



Department of Health

Invitation for Bids

IFB # - 20051

WIC Infant Formula Rebate System

Issued: December 15, 2020

DESIGNATED CONTACT:

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

Sue Mantica
Bureau of Contracts
New York State Department of Health
Corning Tower, Room 2827
Albany, New York 12237
Telephone: 518-474-7896
Email Address: sue.mantica@health.ny.gov

PERMISSIBLE SUBJECT MATTER CONTACT:

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

Corie Nadzan
New York State Department of Health
Division of Nutrition
Bureau of Supplemental Food Programs
Riverview Center
150 Broadway, Suite 650
Albany, NY 12204
Telephone: 518-402-7093
Email Address: BSFP-FMS.Procure@health.ny.gov

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1. CALENDAR OF EVENTS

IFB #20051 – WIC INFANT FORMULA REBATE SYSTEM	
<u>EVENT</u>	<u>DATE</u>
Issuance of Invitation for Bids	December 15, 2020
Deadline for Submission of Written Questions	January 4, 2021 5:00 p.m. ET
Responses to Written Questions Posted by DOH	January 25, 2021
Deadline for Public Bid Opening Registration	February 8, 2021
Deadline for Submission of Bids	February 16, 2021 2:00 p.m. ET
Public Bid Opening	February 16, 2021 2:15 p.m. ET
<i>Anticipated</i> Contract Start Date	October 1, 2021

2. OVERVIEW

Through this Invitation for Bids (“IFB”), the New York State (“State”) Department of Health (“DOH”) is seeking competitive bids from qualified vendors to implement a system that lowers the cost of retail infant formula purchases by New York State WIC participants as further detailed in [Section 4.0](#) (Detailed Specifications). It is the Department’s intent to award one (1) contract for milk-based non-exempt infant formulas, and award one (1) contract for soy-based non-exempt infant formulas. The two (2) contracts may be with two (2) different manufacturers or both may be with the same manufacturer, depending on the results of the bids that are submitted. As required by federal law, the milk-based formula specified by the Bidder awarded the contract for milk-based formula will be the first choice of issuance to infants utilizing milk-based formula and the soy-based formula specified by the Bidder awarded the contract for soy-based formula will be the first choice of issuance to infants utilizing soy-based formula.

2.1. Introductory Background

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is a federally- and State-funded program carried out pursuant to provisions of the Child Nutrition Act and to federal and New York State laws, regulations, and policies. The program is funded through the Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA) and the Division of Nutrition (DON) of the New York State (NYS) Department of Health (DOH). The NYS WIC Program serves low-income pregnant, postpartum, and breastfeeding women, infants, and young children who are at nutritional risk due to medical conditions or inadequate dietary intake. NYS WIC is an adjunct to health care, providing nutrition education and prescribed food packages to the targeted population.

2.2. Important Information

The Bidder is required to review, and is requested to have legal counsel review, [Attachment 8](#), the DOH

Agreement as the Bidder must be willing to enter into an Agreement substantially in accordance with the terms of [Attachment 8](#) should the Bidder be selected for contract award. Please note that this IFB and the awarded Bidder's proposal will become part of the contract as Appendix B and C, respectively.

It should be noted that Appendix A of [Attachment 8](#), "Standard Clauses for New York State Contracts", contains important information related to the contract to be entered into as a result of this IFB and will be incorporated, without change or amendment, into the contract entered into between DOH and the successful Bidder. By submitting a response to the IFB, the Bidder agrees to comply with all the provisions of Appendix A.

Note, Attachment G, the Bidder's Certified Statements, should be submitted and includes a statement that the Bidder accepts, without any added conditions, qualifications or exceptions, the contract terms and conditions contained in this IFB including any exhibits and attachments. It also includes a statement that the Bidder acknowledges that, should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the DOH.

Any qualifications or exceptions proposed by a Bidder to this IFB should be submitted in writing using the process set forth in [Section 5.2](#) (Questions) prior to the deadline for submission of written questions indicated in [Section 1.0](#) (Calendar of Events). Any amendments DOH makes to the IFB as a result of questions and answers will be publicized on the DOH website.

2.3. Term of the Agreement

This contract term is expected to be for a period of five years commencing on the date shown on the Calendar of Events in [Section 1.0](#), subject to the availability of sufficient funding, successful Contractor performance, and approvals from the New York State Attorney General (AG) and the Office of the State Comptroller (OSC), with the option of a six month extension, at the sole discretion of the State.

3. MINIMUM QUALIFICATIONS TO BID

The NYS WIC Program will accept bid proposals from Bidders with the following types and levels of experience as a prime Contractor:

1. Bidder must be an infant formula manufacturer registered with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act and producing infant formula products that are in compliance with Federal regulations issued pursuant to [P.L. 100-237](#); and
2. Bidder must produce and distribute infant formula products in sufficient quantity to serve 100 percent of potential WIC infant participants' milk-based infant formula needs in New York State can bid for the milk-based formula contract; or
3. Bidder must produce and distribute infant formula products in sufficient quantity to serve 100 percent of potential WIC infant participants' soy-based infant formula needs in New York State can bid for the soy-based formula contract.

In 2018, there were an estimated 141,122 infants potentially eligible for WIC program services in New York State. This estimate was calculated by obtaining the number of infants below 185% of the federal poverty line as estimated by the American Community Survey (ACS) 2014-2018, table B17024. The majority (~97%) of the NYS WIC program's infants who receive non-exempt infant formula receive milk-based formula. The balance – approximately 3% - utilize soy-based formula. This capacity must be maintained for the duration of the contract(s).

NOTE: This count is stratified by the proportion of infants as reported in the 2010 Census Summary File 1, table QT-P2. These estimates are adjusted for adjunctive eligibility, monthly income fluctuation, and nutritional risk according to a report provided annually by the USDA 'National and State-Level Estimates of

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Eligibles and Program Reach, 2017, Table A.1.

The DOH will only accept bid proposals from Bidders who meet all minimum requirements. Failure to meet these minimum qualifications will result in a bid proposal being found non-responsive and eliminated from consideration.

4. DETAILED SPECIFICATIONS

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

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

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

4.1. Definitions

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

“Contract effective date” refers to the earliest benefit start date loaded on the EBT card under the terms of the awarded contract(s). The desired notification of award is April 1, 2021, to select a vendor for a contract execution date of July 1, 2021.

“WIC benefits” means a participant’s food prescription loaded onto an EBT card drawn on the account of the State Department of Health exchangeable for WIC-approved products.

“Issued during the contract period” refers to WIC benefits with dates falling between contract effective date and the end date of the contract.

“Non-exempt formula” refers to any contract formula eligible for a rebate

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

4.2. Programmatic Statistics

In New York State, 90 WIC local agencies are under contract to provide services to over approximately 367,000 participants per month at 400 clinics statewide. When infant formula is issued, it is provided to participants via an EBT benefit card that is redeemed at WIC authorized vendors.

The retail food delivery system is utilized statewide through contracts with approximately 2,800 retail grocery stores and pharmacies that agree to accept WIC benefits issued for specified authorized foods. All WIC authorized grocery stores and pharmacies (WIC authorized vendors) 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 WIC authorized vendor specifies the responsibilities of both the State program and WIC authorized vendors and outlines sanctions for violations. WIC authorized vendors are reviewed for compliance on a continual basis.

WIC benefits are issued by local WIC local agencies at clinic sites throughout the state to certified eligible participants or participants' authorized representative(s). While infant formula is primarily issued to infants, it may also be issued to women and children with qualifying medical conditions if it is prescribed by the health care provider with medical documentation. Benefits may be issued for up to a three-month period but will be loaded on the participant's EBT benefit card in 30-day increments. Issued formula benefits specify the quantity, container size, form, and brand name of the infant formula which may be purchased at WIC authorized vendors within the 30-day benefit period loaded on the EBT benefit card. The transaction is directly submitted to NYS WIC's EBT Contractor and is processed for payment within 2-3 business days.

The table below depicts the NYS WIC Program's caseload over a recent six-month period, with detail provided on the number of formula-fed infants.

TABLE I – NYS WIC Caseload

MONTH	TOTAL CASELOAD	ALL INFANTS	FULLY BREASTFED INFANTS	INFANTS RECEIVING FORMULA
May 2020	360,521	85,998	9,005	76,993
June 2020	362,598	85,822	9,183	76,639
July 2020	362,746	85,450	9,063	76,387
August 2020	361,433	84,217	8,900	75,317
September 2020	364,385	83,854	8,917	74,937
October 2020	368,721	84,115	8,841	75,274
Average	363,401	84,909	8,985	75,925

More details on subcategories of formula-fed infants are provided in Tables II-V below.

TABLE II – NYS WIC Formula-Fed Infant Caseload Breakdown

Infant Feeding Category	Age Breakdown	Average Caseload of Infants Receiving Any Formula	Estimated Caseload of Infants Receiving Contract Formula
FF: Fully Formula Fed + Minimally Breastfeeding	0 to <4 Months	10,197	8,986
	4 to <6 Months	6,957	6,059
	6 to <12 Months	26,426	23,462
PBF: Mostly Breastfeeding	0 to <4 Month	13,929	12,980
	4 to <6 Months	5,736	5,303
	6 to <12 Months	12,801	12,012
TOTAL		76,046	68,803

TABLE III – NYS WIC Contract Formula Issuance

Type of Formula	Average Number of Infants Issued Contract Formula	Proportion of Total
Milk-Based Concentrate	2,894	4.20%
Milk-Based Powder	63,235	91.83%
Milk-Based Ready-to-Feed	365	0.53%
Soy-Based Concentrate	18	0.03%
Soy-Based Powder	2,344	3.40%
Soy-Based Ready-to-Feed	5	0.01%
TOTAL	68,861	

TABLE IV – NYS WIC Number of Infants by Age, Feeding Status and Type of Formula

Infant Age Categories	Milk-based Formula: Estimated Average Infant Caseload by Form		Soy-based Formula: Estimated Average Infant Caseload by Form	
	IFF*	IBP*	IFF	IBP
Powder				
0 to <4 Months	8,288	11,909	270	353
4 to <6 Months	5,602	4,837	201	201
6 to <12 Months	21,708	10,836	749	568
Concentrate				
0 to <4 Months	356	630	5	2
4 to <6 Months	217	241	3	1
6 to <12 Months	893	558	6	1
Ready to Feed				
0 to <4 Months	65	86	2	1
4 to <6 Months	37	23	1	0
6 to <12 Months	105	49	1	1

* IFF = Infant Non-Breastfed, IBP = Infant Breastfed Partially

TABLE V - NYS WIC Maximum Formula Ounces by Infant Age and Feeding Status

Infant Age Categories	Monthly Maximum Allowance	
	FF	PBF
Powder		
0 to <4 Months	870	435
4 to <6 Months	960	522
6 to <12 Months	696	384
Concentrate		
0 to <4 Months	823	388
4 to <6 Months	896	460
6 to <12 Months	630	315
Ready to Feed		
0 to <4 Months	832	384
4 to <6 Months	913	474
6 to <12 Months	643	338

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

The average monthly number of containers of milk- and soy-based contract infant formula redeemed and invoiced during May 2020 through October 2020 is shown in Table VI below. These numbers include containers redeemed for children with qualifying medical diagnoses as well as those redeemed for infants. The infant formula rebate invoices compiled in this table are included with this IFB as Attachment F.

TABLE VI – Infant Formula Distribution – Number of Units

INFANT FORMULA TYPE	13-OUNCE CONCENTRATE	12- OR 12.9- OUNCE POWDERED	32-OUNCE READY-TO-FEED	8-OUNCE READY-TO-FEED	TOTAL
Milk-Based:	75,309	443,808	6,850	0	525,967
Soy-Based:	0	14,232	0	613	14,845
TOTAL	75,309	458,040	6,850	613	540,812

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

Formula-fed infants are issued contract formula unless their health care provider determines that an exempt formula is needed. Medical documentation is required before issuance of any exempt infant formula as required by 7 CFR 246.10(d)(1). Additionally, per 7 CFR 246.10(d)(1), medical documentation is required for issuance of infant formula to women, infants, and children receiving Food Package III. Non-contract non-exempt formulas are not currently among the choices available to be prescribed for infants or for children or women with qualifying medical conditions. No assurance is given that this policy regarding non-contract non-exempt formula will remain unchanged during the term of the contract established as a result of this IFB.

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

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

Category	Capital/ Central (#)	Capital/ Central (%)	Western (#)	Western (%)	Metropolitan (#)	Metropolitan (%)
Infants Eligible for WIC Participation	21,120	15%	19,264	14%	100,738	71%
Number of Vendors per Region	453	16%	290	10%	2107	74%

*See Attachment E - New York State WIC Program Regions

Note: these WIC authorized vendors may be located in remote, rural areas of New York State.

4.3. Contractor Product and Service Requirements

Relative to non-exempt infant milk-based formulas for the milk-based infant formula Contractor, and relative to non-exempt infant soy-based formulas for the soy-based formula Contractor, the Contractor(s) shall:

Ensure all formulas meet the definition for an infant formula in section 201(z) of the [Federal Food, Drug, and Cosmetic Act \(21 U.S.C. 321\(z\)\)](#) and meet the requirements for an infant formula under section 412 of the Federal Food, Drug and Cosmetic Act, as amended ([21 U.S.C. 350a](#)) and the regulations at [21 CFR parts 106 and 107](#). All formulas must be complete formulas not requiring the addition of any ingredients other than water prior to being served in a liquid state. All formulas, excluding low iron varieties, which are only issued with medical documentation, must contain at least 10 milligrams of iron per liter of formula at standard dilution, which supplies at least 67 kilocalories per 100 milliliters (i.e., approximately 20 kilocalories per fluid ounce of formula at standard dilution). All formulas must be designed for enteral digestion via an oral or tube feeding. The primary contract infant formula must be suitable for issuance to generally healthy full-term infants.

a. Produce infant formula in the following forms: 12-to-13-ounce concentrate, 12-to-16-ounce powder, and 30-to-35- ounce ready to feed in sufficient amounts to meet WIC requirements, as described in [Section 3.0](#), "Minimum Qualifications to BID," for purchase with WIC benefits issued during the contract period. The Contractor will not be required to provide clinic samples to WIC local agencies. Comparably sized containers may also be acceptable; prospective Bidders producing such sizes should submit an inquiry about the acceptability of their container sizes via the process described in [Section 5.2](#), (Questions) of this IFB. All these products shall be packaged in containers which are not different from the containers distributed by the Contractor to WIC authorized vendors for sale to the general public.

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

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

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

c. Remit to the State a rebate per unit for all non-exempt formulas produced by the contractor prior to or during the contract period and offered by the NYS WIC Program. The State is entitled to a rebate payment for all WIC benefits for such formulas issued to eligible WIC Program participants during the term of the contract and redeemed before or after the expiration date of the WIC benefits as the redemption period is

defined within WIC Program procedures. The initial rebate for each such formula approved for issuance by the NYS WIC Program prior to the contract effective date will be computed as follows:

- Identify the discount percentage for each formula form (concentrate, powder and ready-to-feed bid) using Column C from the Contractor's Bid Sheet (Attachment C or D, depending upon milk or soy based).
- Multiply the lowest national wholesale price per unit for a full truckload of each of the Contractor's non-exempt formulas at the time of bid submission by the appropriate per-form discount percentage. The results will be the initial rebates for each formula.

Once established, the rebates will increase or change as described below in Section 4.3.e. of this IFB.

d. Remit to the State a rebate per unit for all non-exempt formulas newly approved for issuance by the NYS WIC Program on or after the contract effective date. With the exception of the primary contract infant formula specified on the Contractor's Bid Sheet (see Attachment C or D, depending upon milk or soy based), which will be approved by NYS WIC, the State reserves the right to determine whether any infant formula produced by the Contractor at the time of bid submission or any new infant formula introduced by the Contractor during the term of the contract will be approved for use in the NYS WIC program. In the event that an existing or new non-exempt infant formula is approved by the NYS WIC program during the contract term, the rebate for the added product will be computed as follows:

- Identify the three discount percentages (one for concentrate, one for powder and one for ready-to-feed) calculated under Section 4.3.c. of this IFB.
- Apply these per-form percentages to the lowest truckload wholesale prices of all the forms and container sizes of the newly-approved product. The wholesale prices must be those in effect at the time that the Department approves the formula. The results will be the rebates for the newly-approved infant formula.

This rebate amount will subsequently increase or change with wholesale price changes as discussed below in Section 4.3.e. of this IFB.

e. Remit to the State a revised rebate per unit when the Contractor changes its lowest national wholesale price for a full truckload of a rebateable NYS WIC-approved formula. The rebates resulting from the application of the percentage discount must remain the same throughout the contract period except for the cent-for-cent rebate adjustments. When the Contractor increases its lowest national wholesale price for a full truckload of a rebateable formula, the rebate will automatically increase for each affected formula product on a cent-for-cent basis. When the Contractor decreases its lowest national wholesale price for a full truckload of a rebateable formula, the rebate will automatically decrease for each affected formula product on a cent-for-cent basis. Cent-for-cent increases or decreases in rebate amounts will take effect on the first day of the month in which the price increase or decrease occurs and will apply to all WIC benefits with dates valid on or after the first day of the month. Any increase or decrease in the lowest national wholesale price for a full truckload of a rebateable formula between the date of bid submission and the effective date of the contract will be added to or subtracted from the initial rebate amount for that formula according to the calculations described above in this section.

f. Remit to the State a revised rebate per container if any form/size of the primary contract infant formula undergoes a container size change or if it is replaced by another product. Rebates for container sizes or products replacing any form/size of the primary contract infant formula must be calculated to yield the same net wholesale cost per ounce as the primary contract infant formula product in the old container size or the discontinued primary contract infant formula product. These rebate amounts will subsequently increase or change automatically with wholesale price changes as discussed above in Section 4.3.e. of this IFB.

g. Notify the State of any wholesale price changes by electronic mail on the day the price adjustment is released to the Contractor's regular customers, or another earlier date, as agreed to by the Contractor and the State.

h. Rebate the State for the non-exempt infant formula products on each redeemed food instrument used to purchase another company's infant formula product when the primary contract infant formula is unavailable to WIC authorized vendors and another company's infant formula must be substituted to provide the participant(s) with his/her monthly prescription. The rebate shall be calculated to yield the same net wholesale cost per ounce to the State as the product which is unavailable. If only one form - concentrate or powder - of the primary contract infant formula is unavailable, the State will issue the available form (concentrate or powder) of the primary contract infant formula prior to issuing another company's infant formula.

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

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

k. Be totally and exclusively responsible for all costs related to the Contractor's request for audits, inspections, and reviews of WIC program records created solely for this purpose, outside of the usual documents required to support invoices reflecting redeemed benefits. Access to WIC benefits or other confidential records shall be subject to federal and state confidentiality requirements.

l. Meet with the State biennially or more frequently as determined by either party. The location shall be in the offices of the Division of Nutrition in Albany, New York or, at the discretion of the State, by conference call, WebEx or any other electronic medium.

m. Address correspondence and communications to the New York State Department of Health, Division of Nutrition, Director, Bureau of Supplemental Food Programs, Riverview Center, 150 Broadway, Suite 650, Albany, New York 12204-2719. All communications regarding wholesale price increases, unit size changes, reformulations, new products, or cessations in the production of any formula must be in writing and the Contractor must telephone or use electronic mail to confirm the State's receipt of the communication. The State will provide the Contractor with the telephone number of the director of the Bureau of Supplemental Food Programs and email addresses for bureau staff able to confirm receipt of communications from the Contractor.

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

4.4. New York State Product and Service Requirements

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

a. Supply each Contractor with a list of currently authorized WIC vendors. The list will include the store name and address/contact information for each authorized vendor; no other information regarding WIC authorized vendors will be provided for this list or for any other purpose. The WIC program will notify WIC

authorized vendors regarding any changes to the NYS WIC contract formulary.

b. The contract brand formulas will be issued as the WIC benefit unless another formula has been prescribed for a participant, the participant requires a package type not produced by the manufacturer (e.g. eight-ounce containers of ready-to-feed formula due to a participant's unsafe water supply and lack of access to reliable refrigeration), or the Contractor is unable to make enough formula available for purchase by WIC authorized vendors. As required by federal law, the milk-based formula specified by the Bidder awarded the contract for milk-based formula will be the first choice of issuance to infants utilizing milk-based formula and the soy-based formula specified by the Bidder awarded the contract for soy-based formula will be the first choice of issuance to infants utilizing soy-based formula.

c. Prepare invoices for each Contractor's rebate payment; each invoice shall contain the time period, formula names, forms, container sizes, quantities and rebate amounts used to calculate the rebate payment. The State shall mail the invoice to the Contractor via Certified Mail, return receipt requested, or transmit email. Invoices will be prepared regularly on at least a monthly basis. Supplemental invoices or credits will be prepared if ongoing State data system maintenance activities identify additional or corrected amounts.

d. Upon resolution of a dispute, promptly disburse in accordance with prompt payment provisions of Article 11 of the State Finance Law, any funds due the Contractor.

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

- Product Name
- eWIC Card Number
- Effective Date of Benefits
- Month Issued
- Month Redeemed
- Food Item ID Category/Subcategory number
- Quantity of Formula Containers Redeemed
- Rebate Per Unit
- Total Rebate Amount

f. Contractor(s) may audit the books, records and documents of NYS that relate to the generation of monthly invoices. New York State shall retain all records for a minimum of three (3) years. Individual applicant and/or participant records are confidential and exempt from audit by the Contractor in accordance with 7 CFR Part 246 of the Federal Regulations for the Special Supplemental Food Program for Women, Infants and Children. Vendor confidentiality will also be maintained as noted in [Section 4.4.a.](#) of this IFB.

g. Meet with each Contractor biennially or more frequently as determined by either party. The location shall be in the offices of the Division of Nutrition in Albany, New York or, at the discretion of the State, by conference call, WebEx or any other electronic medium.

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

For the purposes of this IFB, a prime Contractor is defined as one who has the contract with the owner of a project or job and has full responsibility for its completion.

Failure to meet these Minimum Qualifications will result in a bid being found non-responsive and eliminated from consideration.

4.5. Use of WIC Service Marks

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

Contractor 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").

Contractor 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.

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

5. ADMINISTRATIVE INFORMATION

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

5.1. Restricted Period

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

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

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

5.2. Questions

There will be an opportunity available for submission of written questions and requests for clarification pertaining to this IFB. All questions and requests for clarification of this IFB should cite the relevant IFB, IFB number, section and paragraph number where applicable and must be submitted via email to BSFP-FMS.Procure@health.ny.gov. It is the Bidder's responsibility to ensure that email containing written questions and/or requests for clarification is received at the above address no later than the Deadline for Submission of Written Questions as specified in [Section 1.0](#) (Calendar of Events). Questions received after the deadline may **not** be answered.

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/> on or about the date indicated on the cover of this IFB.

5.3. Right to Modify IFB

DOH reserves the right to modify any part of this IFB, including but not limited to, the date and time by which bids must be submitted and received by DOH, at any time prior to the Deadline for Submission of Bids listed in [Section 1.0](#) (Calendar of Events). Modifications to this IFB shall be made by issuance of amendments and/or addenda.

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

If the Bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in this IFB, the Bidder shall immediately notify DOH of such error in writing at insert a BML or other contact information here and request clarification or modification of the document.

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

5.4. Payment to the State

The Contractor shall make monthly rebate payments to the State, based on the documented purchases submitted by the State (i.e., WIC benefit redemptions supported by electronic data files subject to audit) as indicated on the State's invoice. Invoices shall reflect the total number of each contract formula redeemed within the preceding calendar month, with a breakdown for each redemption month of the months in which the infant formula benefit was issued, and adjustments, if any, resulting from the analyses described in [Section 4.4.d](#) of this IFB. Each total will be multiplied by the applicable rebate amount. The products of these calculations will be summed to arrive at the total invoice amount.

The State may also issue supplemental invoices if it discovers that any infant formula redemptions were not accounted for in the regular invoices. The contract entitles the State to rebates for all WIC contract infant formula 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 via automated clearinghouse transfer within thirty (30) days of the postmark 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 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.

5.5. Minority & Woman-Owned Business Enterprise Requirements

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

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

For purposes of this solicitation, DOH hereby establishes an overall goal of **0%** for MWBE participation.

5.6. Equal Employment Opportunity (EEO) Reporting

By submission of a bid in response to this solicitation, the Bidder agrees with all of the terms and conditions of [Attachment 8](#) Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. Additionally, the successful Bidder will be required to certify they have an acceptable EEO (Equal Employment Opportunity) policy statement in accordance with Section III of Appendix M in [Attachment 8](#).

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

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

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

Business Enterprises and Equal Employment Opportunity Policy Statement ([Attachment 5](#), Form # 5), to DOH with their bid.

5.7. Sales and Compensating Use Tax Certification (Tax Law, § 5-a)

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

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

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

Forms are available through these links:

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

5.8. Contract Insurance Requirements

Prior to the start of work under this Contract, the Contractor shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, insurance of the types and in the amounts set forth in [Attachment 8](#), the New York State Department of Health Contract, Section IV. Contract Insurance Requirements as well as below.

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that DOH shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with DOH, successful Bidders will be required to verify for DOH, on forms authorized by the New York State Workers' Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed below. Any questions relating to either workers' compensation or disability benefits coverage should be directed to the State of New York Workers' Compensation Board, Bureau of Compliance at (518) 486-6307. Failure to provide verification of either of these types of insurance coverage by the time contracts are ready to be executed will be grounds for disqualification of an otherwise successful Bid.

The successful Bidder must submit the following documentation to the Department within 10 calendar days of notification of award:

ONE of the following forms as Workers' Compensation documentation:

5.8.1. Proof of Workers' Compensation Coverage:

- Form C-105.2 – Certificate of Workers' Compensation Insurance issued by private insurance carrier (or Form U-26.3 issued by the State Insurance Fund); or

- Form SI-12 – Certificate of Workers’ Compensation Self-Insurance (or Form GSI-105.2 Certificate of Participation in Workers’ Compensation Group Self-Insurance); or
- Form CE-200 – Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage.

5.8.2. Proof of Disability Benefits Coverage:

ONE of the following forms as Disability documentation:

- Form DB-120.1 – Certificate of Disability Benefits Insurance; or
- Form DB-155 – Certificate of Disability Benefits Self-Insurance; or
- Form CE-200 – Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage.

Further information is available at the Workers’ Compensation Board’s website, which can be accessed through this link: <http://www.wcb.ny.gov>.

5.9. DOH’s Reserved Rights

The Department of Health reserves the right to:

1. Reject any or all bids received in response to the IFB;
2. Withdraw the IFB at any time, at the agency’s sole discretion;
3. Make an award under the IFB in whole or in part;
4. Disqualify any Bidder whose conduct and/or bid fails to conform to the requirements of the IFB;
5. Seek clarifications and revisions of bids;
6. Use bid information obtained through site visits, management interviews and the State’s investigation of a Bidder’s qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to the agency’s request for clarifying information in the course of evaluation and/or selection under the IFB;
7. Prior to the bid opening, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
8. Prior to the bid opening, direct Bidders to submit bid modifications addressing subsequent IFB amendments;
9. Change any of the scheduled dates;
10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;
11. Waive any requirements that are not material;
12. Negotiate with the successful Bidder within the scope of the IFB in the best interests of the State;
13. Conduct contract negotiations with the next responsible Bidder, should the Department be unsuccessful in negotiating with the selected Bidder;
14. Utilize any and all ideas submitted in the bids received;
15. Every offer shall be firm and not revocable for a period of three hundred and sixty-five days (365) from the bid opening, to the extent not inconsistent with section 2-205 of the uniform commercial code. Subsequent to such three hundred and sixty- five days (365), any offer is subject to withdrawal communicated in a writing signed by the Bidder; and,
16. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder’s bid and/or to determine a Bidder’s compliance with the requirements of the solicitation.

5.10. Freedom of Information Law (“FOIL”)

All bids may be disclosed or used by DOH to the extent permitted by law. DOH may disclose a bid to any person for the purpose of assisting in evaluating the bid or for any other lawful purpose. All bids will become State agency records, which will be available to the public in accordance with the Freedom of Information Law. **Any portion of the bid that a Bidder believes constitutes proprietary information entitled to confidential handling, as an exception to the Freedom of Information Law, must be**

clearly and specifically designated in the bid as directed in [Section 6.2.6 of the IFB](#). If DOH agrees with the proprietary claim, the designated portion of the bid will be withheld from public disclosure. Blanket assertions of proprietary material will not be accepted, and failure to specifically designate proprietary material may be deemed a waiver of any right to confidential handling of such material.

5.11. Lobbying

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

- a) making the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, State Legislature, public authority, certain industrial development agencies and local benefit corporations;
- b) requiring the above-mentioned governmental entities to record all contacts made by lobbyists and Contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
- c) requiring governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
- d) authorizing the New York State Commission on Public Integrity, (now New York State Joint Commission on Public Ethics), to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
- e) directing the Office of General Services to disclose and maintain a list of non-responsible Bidders pursuant to this new law and those who have been debarred and publish such list on its website;
- f) requiring the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment; (Bidders responding to this IFB should submit a completed and signed [Attachment 1](#), "Prior Non-Responsibility Determination".)
- g) increasing the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- h) establishing the Advisory Council on Procurement Lobbying.

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

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

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

5.12. State Finance Law Consultant Disclosure Provisions

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

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

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

State Consultant Services Form A: Contractor's Planned Employment and Form B: Contractor's Annual Employment Report may be accessed electronically at:

<http://www.osc.state.ny.us/agencies/forms/ac3271s.doc> and
<http://www.osc.state.ny.us/agencies/forms/ac3272s.doc>.

5.13. Debriefing

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

5.14. Protest Procedures

In the event unsuccessful Bidders wish to protest the award resulting from this IFB, Bidders should follow the protest procedures established by the Office of the State Comptroller (OSC). These procedures can be found in Chapter XI Section 17 of the Guide to Financial Operations (GFO). Available on-line at:

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

5.15. Iran Divestment Act

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website (currently found at this address:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>) and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

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

5.16. Piggybacking

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

5.17. Encouraging Use of New York Businesses in Contract Performance

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its Contractors. New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. All Bidders should complete [Attachment 6](#), Encouraging Use of New York Businesses in Contract Performance, to indicate their intent to use/not use New York Businesses in the performance of this contract.

5.18. Participation Opportunities for NYS Certified Service-Disabled Veteran-Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. DOH recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of DOH contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, DOH conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>

Bidders are encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

5.19. Vendor Assurance of No Conflict of Interest or Detrimental Effect

All Bidders responding to this solicitation should submit [Attachment 4](#) to attest that their performance of the services outlined in this IFB does not create a conflict of interest and that the Bidder will not act in any manner that is detrimental to any other State project on which they are rendering services.

5.20. Executive Order 177 Prohibiting Contracts with Entities that Support Discrimination

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics. In accordance with Executive Order No. 177, the Offeror certifies that they do not have institutional policies or practices that fail to address those protected status under the Human Rights Law.

6. Bid Format and Content

Bidders responding to this IFB must satisfy all requirements stated in this IFB. All Bidders are requested to submit complete Bid packages. A bid that is incomplete in any material respect may be rejected.

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

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

6.1. Mandatory Bid Requirements

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

In addition to adhering the Administrative Information required in [Section 5.0](#) of the IFB, Bidders must submit the items listed below.

Certifications Form

6.1.1. Bidder's Certified Statements

Bidders must review, sign in wet ink and submit Attachment G, "Bidder's Certified Statements", which includes information regarding the Bidder and an attestation that the Bidder meets all the mandatory minimum requirements outlined in [Section 3.0](#) of this IFB. Attachment G must be signed by an individual authorized to bind the Bidder contractually. Please indicate the title or position that the signer holds with the Bidder. DOH reserves the right to reject a bid that contains an incomplete, unsigned or no Attachment G.

6.1.2. National Wholesale Price List

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

6.1.3. Bid Sheet(s)

The formula specified on the Infant Formula Bid Sheets (Attachments C and D) must be in production and listed on the Bidder's national wholesale price list as of the date of the bid submission. Bidders must include in their bid submission:

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

All bid sheets will be reviewed for completeness to determine the lowest total net wholesale cost to the State. All sheets must be signed in wet ink by a company representative with authority to commit the company to the bid package.

On each bid sheet (Attachment C and/or Attachment D) that the Bidder chooses to submit, Bidders must indicate one rebate bid per unit for concentrated formula, one rebate bid per unit for powdered formula, and one rebate bid per unit for ready-to-feed formula.

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

- The monthly average number of infants receiving formula (See Table II), broken down by age (in months) and feeding category. “FF” refers to infants who receive more than 50% of the maximum amount of formula allowed. “PBF” refers to infants who are partially breastfed and are supplemented with formula up to 50% of the maximum amount allowed.
- The monthly average number of infants receiving contract infant formula (See Table IV). At present, there are no NYS WIC infants receiving non-contract, non-exempt formula.
- The number of infants (for each age/feeding category combination) receiving each type of contract formula. This was done by multiplying the amounts in Table II (farthest right column) by the proportion of contract-formula-fed infants who receive each type of formula: milk-based concentrate, milk-based powder, milk-based ready-to-feed, soy-based concentrate, soy-based powder and soy-based ready-to-feed. These proportions are shown in Table III. The resulting amounts are shown in Table IV.
- The Maximum Monthly Allowances (MMA), in reconstituted ounces that are allowed for each infant by age, feeding status and type of contract formula. These amounts are shown in Table V.

Attachments C and D show how these reconstituted ounce amounts are converted to numbers of containers. Bids are then based on per-container amounts multiplied by the total number of containers.

Instructions for completing Attachments C and D are provided in Attachment B -Instructions for Completing the Bid Forms. Failure to comply with the format and content requirements may result in disqualification. The number of reconstituted ounces discussed above will be converted to a number of containers of the Bidder’s formula on the Bid Sheets.

6.2. Other Bid Documents

6.2.1. Bidder’s Disclosure of Prior Non-Responsibility Determinations

Submit a completed and signed [Attachment 1](#), “Bidder’s Disclosure of Prior Non-Responsibility Determination”.

6.2.2. Vendor Responsibility Questionnaire

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

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

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website, www.osc.state.ny.us/vendrep, or may contact the Office of the State Comptroller’s Help Desk for a copy of the paper form. Bidder’s should complete and submit the Vendor Responsibility Attestation, [Attachment 3](#).

6.2.3. Conflict of Interest or Detrimental Effect

Submit [Attachment 4](#), Vendor’s Assurance of No Conflict of Interest or Detrimental Effect, which includes information regarding the Bidder, members, shareholders, parents, affiliates or subcontractors. [Attachment 4](#) must be signed by an individual authorized to bind the Bidder contractually.

6.2.4. EEO Forms

Submit completed Form #5 as directed in [Attachment 5](#), “New York State DOH M/WBE IFB Required Forms”.

6.2.5. Encouraging Use of New York Businesses in Contract Performance

Submit [Attachment 6](#) “Encouraging Use of New York State Businesses in Contract Performance” to indicate which New York State Businesses you will use in the performance of the contract.

6.2.6. Freedom of Information Law – Bid Redactions

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

6.2.7. EO 177 Prohibiting Contracts with Entities that Support Discrimination

Submit [Attachment 11](#) certifying that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law

7. BID SUBMISSION

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

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

7.1.1. All hard copy bid materials should be printed on 8.5” x 11” white paper (single sided), be clearly page numbered on the bottom of each page with appropriate header and footer information and if necessary, presented separately, in three-ring binders. A type size of eleven (11) points or larger should be used;

- 7.1.2. The Bid submission should be submitted in a sealed envelope or box.
- 7.1.3. Where signatures are required, the bids designated as originals should have a handwritten signature and be signed in blue ink;
- 7.1.4. The NYSDOH discourages overly lengthy bids. Therefore, marketing brochures, user manuals or other materials, beyond that sufficient to present a complete bid, are not desired. Elaborate artwork or expensive paper is not necessary or desired. In order for the NYSDOH to evaluate bids fairly and completely, bids should follow the format described in this IFB and provide all requested information;
- 7.1.5. In the event that a discrepancy is found between the electronic and hardcopy bid, the original hardcopy #1 will prevail.
- 7.1.6. Audio and/or videotapes are not allowed. Any submitted audio or videotapes will be ignored by the evaluation team.

The complete bid must be received by the NYSDOH, no later than the Deadline for Submission of Bids specified in [Section 1.0](#), (Calendar of Events). Late bids will not be considered.

Bids should be submitted in a clearly labeled package, prepared in accordance with the requirements stated in this IFB. Mark the outside envelope of bid as "IFB #20051 WIC Infant Formula Rebate Bid

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

Department of Health
IFB #20051 – WIC Infant Formula Rebate
Attention: Corie Nadzan, WIC Program Director
Division of Nutrition
Bureau of Supplemental Foods Program
Riverview Center
150 Broadway, Suite 650
Albany, NY 12204-2719

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

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

It is the Bidder's responsibility to see that bids are delivered to the address above prior to the date and time noted on the [Section 1.0](#), (Calendar of Events). 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 due to the delay by the carrier or not received in the department's mail room will not be considered.

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 (2) representatives to witness the Bid Opening. There will be at least two (2) representatives from the State present at the opening. Photo identification is required for admission to the bid opening.

Bidders must pre-register their representatives for the Public Bid Opening by emailing James Browning at BSFP-FMS.Procure@health.ny.gov by the deadline for registering indicated in [Section 1.0](#), (Calendar of Events) of this IFB. Bidders must provide the name and title of their representatives when registering.

In the event that the Bid Opening must be done virtually due to COVID19 related social distancing requirements, or any other public health emergency, Bidders will receive a Web-Ex or other virtual media invitation for the bid opening. Bidders must still pre-register and follow instructions for bid submissions as outlined in [Section 7.0](#).

At the Bid Opening, the Bidders' company names will be announced, and the formula names and the amounts entered into the Bid Sheets (Attachments C and D) 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.

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.

7.2. No Bid Form

Bidders choosing not to bid are requested to complete the No-Bid form [Attachment 2](#).

8. METHOD OF AWARD

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

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

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

The tied Bidders will be given the opportunity to provide their best and final bid price to the Department, and after evaluation of these revised bids, the award will then be made to the Bidder with the lowest total monthly net wholesale cost to the State.

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

- Lowest cost (Lowest net cost per unit of milk-based powdered formula for the milk-based formula award and the lowest net cost per unit of soy-based powdered formula for the soy-based formula award.)
- Past experience

8.1. General Information

Once a Bidder is selected, the Department of Health will issue a contract to the vendor. In order to be considered responsible and responsive, the bid must include all Invitation for Bid (IFB) required documents and meet the minimum qualifications as stated in the IFB.

Bidders may be requested by DOH to clarify the contents of their bids. Other than to provide such information as may be requested by DOH, no Bidder will be allowed to alter its bid after the Deadline for Submission of Proposals listed in [Section 1.0](#) (Calendar of Events).

8.2. Submission Review

DOH will examine all bids that are received in a proper and timely manner. The bid containing the lowest total monthly net wholesale cost to the State for milk-based and/or soy-based infant formulas will be further evaluated to determine if it meets all bid submission requirements, as described in [Section 6.0](#) (Bid Format and Content) and [Section 7.0](#) (Bid Submission) for award. That process will be followed until an award is made.

8.3. Award Recommendation

The Evaluation Committee will submit a recommendation for award to the responsible and responsive Bidder with the lowest total monthly net wholesale cost to the state for milk-based and/or soy-based infant formulas.

The Department will notify the awarded Bidder(s) and Bidders not awarded. The awarded Bidder(s) will enter into a written Agreement substantially in accordance with the terms of [Attachment 8](#), DOH Agreement, to provide the required services as specified in this IFB. The resultant contract shall not be binding until fully executed and approved by the New York State Office of the Attorney General and the Office of the State Comptroller.

9. ATTACHMENTS

The following attachments are included in this IFB and are available via hyperlink or can be found at: <https://www.health.ny.gov/funding/forms/>.

1. [Bidder's Disclosure of Prior Non-Responsibility Determination](#)
2. [No-Bid Form](#)
3. [Vendor Responsibility Attestation](#)
4. [Vendor Assurance of No Conflict of Interest or Detrimental Effect](#)
5. [Guide to New York State DOH M/WBE Required Forms & Forms](#)
6. [Encouraging Use of New York Businesses in Contract Performance](#)
8. [DOH Agreement](#) (Standard Contract)
10. [Diversity Practices Questionnaire](#)
11. [Executive Order 177 Prohibiting Contracts with Entities that Support Discrimination](#)

The following attachments are attached and included in this IFB:

- A. Bid Package Checklist
- B. Instructions for Completing the Bid Forms
- C. Bid Form – Milk Based Formula
- D. Bid Form – Soy Based Formula
- E. NYS Program Regions
- F. NYS WIC Infant Formula Rebate Invoices
- G. Bidder's Certified Statements

**ATTACHMENT A
BID PACKAGE CHECKLIST**

Please reference [Section 7.0](#) for the appropriate format and quantities for each proposal submission.

IFB # 20051 – WIC Infant Formula Rebate System		
FOR THE MANDATORY BID REQUIREMENTS		
IFB §	SUBMISSION	INCLUDED
§ 6.1.1	Attachment G - Bidder's Certified Statements.	<input type="checkbox"/>
§ 6.1.2	National Wholesale Price List	<input type="checkbox"/>
§ 6.1.3 And/ Or	Bid Forms:	
	Attachment C- Bid Form – milk-based infant formula	<input type="checkbox"/>
	Attachment D- Bid Form – soy-based infant formula	<input type="checkbox"/>
FOR THE OTHER BID DOCUMENTS		
§ 6.2.1	Attachment 1 – Bidder's Disclosure of Prior Non-Responsibility Determinations, completed and signed.	<input type="checkbox"/>
§ 6.2.2	Attachment 3- Vendor Responsibility Attestation	<input type="checkbox"/>
§ 6.2.3	Attachment 4 - Vendor Assurance of No Conflict of Interest or Detrimental Effect	<input type="checkbox"/>
§ 6.2.4	Attachment 5 – EEO Forms:	<input type="checkbox"/>
	Attachment 5 - Form 5	<input type="checkbox"/>
§ 6.2.5	Attachment 6- Encouraging Use of New York Businesses	<input type="checkbox"/>
§ 6.2.6	Freedom of Information – Statement of Bid Redactions	<input type="checkbox"/>
§ 6.2.8	Attachment 11 - Executive Order 177 Prohibiting Contracts with Entities that Support Discrimination	<input type="checkbox"/>

ATTACHMENT B INSTRUCTIONS FOR COMPLETING BID SHEETS

As part of their bid packages, Bidders must include:

- 4 handwritten signed originals and 4 handwritten signed copies Bid Sheet – Milk-Based Infant Formula (Attachment C), **OR**
- 4 handwritten signed originals and 4 handwritten signed copies Bid Sheet – Soy-Based Infant Formula (Attachment D), **OR**
- 4 handwritten signed originals and 4 handwritten signed copies Bid Sheet - Milk-Based Infant Formula (Attachment C) **AND** 4 handwritten signed originals and 4 handwritten signed copies Bid Sheet – Soy-Based Infant Formula (Attachment D).

Bidders must use the Microsoft Excel spreadsheet files provided by the NYS Department of Health to prepare their Bid Sheets. The two files named below will be available on the NYS Department of Health website at <http://www.health.ny.gov/funding/>.

1. "Attachment C Milk-Based Infant Formula Bid Sheet.xls"
2. "Attachment D Soy- Based Infant Formula Bid Sheet.xls"

For each bid Excel file that the Bidder chooses to submit, Bidders must:

On the "Page 1" tab:

- Enter Manufacturer Name in the yellow box entitled 'Manufacturer' (cell D13).
- In the row for the appropriate form (powder, concentrate, ready-to-feed) enter the:
 - Product Name
 - UPC Code
 - Unit Size (in ounces)
 - Reconstituted Ounces per Unit
 - Lowest Wholesale Full Truckload Price per Unit (carry to three (3) decimal places)
 - Rebate Bid per Unit (carry to three (3) decimal places)
- The Rebate Bid per Unit is the dollar amount per container that will be returned to the State under the terms of the contract awarded as a result of this IFB.
- **DO NOT ENTER ANY TEXT (LETTERS) for Unit Size in Ounces, Reconstituted Ounces per Unit, Lowest Wholesale Full Truckload Price per Unit or Rebate Bid per Unit. PLEASE ONLY ENTER NUMERIC VALUES.** For example, only enter "32" for 32 ounces.
- Print a hard copy of the sheet.
- Sign and date this page at the bottom. The sheet must be signed by a company representative with authority to commit the company to the bid package.
- Include 4 handwritten originals and 4 handwritten copies of the signed sheet in the bid package.

On the "Page 2" tab: This page will automatically calculate the total net cost per months based on the information entered on Page 1.

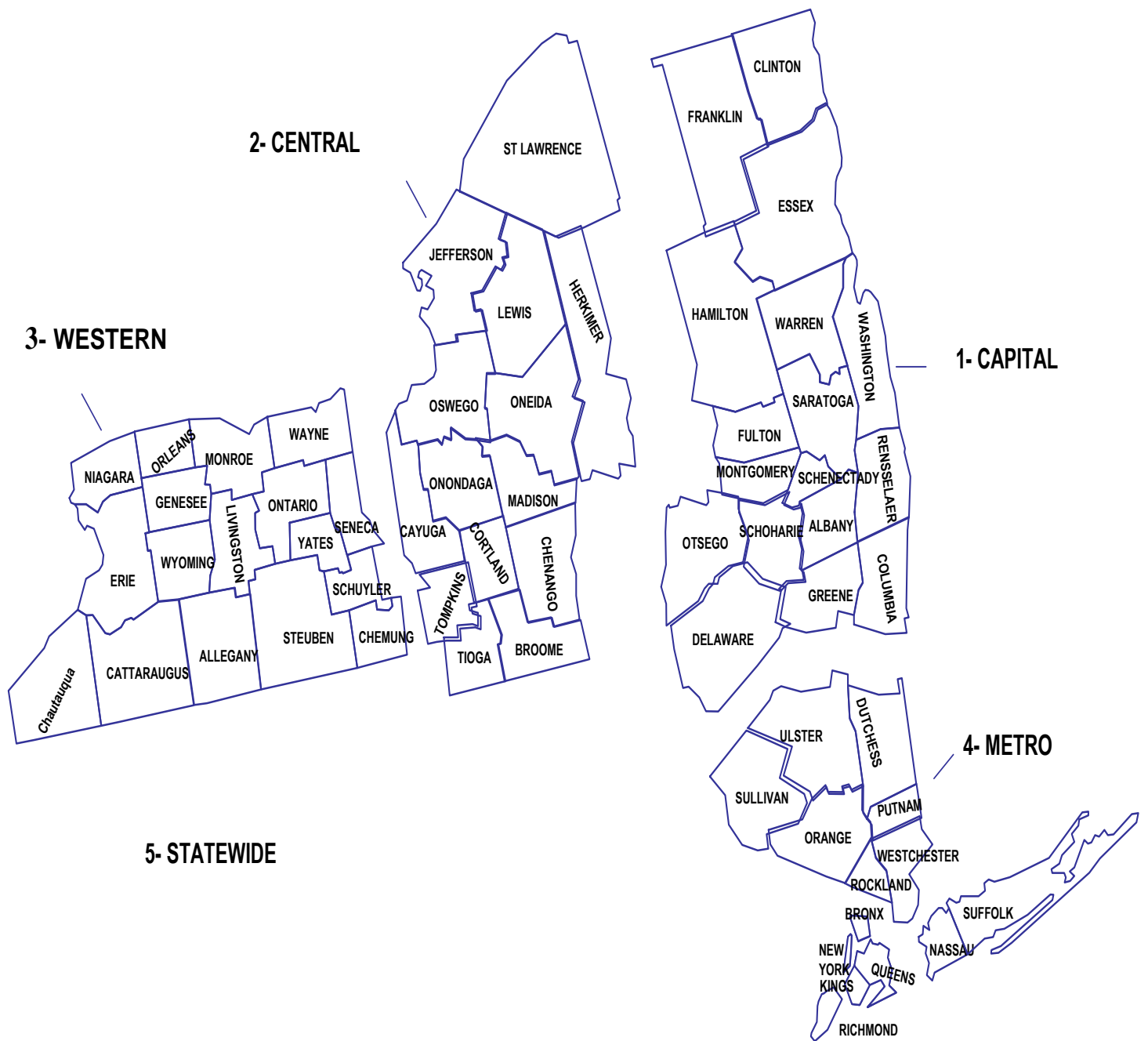
**ATTACHMENT C
BID SHEETS – MILK-BASED INFANT FORMULA**

**ATTACHMENT D
BID SHEETS – SOY-BASED INFANT FORMULA**

See file named: “Milk-Based Formula Bid Sheet.xls”

See file named: “Soy-Based Formula Bid Sheet.xls”

**ATTACHMENT E
NYS WIC PROGRAM REGIONS**



**ATTACHMENT F
NYS WIC INFANT FORMULA REBATE INVOICES**

See file named: "NYS WIC Infant Formula Rebate Invoices Sheet.pdf"

**ATTACHMENT G
 BIDDER'S CERTIFIED STATEMENTS**

To be completed and included in the Administrative Proposal documents.

IFB 20051– WIC Infant Formula Rebate System
1. Information with regard to the Bidder
A. Provide the Bidder's name, address, telephone number, and fax number.
Name:
Address:
City, State, ZIP Code:
Telephone Number (including area code):
Fax Number (including area code):
B. Provide the name, address, telephone number, and email address of the Bidder's Primary Contact with DOH with regard to this Bid.
Name:
Address:
City, State, ZIP Code:
Telephone Number (including area code):
Email Address:
C. The Bidder is (check as applicable):
<input type="checkbox"/> A New York State Certified Minority-Owned Business Enterprise A New York State Certified Woman-Owned Business Enterprise <input type="checkbox"/> A New York State Certified Minority and Woman-Owned Business Enterprise (Dual Certified) <input type="checkbox"/> None of the above

<p>2. By submitting the bid the Bidder acknowledges and agrees to all of the following: [Please note: alteration of any language contained in this section may render your proposal non-responsive.]</p>
<p>The Bidder certifies that it can and will provide and make available, at a minimum, all services as described in the IFB if selected for award.</p>
<p>Bidder attests that it is an infant formula manufacturer registered with the Secretary of Health and Human Services.</p>
<p>Bidder attests that it can produce and distribute infant formula products in sufficient quantity to serve 100 percent of potential WIC infant participants' milk based and/or soy based infant formula needs in New York State.</p>
<p>Bidder attests that all formulas are complete formulas not requiring the addition of any ingredients other than water prior to being served in a liquid state.</p>
<p>Bidder attests that all formulas contain at least 10 milligrams of iron per liter of formula at standard dilution.</p>
<p>Bidder attests that all formulas supply at least 67 kilocalories per 100 milliliters (approximately 20 kilocalories per fluid ounce).</p>
<p>Bidder attests all formulas are designed for enteral digestion via an oral or tube feeding.</p>
<p>Bidder acknowledges that, should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the DOH.</p>
<p>Bidder accepts, without any added conditions, qualifications or exceptions, all contract terms and conditions contained in this IFB including any exhibits and attachments.</p>
<p>The bidder is either registered to do business in NYS, or if formed or incorporated in another jurisdiction than NYS, can provide a Certificate of Good Standing from the applicable jurisdiction or provide an explanation, subject to the sole satisfaction of the Department, if a Certificate of Good Standing is not available, and if selected, the vendor will register to do business in NYS.</p>
<p>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 its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.</p>
<p>A. Provide the name, title, address, telephone number, and email address of the person authorized to receive Notices with regard to the contract entered into as a result of this procurement. See Section M of the DOH Agreement (Attachment 8), NOTICES.</p>
<p>Name:</p>
<p>Title:</p>
<p>Address:</p>
<p>City, State, ZIP Code:</p>
<p>Telephone Number (including area code):</p>
<p>Email Address:</p>

B. Bidder's Taxpayer Identification Number:
C. Bidder's NYS Vendor Identification Number as discussed in Section 6.2.2, if enrolled:

3. By my signature on this Attachment G, I certify to the statements made above in Section 2 and that I am authorized to bind the Bidder contractually. Furthermore, I certify that all information provided in connection with its proposal is true and accurate.

Typed or Printed Name of Authorized Representative of the Bidder

Title/Position of Authorized Representative of the Bidder

Signature of Authorized Representative of the Bidder

Date
