Hispanic	Asian/ Pacific Islander	Other
H. Administrators							
Managers/Supervisors							
Professionals							
Technicians							
Clerical							
Craft/Maintenance							
Operatives							
Laborers							
Public Assistance Recipients							
TOTAL							
(Name and Title)							
(Signature)							
Date							

- M/WBE Form #5 -

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

M/WBE AND EEO POLICY STATEMENT

Signature & Date

set by the State for that area in which the State-funded project is located, by taking the following steps: (1) Actively and af firmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations. (2) Request a List of State-certified M/WBEs from AGENCY and solicit bids from them directly. (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective m/WBEs. (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.	(a) This organization will not discriminate against any employee or applicant for pecause of race, creed, color, national origin, sex, by or marital status, will undertake or continue trams of affirmative action to ensure that minority
Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE Rights Law, contract participation goals. (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and ot her credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation. (6) Ensure that progress payments to M/WBEs are made on subcontractor applicant for each sex, national disability, pre domestic vio requirements discrimination arrest. (6) Ensure that progress payments to M/WBEs are made on subcontractor applicant for each sex, national disability, pre domestic vio requirements discrimination arrest. (6) Ensure that progress payments to M/WBEs are made on subcontractor applicant for each sex, national disability, pre domestic vio requirements discrimination arrest. (6) This organt that the matter of the contractor applicant for each sex, national disability, pre domestic vio requirements discrimination arrest.	ers are afforded equal employment opportunities imination, and shall make and document its and ac tive efforts to employ and utilize minority rs and women in its work force on state contracts. anization shall state in all solicitation or its for employees that in the performance of the call qualified applicants will be afforded equal apportunities without discrimination because of race, national origin, sex disability or marital status. Quest of the contracting agency, this organization to each employment agency, labor union, or presentative will not discriminate on the basis of color, national origin, sex, age, disability or marital stat such union or representative will affirmatively the implementation of this organization's obligations or shall comply with the provisions of the Human all other State and Federal statutory and non-discrimination provisions. Contractor and is shall not discriminate against any employee or employment because of race, creed (religion), color, origin, sexual orientation, military status, age, disposing genetic characteristic, marital status or lence victim status, and shall also follow the of the Human Rights Law with regard to nonon the basis of prior criminal conviction and prior inization will include the provisions of sections (a) of this agreement in every subcontract in such a the requirements of the subdivisions will be binding becontractor as to work in connection with the State

- M/WBE Form #6 -

New York State Department of Health WORKFORCE EMPLOYMENT UTILIZATION REPORT

C	Check applicable categories: \square Project Staff \square Consultants							
	Subcontractors							
C	Contractor Name Contract #							
_								
Staf	f Used on Contract for	the qua	arter _	/ /	to	<u>/ /</u>	Asian/	
	STAFF	Total	Male	Female	Black	Hispanic	Pacific Islander	Other
	I. Administrators							
	Managers/Supervisors							
	Professionals							
	Technicians							
	Clerical							
	Craft/Maintenance							
	Operatives							
	Laborers							
	Public Assistance Recipients							
	TOTAL							
Expla	in variances from original	inal st	affing	plan su	ubmitte	ed in the	space be	low:
-	Name and Title)				_			
(Mamo did IICIC/							
(Signature)							
_	nto							

ATTACHMENT 11 – SAM	IPLE CONTRACT LAN	GUAGE AND APPENDICES

MISCELLANEOUS / CONSULTANT SERVICES

	E AGENCY (Nar	ne and Address):	NYS COMPTROLLER'S NUMBER: X#			
	ng Tower		ORIGINATING AGENCY GLBU: DOH01			
	y, NY 12237		DEPARTMENT ID: 3450270			
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	ence snall be given	en to these documents in t	ne order listed below. iired by the Attorney General for all State Contracts.			
<u>X</u> <u>X</u>	APPENDIX X	•	orm (to accompany modified appendices for			
<u> </u>	, a r Ending n		leration on an existing period or for renewal periods)			
	APPENDIX Q	•	Department of Health Contract Language			
<u>X</u>		YORK AGREEMENT				
X	APPENDIX D	General Specifications				
X	APPENDIX B	Invitation for Bid (IFB)				
X	APPENDIX C	Proposal	neation Coverage			
^		Proof of Workers' Competer Proof of Disability Insuran	· · · · · · · · · · · · · · · · · · ·			
$\frac{\wedge}{X}$	APPENDIX 6-2	Notices	oe ooverage			
X	APPENDIX M Participation by Minority Group Members and Women with respect to State					

Contracts: Requirements and Procedures

Contract No.: C#

IN WITNESS THEREOF, the parties hereto had dates below their signatures.	ave executed or approved this AGREEMENT on the					
CONTRACTOR	STATE AGENCY					
	D					
By:	By:					
Printed Name	Printed Name					
Title:	Title:					
Date:	Date:					
	State Agency Certification: "In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."					
STATE OF NEW YORK))SS.: County of)						
instrument and acknowledged to me that he/sł	, personally known to me or proved to me on the ual(s) whose name(s) is(are) subscribed to the within ne/they executed the same in his/her/their/e(s) on the instrument, the individual(s), or the					
(Signature and office of the individual taking acknowledgement)						

ATTORNEY GENERAL'S SIGNATURE	STATE COMPTROLLER'S SIGNATURE
Title	Title
Title:	Title:
Date:	Date:

GLBU: DOH01 APPENDIX X

Contract Number:	Contrac	tor:					
Amendment Number X	BSC Un	it ID: _3	345 <x< td=""><td>XXX>_</td><td></td><td>_</td><td></td></x<>	XXX>_		_	
This is an AGREEMENT between THE S Department of Health, having its principa as the STATE), and the CONTRACTOR), for amendment of t	al office at Al	lbany, N	lew Yo	ork, (hei	reinafte	er referre	ed to
This amendment makes the following cha	anges to the	contrac	ct (chec	k all that	apply):		
Modifies the contract period	at no addition	onal cos	st				
Modifies the contract period	at additiona	l cost					
Modifies the budget or paym	ent terms						
Modifies the work plan or de	liverables						
Replaces appendix(es)	with	the atta	ached a	append	ix(es)_		
Adds the attached appendix	(es)						
Other: (describe)							
This amendment is is not a contrac	t renewal as	s allowe	d for i	n the ex	kisting	contract	. -
All other provisions of said AGREEMENT st	nall remain in	full forc	e and e	effect.			
Additionally, Contractor certifies that it is not included http://www.ogs.ny.gov/about/regs/docs/ListofEntities. the 2012 Laws of New York. Under the Act, the Com list (prohibited entities list) of "persons" who are enga law). Contractor (or any assignee) also certifies that on the prohibited entities list.	pdf as a result o missioner of the ged in "investm	of the Iran I e Office of ent activition	Divestmonder Diversity Div	ent Act of Services n" (both a	(OGS) h	as develop d terms in	ed a the
Prior to this amendment, the contract val	ue and peric	d were:	i i				
\$	From	1	1	_ to	1	1	<u>-</u>
(Value before amendment)	(lı	nitial start	date)				
This amendment provides the following	modification	(compl	lete on	ly items	s being	j modifie	ed):
\$	From	/	1	_ to	1		<u>.</u>
This will result in new contract terms of:							
\$(All years thus far combined)	From	/ Initial start	/	_ to	/ mendmer	/ nt end date	~) ~
tali veals illus fai cullibilieu i	U	ınılaı əlall	. uaic)	(//\	ciiuiii c i	it ciiu ualt	, i

Signature Page for: Contract Number: Contractor: _____ BSC Unit ID: <u>3450270</u> Amendment Number: X-IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures. CONTRACTOR SIGNATURE: By:______(signature) Date: Printed Name: Title: STATE OF NEW YORK) SS: County of _____ On the ___ day of ____ in the year ____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/ capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument. (Signature and office of the individual taking acknowledgement) STATE AGENCY SIGNATURE "In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract." By:_____ Date:____ (signature) Printed Name:_____ ATTORNEY GENERAL'S SIGNATURE By:_____ Date: STATE COMPTROLLER'S SIGNATURE

By:____

Date:

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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STANDARD CLAUSES FOR NYS CONTRACTS

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

- **1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
- 2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
- 3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.
- **4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

- **5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
- **6.** WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

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STANDARD CLAUSES FOR NYS CONTRACTS

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any State approved sums due and owing for work done upon the project.

- **7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.
- 8. INTERNATIONAL BOYCOTT PROHIBITION. accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract. amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).
- 9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.
- 10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

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

- 11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). E very invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number. (ii) the pavee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.
- (b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.
- **12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

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STANDARD CLAUSES FOR NYS CONTRACTS

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whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

- (a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
- (b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and
- (c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

- **13.** <u>CONFLICTING TERMS</u>. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.
- **14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
- **15. LATE PAYMENT**. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.
- **16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a co urt of competent jurisdiction of the State of New York.
- 17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.
- **18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS**. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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STANDARD CLAUSES FOR NYS CONTRACTS

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

NYS Department of Economic Development Division for Small Business Albany, New York 12245 Telephone: 518-292-5100

Fax: 518-292-5884 email: opa@esd.ny.gov

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

NYS Department of Economic Development Division of Minority and Women's Business Development 633 Third Avenue New York, NY 10017 212-803-2414

email: <u>mwbecertification@esd.ny.gov</u>

http://esd.ny.gov/MWBE/directorySearch.html

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

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

- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS.

Bidders are hereby notified that if their principal place of business is located in a co untry, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska,

West Virginia, Wyoming, Louisiana and Hawaii. C ontact

NYS Department of Economic Development for a current list

of jurisdictions subject to this provision.

- 22. <u>COMPLIANCE</u> <u>WITH</u> <u>NEW</u> <u>YORK</u> <u>STATE</u> <u>INFORMATION</u> <u>SECURITY</u> <u>BREACH</u> <u>AND</u> <u>NOTIFICATION ACT.</u> Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).
- 23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded

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STANDARD CLAUSES FOR NYS CONTRACTS

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the contract, the Department of Civil Service and the State Comptroller.

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

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

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

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

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STATE OF NEW YORK AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

II. Payment and Reporting

A. The CONTRACTOR shall make monthly rebate payments to the State, based on the documented purchases submitted by the State (i.e., food instrument redemptions supported by electronic data files subject to audit) as indicated on the State's invoice.

- B. The State may issue supplemental invoices if it discovers that any infant cereal redemptions were not accounted for in the regular invoices. The State is entitled to rebates for all WIC contract infant cereal checks issued to WIC program participants during the contract period and redeemed by WIC program participants as the redemption period is defined within WIC program procedures.
- C. Payments will be forwarded to the State by the CONTRACTOR thirty (30) days of the postmark, fax mark, or electronic mail date of the invoice according to specifications that will be provided by the State. If payment is not forwarded to the State within 30 days of the postmark, fax mark or electronic mail date of the invoice, the Contractor shall pay the State, in addition to the amount due, interest at a rate of one (1) percent per month, or portion thereof, on the unpaid balance from the expiration of such 30-day period until such time as payment is received by the State.

III. Term of Contract

- A. Upon approval of the Office of the State Comptroller, this AGREEMENT shall be effective for the term as specified on the cover page.
- B. This Agreement may be terminated by mutual written agreement of the contracting parties.
- C. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefor, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- D. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.
- E. This agreement may be canceled at any time by the Department of Health giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

IV. Proof of Coverage

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

A. Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:

- CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
- 2. C-105.2 Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
- 3. SI-12 Certificate of Workers' Compensation Self-Insurance, OR GSI-105.2 Certificate of Participation in Workers' Compensation Group Self-Insurance.
- B. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:
 - CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - 2. DB-120.1 Certificate of Disability Benefits Insurance OR
 - 3. DB-155 Certificate of Disability Benefits Self-Insurance

V. Indemnification

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

APPENDIX D GENERAL SPECIFICATIONS

- A. By signing the "Bid Form" each bidder attests to its express authority to sign on behalf of this company or other entity and acknowledges and accepts that all specifications, general and specific appendices, including Appendix-A, the Standard Clauses for all New York State contracts, and all schedules and forms contained herein will become part of any contract entered, resulting from the Request for Proposal. Anything which is not expressly set forth in the specifications, appendices and forms and resultant contract, but which is reasonable to be implied, shall be furnished and provided in the same manner as if specifically expressed.
- B. The work shall be commenced and shall be actually undertaken within such time as the Department of Health may direct by notice, whether by mail, e-mail, or other writing, whereupon the undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the Department may prescribe.
- C. The Department reserves the right to stop the work covered by this proposal and the contract at any time that the Department deems the successful bidder to be unable or incapable of performing the work to the satisfaction of the Department, and in the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable, and if the cost thereof exceeds the amount of the bid, the successful bidder and its surety shall be liable to the State of New York for any excess cost on account thereof.
- D. Each bidder is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other means as it may select, of character, quality, and extent of work to be performed and the conditions under which the contract is to be executed.
- E. The Department of Health will make no allowance or concession to a bidder for any alleged misunderstanding or deception because of quantity, quality, character, location or other conditions.
- F. The bid price is to cover the cost of furnishing all of the said services, materials, equipment, and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.
- G. The successful bidder will be required to complete the entire work or any part thereof as the case may be, to the satisfaction of the Department of Health in strict accordance with the specifications and pursuant to a contract therefore.
- H. Contractor will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.
- I. <u>Non-Collusive Bidding</u> By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
 - a. The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
 - b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or

indirectly to any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;

c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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

A bid shall not be considered for award nor shall any award be made where (a), (b) and (c) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a), (b) and (c) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made or its designee, determines that such disclosure was not made for the purpose of restricting competition. The fact that a bidder has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of the above quoted certification.

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

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

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

N. Date/Time Warranty

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

"Product" shall include, without limitation: when solicited from a vendor in a State government entity's contracts, RFPs, IFBs, or mini-bids, any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g., consulting, systems integration, code or data conversion or data entry, the term "Product" shall include resulting deliverables.

"Third Party Product" shall include product manufactured or developed by a corporate entity independent from the vendor and provided by the vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. "Third Party Product" does not include product where vendor is: (a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and/or (b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

2. Date/Time Warranty Statement

Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

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

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

O. <u>No Subcontracting</u> Subcontracting by the contractor shall not be permitted except by prior written approval of the Department of Health. All subcontracts shall contain provisions specifying that the work performed by the

subcontractor must be in accordance with the terms of this AGREEMENT, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.

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

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

T. Provisions Upon Default

- 1. In the event that the Contractor, through any cause, fails to perform any of the terms, covenants or promises of this agreement, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor
- 2. If, in the judgment of the Department of Health, the Contractor acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor. In such case the Contractor shall receive equitable compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the Contractor up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the Contractor was engaged in at the time of such termination, subject to audit by the State Comptroller.
- U. Upon termination of this agreement, the following shall occur:
 - 1. Contractor shall make available to the State for examination all data, records and reports relating to this Contract; and
 - 2. Except as otherwise provided in the Contract, the liability of the State for payments to the Contractor and the liability of the Contractor for services hereunder shall cease.

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

W. Contract Insurance Requirements

- 1. The successful bidder must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this proposal and the contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York covering all operations under this proposal and the contract, whether performed by it or by subcontractors. Before commencing the work, the successful bidder shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to the Department. The kinds and amounts of required insurance are:
 - a. A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).
 - b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction or property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
 - i. Contractor's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
 - ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
 - iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
- X. Certification Regarding Debarment and Suspension Regulations of the Department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial

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

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

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

Instructions for Certification

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered and erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it

- determines the eligibility of its principals. Each participant may, but is not required to, check the List of parties Excluded from Federal Procurement and Non-procurement Programs.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- 2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions
 - a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.
 - b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Y. Confidentiality Clauses

- 1. Any materials, articles, papers, etc., developed by the CONTRACTOR under or in the course of performing this AGREEMENT shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the STATE for conformity with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The Department reserves the right to disallow funding for any educational materials not approved through its review process.
- 2. Any publishable or otherwise reproducible material developed under or in the course of performing this AGREEMENT, dealing with any aspect of performance under this AGREEMENT, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the STATE, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is secured from the STATE or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.
- 3. No report, document or other data produced in whole or in part with the funds provided under this AGREEMENT may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data developed pursuant to this AGREEMENT.

- 4. All reports, data sheets, documents, etc. generated under this contract shall be the sole and exclusive property of the Department of Health. Upon completion or termination of this AGREEMENT the CONTRACTOR shall deliver to the Department of Health upon its demand all copies of materials relating to or pertaining to this AGREEMENT. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department of Health or its authorized agents.
- 5. The CONTRACTOR, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.

Z. Provision Related to Consultant Disclosure Legislation

- 1. If this contract is for the provision of consulting services as defined in Subdivision 17 of Section 8 of the State Finance Law, the CONTRACTOR shall submit a "State Consultant Services Form B, Contractor's Annual Employment Report" no later than May 15th following the end of each state fiscal year included in this contract term. This report must be submitted to:
 - a. The NYS Department of Health, at the following address New York State Department of Health, Bureau of Contracts Room -2756, Corning Tower, Albany, NY 12237; and
 - b. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany NY 12236 ATTN: Consultant Reporting -or via fax at (518) 474-8030 or (518) 473-8808; and
 - c. The NYS Department of Civil Service, Albany NY 12239, ATTN: Consultant Reporting.
- AA. <u>Provisions Related to New York State Procurement Lobbying Law</u> The STATE reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONTRACTOR in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this AGREEMENT.
- BB. Provisions Related to New York State Information Security Breach and Notification Act CONTRACTOR shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). CONTRACTOR shall be liable for the costs associated with such breach if caused by CONTRACTOR'S negligent or willful acts or omissions, or the negligent or willful acts or omissions of CONTRACTOR'S agents, officers, employees or subcontractors.
- CC. <u>Lead Guidelines</u> All products supplied pursuant to this agreement shall meet local, state and federal regulations, guidelines and action levels for lead as they exist at the time of the State's acceptance of this contract.

DD. On-Going Responsibility

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

- 2. Suspension of Work (for Non-Responsibility): The Commissioner of Health or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Health or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
- 3. Termination (for Non-Responsibility): Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Department of Health officials or staff, the Contract may be terminated by Commissioner of Health or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of Health or his or her designee to be non-responsible. In such event, the Commissioner of Health or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.
- EE. <u>Provisions Related to Iran Divestment Act</u> As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list has been posted on the OGS website at http://www.ogs.nv.gov/about/regs/docs/ListofEntities.pdf.

By entering into this Contract, CONTRACTOR (or any assignee) certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list. Additionally, CONTRACTOR agrees that should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. CONTRACTOR also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the New York State Department of Health may approve a request for Assignment of Contract. During the term of the Contract, should New York State Department of Health receive information that a person is in violation of the above referenced certification, New York State Department of Health will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then New York State Department of Health shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the CONTRACTOR in default.

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

Appendix G NOTICES

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

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

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

State of New York Department of Health

Name:
Title:
Address:
Telephone Number:
Facsimile Number:
F-Mail Address:

[Insert Contractor Name]

Name:
Title:
Address:
Telephone Number:
Facsimile Number:
E-Mail Address:

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

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

APPENDIX M

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

I. General Provisions

- A. The New York State Department of Health is required to implement the provisions of New York State Executive Law Article 15-A and 5 N YCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State New York State Department of Health (the "New York State Department of Health"), to fully comply and cooperate with the New York State Department of Health in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deem ed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this procurement, the New York State Department of Health hereby establishes an ov erall goal of N/A% for Minority and W omen-Owned Business Enterprises ("MWBE") participation, N/A% for Minority-Owned Business Enterprises ("MBE") participation and N/A% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:

http://www.esd.ny.gov/mwbe.html

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

C. Where MWBE goals have been es tablished herein, pursuant to 5 N YCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 N YCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the New York State Department of Health for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and W omen's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
 - 1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - 2. The Contractor shall submit an E EO policy statement to the New York State Department of Health within seventy two (72) hours after the date of the notice by New York State Department of Health to award the Contract to the Contractor.
 - 3. If Contractor or Subcontractor does not have an existing EEO policy statement, the New York State Department of Health may provide the Contractor or Subcontractor a model statement (see Form #5 Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
 - 4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

- c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form #4 - Staffing Plan

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

D. Form #6 - Workforce Employment Utilization Report ("Workforce Report")

- Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the New York State Department of Health of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and F ederal occupational categories. The Workforce Report must be submitted to report this information.
- 2. Separate forms shall be c ompleted by Contractor and any subcontractor performing work on the Contract.
- 3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. C ontractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic

violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (Form #1) either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, New York State Department of Health shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor nonresponsiveness.

V. Waivers

- A. For Waiver Requests Contractor should use Form #2 Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the New York State Department of Health shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the New York State Department of Health, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the New York State Department of Health may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form #3) to the New York State Department of Health by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages - MWBE Participation

A. Where New York State Department of Health determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to

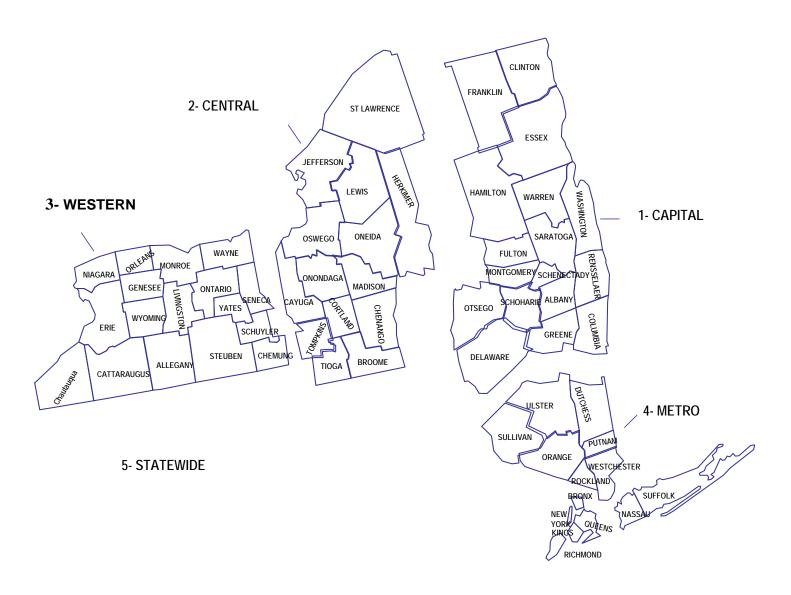
comply with the MWBE participation goals, Contractor shall be obligated to pay to the New York State Department of Health liquidated damages.

- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the New York State Department of Health, Contractor shall pay such liquidated damages to the New York State Department of Health within sixty (60) days after they are assessed by the New York State Department of Health unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Department of Health.

ATTACHMENT 12 – VENDOR RESPONSIBILITY QUESTIONNAIRE – FOR PROFIT BUSINESS ENTITY
An electronic fill-in version of the NYS Vendor Responsibility Questionnaire can be found at:
An electronic fill-in version of the NYS Vendor Responsibility Questionnaire can be found at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm

ATTACHMENT 13 – NYS WIC PROGRAM REGIONS

NEW YORK STATE DEPARTMENT OF HEALTH NYS WIC PROGRAM REGIONS



ATTACHMENT 14 – CHECKLIST FOR BIDDERS

WIC INFANT CEREAL REBATE SYSTEM IFB CHECKLIST

Bidder:
To assist with assembling a complete bid package, this checklist identifies all documents that are requested as part of your bid package. Failure to include the items marked 'MANDATORY' will result in disqualification of the bid. The cover page of this IFB identifies the due date for receipt of your bid package.
Bidders assume all risks for timely, properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of bids to DOH prior to the date of the bid opening. LATE BIDS will be rejected. E-mail bid submissions are not acceptable and will not be considered.
TECHNICAL RESPONSE
☐ Two signed originals and three copies of the "Cover Sheet" (Attachment 5)
☐ Two signed originals and three copies of the Technical Certifications Form (Attachment 6) , <u>including the required attachments to the form</u> MANDATORY
☐ Two signed originals and three copies of the Vendor Responsibility Attestation (Attachment 1) or completed Vendor Responsibility Questionnaire (Attachment 17)
☐ Five sets of package flats/labels or label images including nutrition panels for all WIC eligible infant cereal
☐ WIC Infant Cereal Rebate System IFB Checklist (This Form)
Sealed in separate envelope. Envelope marked with the following information: 1. "TECHNICAL RESPONSE" 2. "BID ENCLOSED" 3. "IFB NUMBER" (from the cover page of this IFB) 4. "BID OPENING DATE" (from the cover page of this IFB)
COST PROPOSAL
☐ Two signed originals and three copies of the "NYS Department of Health Lobbying Form" (Attachment 4) MANDATORY
☐ Two signed originals and three copies of the "Cover Sheet" (Attachment 5)
☐ Two signed originals and three copies of the Infant Cereal Bid Sheet (Attachment 8) MANDATORY
☐ Two signed originals and three copies of the M/WBE Utilization Plan (Attachment 11) MANDATORY
☐ Five copies of the Vendor's National Wholesale Price List for all WIC eligible infant cereal MANDATORY
Sealed in separate envelope. Envelope marked with the following information: 1. "COST PROPOSAL" 2. "BID ENCLOSED" 3. "IFB NUMBER" (from the cover page of this IFB) 4. "BID OPENING DATE (from the cover page of this IFB)
PLEASE LABEL THE OUTSIDE OF THE BID PACKAGE WITH THE FOLLOWING: 1. "WIC INFANT CEREAL REBATE BID".

"CONFIDENTIAL – DO NOT OPEN"
 NAME OF BIDDER

ATTACHMENT 15 - SAMPLE INFANT CEREAL REBATE INVOICES

NEW YORK STATE DEPARTMENT OF HEALTH INFANT CEREAL REBATE BILLING FOR CHECKS REDEEMED DURING MONTH OF NOVEMBER 2012

REDEMPTION MONTH	ISSUE MONTH	NUMBER OF CHECKS	BILLABLE 8 OZ. UNITS	MULTIPLIED BY REBATE UNIT AMOUNT	EQUALS TOTAL REBATE
NOVEMBER NOVEMBER NOVEMBER NOVEMBER	AUGUST SEPTEMBER OCTOBER NOVEMBER	15 6,099 72,156 59,493	15 6,101 72,355 59,737	\$1.3900 \$1.3900 \$1.3900 \$1.3900	\$20.85 \$8,480.39 \$100,573.45 \$83,034.43
				TOTAL	\$192,109.12
				PAY THIS AMOUNT>>>	\$192,109,12

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

DIRECTOR, WIC PROGRAM	
(Title)	Date

NEW YORK STATE DEPARTMENT OF HEALTH INFANT CEREAL REBATE BILLING FOR CHECKS REDEEMED DURING MONTH OF OCTOBER 2012

REDEMPTION MONTH	ISSUE MONTH	NUMBER OF CHECKS	BILLABLE 8 OZ. UNITS	MULTIPLIED BY REBATE UNIT AMOUNT	EQUALS TOTAL REBATE
OCTOBER OCTOBER OCTOBER OCTOBER	JULY AUGUST SEPTEMBER OCTOBER	52 5,566 75,306 58,716	52 5,574 75,540 59,004	\$1.3900 \$1.3900 \$1.3900 \$1.3900	\$72.28 \$7,747.86 \$105,000.60 \$82,015.56
	*			TOTAL	\$194,836.30
Ø ;				PAY THIS AMOUNT>>>	\$194,836.30

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

DIRECTOR, WIC PROGRAM	
(Title)	Date

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NEW YORK STATE DEPARTMENT OF HEALTH INFANT CEREAL REBATE BILLING FOR CHECKS REDEEMED DURING MONTH OF SEPTEMBER 2012

REDEMPTION MONTH	ISSUE MONTH	NUMBER OF CHECKS	BILLABLE 8 OZ. UNITS	MULTIPLIED BY REBATE UNIT AMOUNT	EQUALS TOTAL REBATE
SEPTEMBER	JUNE	42	42	\$1.3900	\$58.38
SEPTEMBER	JULY	3,173	3,176	\$1.3900	\$4,414.64
SEPTEMBER	AUGUST	64,576	64,768	\$1.3900	\$90,027.52
SEPTEMBER	SEPTEMBER	55,588	55,828	\$1.3900	\$77,600.92
				TOTAL	\$172,101.46
		** _{**}	8.00	i i	
				DAY THE AMOUNT	0470 404 46

PAY THIS AMOUNT>>> \$172,101.46

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

DIRECTOR, WIC PROGRAM	
(Title)	
(Time)	Date

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NEW YORK STATE DEPARTMENT OF HEALTH INFANT CEREAL REBATE BILLING FOR CHECKS REDEEMED DURING MONTH OF AUGUST 2012

EQUALS TOTAL REBATE	MULTIPLIED BY REBATE UNIT AMOUNT	BILLABLE 8 OZ. UNITS	NUMBER OF CHECKS	ISSUE MONTH	REDEMPTION MONTH
\$31.97	\$1.3900	23	23	MAY	AUGUST
\$5,404.32	\$1.3900	3,888	3,884	JUNE	AUGUST
\$100,316.30	\$1.3900	72,170	71,977	JULY	AUGUST
\$98,389.76	\$1.3900	70,784	70,496	AUGUST	AUGUST
\$204,142.35	TOTAL				
\$204,142.35	PAY THIS AMOUNT>>>				

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

DIRECTOR, WIC PROGRAM	
(Title)	Date

CEREAL

NEW YORK STATE DEPARTMENT OF HEALTH INFANT CEREAL REBATE BILLING FOR CHECKS REDEEMED DURING MONTH OF JULY 2012

REDEMPTION MONTH	ISSUE MONTH	NUMBER OF CHECKS	BILLABLE 8 OZ. UNITS	MULTIPLIED BY REBATE UNIT AMOUNT	EQUALS TOTAL REBATE
JULY	APRIL	49	49	\$1.3900	\$68.11
JULY	MAY	4,962	4,967	\$1.3900	\$6,904.13
JULY	JUNE	77,518	77,704	\$1.3900	\$108,008.56
JULY	JULY	69,506	69,774	\$1.3900	\$96,985.86
				TOTAL	\$211,966.66
		*	T 2 10		

PAY THIS AMOUNT>>> \$211,966.66

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

DIRECTOR, WIC PROGRAM	
	2
(Title)	Date

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REDEMPTION MONTH	ISSUE MONTH	NUMBER OF CHECKS	BILLABLE 8 OZ. UNITS	MULTIPLIED BY REBATE UNIT AMOUNT	EQUALS TOTAL REBATE
JUNE JUNE JUNE JUNE	MARCH APRIL MAY JUNE	36 4,060 71,576 63,532	36 4,064 71,768 63,769	\$1.3900 \$1.3900 \$1.3900 \$1.3900	\$50.04 \$5,648.96 \$99,757.52 \$88,638.91
	t/	9 9		TOTAL	\$194,095.43
* *	8			PAY THIS AMOUNT>>>	\$194,095.43

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

DIRECTOR, WIC PROGRAM	-
BITECTOT, WIOT HOUTAW	
(Title)	Date

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