

NEW YORK STATE DEPARTMENT OF HEALTH

AN INVITATION FOR BIDS

**Bureau of Supplemental Food Programs
Food Delivery Systems Unit**

Invitation for Bids (IFB) No. 0803070830

WIC Infant Cereal Rebate System

SCHEDULE OF KEY EVENTS

IFB Release Date	June 30, 2008
Written Questions Due	July 21, 2008
Response to Written Questions Posted on Department of Health Website	August 8, 2008
Bids Due	August 22, 2008 10:00 AM
Public Bid Opening	August 22, 2008 10:15 AM

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

DESIGNATED CONTACTS:

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

*Bonnie DeGennaro
Fiscal Administration Unit
New York State Department of Health
Room 1325, Corning Tower, Empire State Building
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 the following subjects:

Submission of written proposals or bids:

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

Debriefings:

*Jo-Ann Tyler or Caroline Robinson
Bureau of Supplemental Food Programs
Division of Nutrition
New York State Department of Health
Riverview Center
150 Broadway, 6FL West
Albany, NY 12204*

Submission of Written Questions:

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

Negotiation of Contract Terms after Award:

*Jo-Ann Tyler or Caroline Robinson
Bureau of Supplemental Food Programs
Division of Nutrition
New York State Department of Health
Riverview Center
150 Broadway, 6FL West
Albany, NY 12204*

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

TABLE OF CONTENTS

A. INTRODUCTION	1
B. BACKGROUND	1
C. DETAILED SPECIFICATIONS	3
1. TERMINOLOGY	3
2. USE OF WIC ACRONYM AND LOGO	3
3. SERVICES TO BE PROVIDED	4
4. COMPETITIVE BID REBATE SYSTEM	5
D. PROPOSAL REQUIREMENTS	11
1. FORM AND DETAIL	11
2. METHOD OF AWARD	14
E. ADMINISTRATIVE	14
1. ISSUING AGENCY	14
2. INQUIRIES/UPDATES	15
3. SUBMISSION OF PROPOSALS	15
4. RESERVED RIGHTS	18
5. PAYMENT	18
6. TERM OF CONTRACT	19
7. DEBRIEFING	19
8. VENDOR RESPONSIBILITY QUESTIONNAIRE	19
9. STATE CONSULTANT SERVICES REPORTING	20
10. LOBBYING STATUTE	20
11. ACCESSIBILITY OF STATE AGENCY WEB-BASED INTRANET AND INTERNET INFORMATION AND APPLICATIONS	21
12. INFORMATION SECURITY BREACH AND NOTIFICATION ACT	22
13. NEW YORK STATE TAX LAW SECTION 5-A	22
F. APPENDICES	23
G. ATTACHMENTS	24

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

Invitation for Bids
WIC Infant Cereal Rebate System

Special Bid Conditions and Technical Specifications

A. INTRODUCTION

Congress has mandated that states undertake cost containment initiatives to reduce WIC Program costs. Because of the clearly demonstrated social and public health benefits resulting from participation in the WIC Program, New York State has made a strong commitment to lower program costs without reducing either the number of individuals participating in the program or the nutritional content of the food package.

To achieve this goal, the Department is seeking to obtain infant cereal at the lowest overall cost to the WIC Program. Only a Competitive Bid Rebate System will be solicited. The Department will continue to distribute infant cereal through the retail purchase system.

B. BACKGROUND

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

The New York State WIC program provides infant cereal to eligible clients through a retail purchase system. This uniform delivery system is utilized statewide through contracts with approximately 4,500 retail grocery stores and pharmacies that agree to accept WIC checks issued for specified authorized foods. All contractors must comply with federal requirements set forth in 7 CFR, Part 246.12 and state regulations in 10 NYCRR Part 60-1. The contract with the vendor specifies the responsibilities of both the state program and vendors and outlines sanctions for violations. Vendors are reviewed for compliance on a continual basis.

WIC checks are issued by local WIC agencies at clinic sites throughout the state to the parents/guardians of certified eligible infants. These checks specify the quantity and brand name of infant cereal which may be purchased at an authorized retail vendor. After a vendor accepts a WIC check, it is processed through the Federal Reserve System to a

contract bank for payment. A series of pre-payment edits are performed by the contract bank on each check to ensure that specific requirements are met.

Checks are returned to the vendor and not paid when they contain any of the following errors:

- ◆ missing/illegible vendor stamp
- ◆ post dated
- ◆ stale dated
- ◆ exceeds maximum value
- ◆ canceled vendor
- ◆ altered amount
- ◆ missing amount
- ◆ missing signature

During January – June 2007, WIC program benefits and services were provided to an average of 476,993 participants in New York State, including 121,661 infants who were provided approximately 162,200 8-ounce boxes of infant cereal each month. Currently, infants four to 12 months of age are prescribed from eight ounces to a maximum of 24 ounces of dry infant cereal per month. The number of infant participants during the term of any agreement is dependent upon the availability of funds from federal and state sources and the cost of WIC food items. No assurance is given as to any minimum or maximum number of infant participants.

New WIC regulations to be implemented near the beginning of the term of the contract for which bids are being sought will change the amount of infant cereal purchased with WIC checks each month. Under the new regulations, the WIC Program will begin providing infant cereal to infants when they reach six months of age rather than four months of age. This is expected to reduce the monthly volume of infant cereal by 25 percent, from 162,200 8-ounce boxes to 121,650 8-ounce boxes. Implementation of this change may occur as early as October 2008. By federal regulation, the latest implementation date falls in early August 2009.

The New York State WIC program seeks to enter into a new three-year contract with an infant cereal manufacturer as of February 1, 2009 for WIC infant cereal provided to participants beginning May 1, 2009, with the option for two one-year extensions, and a final three-month extension, at the sole discretion of New York State.

C. DETAILED SPECIFICATIONS

1. Terminology

The term “bidder” in this Invitation for Bids (IFB) refers to all potential respondents to the IFB.

The term “manufacturer” refers to the successful bidder who is subsequently awarded a contract and any subcontractor(s) if applicable. The manufacturer is also referred to as the contractor in the standard language sections of the IFB beginning with Section E.8.

The term “State” refers to New York State as represented by the New York State Department of Health WIC program.

“Contract start date” refers to the date on which the state and manufacturer enter into an agreement regarding the issuance of WIC infant cereal checks printed with specific future “not good before” dates. The desired contract start date is February 1, 2009.

“Contract effective date” refers to the earliest “not good before” date on checks printed under the terms of the awarded contract. The earliest possible contract effective date is May 1, 2009. WIC checks with May 1, 2009 “not good before” dates may be printed and distributed to WIC participants as early as February 1, 2009.

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

“Base wholesale price” is the wholesale price per 8-ounce unit of infant cereal when ordered in the largest quantity possible (such a truckload) for delivery to a New York State location.

The “Bid Sheet” is the format for the bidders’ cost proposals as described in Section D.1. of this IFB. The format is provided as Attachment 10 of this IFB.

The “Bid Form” and “No-Bid Form” (Attachment 1 and 2 of this IFB) are standard procurement forms discussed in Section E.3. of this IFB.

2. Use of WIC Acronym and Logo

The use of the “WIC” acronym and logo is reserved for the official use of the WIC program for purposes consistent with WIC program regulations and USDA Food and Nutrition Service (FNS) instructions and policies. Food manufacturers, regardless of whether their foods are provided to NYS WIC Program participants, are not permitted to use the “WIC” acronym or logo 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.

Food manufacturers desiring to make references to a product’s WIC eligibility at the federal level are directed to consult with USDA officials.

3. Services to Be Provided

The successful bidder shall be an infant cereal manufacturer and shall enter into a contract to provide a rebate on a minimum of four types of dry, plain infant cereal – single grain rice, single grain oatmeal, single grain barley, and a mixture of two or more of these grains.

All infant cereals must meet federal, state and local regulations governing foods, and must contain a minimum of 45 milligrams of iron per 100 grams of dry cereal. Prepackaged cereal/fruit, cereal/vegetable, cereal/formula combination items and boxes containing individual serving packets will not be considered.

Only those companies which can produce and distribute sufficient quantity of infant cereal to serve 100 percent (to account for potential program growth) of potentially-eligible WIC infants statewide can bid. By submission of a bid, the bidder certifies that the company can produce and distribute infant cereal for 100 percent of the potentially-eligible WIC infant participants in New York State for the duration of the contract.

Documentation sufficient to substantiate the claim that a bidder can supply 100 percent of the potentially-eligible WIC infants for the duration of the contract shall be required (see Section D.1. of this IFB). In 2006, there were an estimated 167,627 infants potentially eligible for WIC program services in New York State. This estimate is based on New York State birth records and census data.

The successful bidder will be responsible for providing sufficient quantities of infant cereal in the event that the proportion of WIC-eligible infants that participate in the WIC program increases, or the rules governing the WIC Program change in such a way as to increase the amount of infant cereal purchased with WIC checks during the term of this contract. The successful bidder will be responsible for making contract infant cereal available to all of the program's authorized retailers (vendors).

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

Regional* Distribution of Eligible Infants and WIC Vendors

Category	Capital/ Central (#)	Capital/ Central (%)	Western (#)	Western (%)	Metropolitan (#)	Metropolitan (%)
Infants Eligible for WIC Participation	28,709	17%	15,600	9%	123,318	74%
Number of Vendors per Region	548	12%	420	10%	3,485	78%

*See Attachment 9 - New York State WIC Program Regions

4. Competitive Bid Rebate System

The successful bidder shall:

- a. Certify to the State that all infant cereal to be supplied under the terms of the contract, meet Federal, State, and local regulations governing foods.
- b. Provide infant cereal containing a minimum of 45 milligrams of iron per 100 grams of dry cereal in sufficient supply to meet 100 percent of WIC caseload requirements for purchase during the contract period. These products shall be packaged in containers which are not different than the containers distributed by the successful bidder to retail vendors for sale to the general public.

Infant cereal must be packaged in an 8-ounce unit. If 16-ounce units are available from the manufacturer, they will be eligible for a rebate as outlined in this Invitation for Bids, equal to twice the rebate for an 8-ounce unit.

- c. Guarantee the availability of sufficient quantities of the four required infant cereals (single grain rice, single grain oatmeal, single grain barley, and a mixture of two or more of these grains) to all of the program's authorized retailers (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 these infant cereals made available by the manufacturer through its marketing channels and practices. WIC retail vendors are responsible for paying the manufacturer or wholesale supplier of the manufacturer's formula according to the payment terms agreed upon by the WIC retail vendor and the manufacturer or wholesale supplier.

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

- d. Contact major wholesalers and distributors serving New York State to assure adequate knowledge of the change to the single source brand of WIC infant cereal at least 45 days prior to the effective date of the contract.
- e. Remit to the State a rebate per 8-ounce unit of infant cereal to be stipulated by the manufacturer for each required cereal type on the Bid Sheet (Attachment 10). The State is entitled to a rebate payment for all infant cereal food instruments issued to WIC Program participants during the term of this contract (beginning with the effective date of the contract) and redeemed before or after the expiration date of the contract as the redemption period is defined within WIC Program procedures.
- f. Agree that increases in the manufacturer's base wholesale price will result in an automatic rebate increase for that cereal type on a cent-for-cent basis, taking effect the first day of the month in which prices were increased. If the contracted manufacturer decreases its base wholesale price, the rebate will automatically decrease for each affected cereal on a cent-for-cent basis. Cent-for-cent decreases in rebate amounts will take effect on the first day of the month after the month in which the price decrease occurs. This applies to any base wholesale price changes (increases and decreases) that occur during the term of the contract as well as to any that occur between the date of bid submission and the effective date of the contract.
- g. Remit to the State a rebate per container of any of the manufacturer's WIC-eligible infant cereals in addition to the four required types that the State chooses to approve for issuance to WIC infants. The rebate amount per container of each additional approved infant cereal will be established at the time of State WIC approval and will be computed as shown below, using the base wholesale prices and rebate amounts in effect at the time of NYS WIC approval of the additional cereal.

<u>Rebate amount for the required rice cereal</u>		Base wholesale price
Base wholesale price for the required rice cereal	X	of the additional infant cereal

The rebate established will change with any subsequent base wholesale price increases and decreases on a cent-for-cent basis as described in paragraph "f." directly above.

- h. Notify the State of any wholesale price changes by telephone, fax or electronic mail, on the day the price adjustment is released to the manufacturer's regular customers, or another earlier date if possible as agreed to by the manufacturer and the State. The manufacturer must place a telephone call to confirm the state's receipt of the communication.

- i. Provide pamphlets, free of charge, in English, Spanish, and other languages, as determined by the State, to local WIC clinics, designed for the parent/guardian of WIC infants for the duration of the contract. The pamphlets may only address product information regarding preparation and feeding of the manufacturer's infant cereals. These pamphlets may not contain any reference to WIC or in any way suggest or imply an endorsement of a product by the State. The State may request an amount of educational materials in sufficient supply to equal 100 percent of the total number of WIC infant participants. These materials are considered to be those currently distributed or developed by the manufacturer during the term of the contract as long as they are adequate to meet the intended purpose and requirements of the contract.
- j. Provide, free of charge, product labels or package flats to local WIC clinics for their use in educating WIC participants regarding selecting the appropriate product at the grocery store for the duration of the contract. The State may request product labels or package flats for each infant cereal product in sufficient supply to equal 110 percent of the total number of local agency employees responsible for participant education.
- k. Certify that all approved cereals distributed for New York State WIC participants shall be kosher and shall be represented as kosher on the product label as of the effective date of the contract.
- l. Rebate the State the current rebate amount for another company's infant cereal product when the manufacturer's product has a factory back order of three calendar days or more and another company's (or companies') cereal must be substituted to provide participants with their monthly cereal allowance. 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 manufacturer fails to deliver the specified services on the delivery date designated herein, then the State may procure the usage of other parties' services and may cancel the contract.
- m. Make monthly rebate payments as described in Section E.5. of this IFB.

- n. Be totally and exclusively responsible for all costs related to the manufacturer'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 state confidentiality requirements.
- o. Notify the State of any dispute or error in the rebate invoice within 30 days of the postmark or fax marked date of the invoice. After this 30 day period, any requirement to return funds to the manufacturer as a result of a dispute or over billing error is waived. Payments cannot be withheld by the manufacturer in the event of a dispute of billing error. The manufacturer may not withhold rebate payments based on rebate invoices issued by the State under any circumstances.
- p. Be required to furnish a performance bond equal to two months' rebate revenue within 30 calendar days of the effective date of the contract to guarantee performance in accordance with the conditions and specifications of this Invitation for Bids and the contract. The two months' rebate revenue amount will be calculated by multiplying the average of the rebate bids per 8-ounce unit from Column B on the Bid Sheet (Attachment 10) by the estimated number of 8-ounce units per month from the Bid Sheet (see the asterisked phrase at the bottom of the sheet) and doubling the sum. A surety bond executed by a company authorized to do business in the state would be acceptable as a performance bond. The performance bond amount shall remain valid for the entire contract period, including all extensions. Prior to acceptance of the performance bond, the State reserves the right to review the bond and may require the manufacturer to substitute a more acceptable bond in such form as may be required. Failure to provide a performance bond within the required time shall be cause for the cancellation or termination of the contract. In the event of termination for default, the performance bond shall become available to the State for any outstanding damage assessments against the manufacturer. Up to the full amount of the performance bond may also be applied to the manufacturer's liability for any administrative costs and/or excess costs incurred by the State in obtaining similar services to replace those terminated as a result of the default. The State may seek other remedies under law in addition to this stated liability. The performance bond shall also become payable to the State if the contract is terminated due to bankruptcy on the part of the manufacturer, whether voluntary or involuntary
- q. Meet with the State annually 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.

- r. Address correspondence and communications to the New York State Department of Health, Division of Nutrition, Director, Bureau of Supplemental Food Programs, Riverview Center, 150 Broadway 6th Floor West, Albany, New York 12204-2719.
- s. The director of the Bureau of Supplemental Food Programs must be notified of wholesale price increases for any NYS WIC approved infant cereals as noted in paragraph “h.” above. In addition he/she must be informed in writing (hard-copy mail, fax or electronic mail) of, for all of the manufacturer’s infant cereals, any product changes (such as package appearance changes, reformulations, new or discontinued products) that could affect the WIC consumer’s ability to identify a NYS WIC approved infant cereal. The manufacturer must place a telephone call to confirm the state’s receipt of the communication.
- t. Agree to fully indemnify and save harmless the State, as well as its officers, agents and employees without limitation from suits, actions, damages and costs of every name and description arising out of the acts or omissions of manufacturer, its officers, employees, subcontractors, partners, or agents, in any performance under this contract, including but not limited to personal injury caused by use of manufacturer’s cereal furnished pursuant to this contract, provided that the State shall give the manufacturer written notice of any action, claim, or other suit within 30 days of receiving notice of such action, claim, or other suit. Further, the manufacturer shall be given the opportunity to take over, settle or defend itself in such action, claim or suit at the manufacturer's sole expense, together with reasonable cooperation from the State in the defense of any such action, also at the manufacturer's expense. Notwithstanding any indemnification clause, the State shall have full authority to conduct its own defense, negotiations, and settlements, which settlements shall have the prior written approval of manufacturer, but the manufacturer’s indemnification nevertheless remains in full force and effect.
- u. Assist the State with providing contract 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 State for direct distribution to WIC participants. In the event of direct infant cereal purchases by the State, the cost to the State will be the base wholesale price less the rebate amount in effect on the purchase date.

The 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 to the manufacturer for this list or for any other purpose. The State will also notify all authorized WIC retail outlets to inform them of the change to the manufacturer's products approved for WIC participants.
- b. Restrict all WIC food instruments for infant cereal to cereals produced by the manufacturer. This restriction will be implemented by creating food instruments with the brand name of the manufacturer listed.
- c. Upon resolution of a dispute, the State will promptly disburse in accordance with prompt payment provisions of Article 11 of the State of Finance Law, any funds due the manufacturer.
- d. Supply upon request only records directly related to the monthly billings to the manufacturer for review. This review shall be limited to books, records, and documents related to the generation of monthly invoices and shall include and be limited to the following data elements:

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

The manufacturer 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 manufacturer in accordance with 7 CFR Part 246 of the Federal Regulations for the Special Supplemental Food Program for Women, Infants and Children.

- e. Meet with the manufacturer annually 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.

The State and the manufacturer 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 contract by closeout of the federal fiscal year within which the issuance month of the disputed rebate amounts occurred. Notwithstanding the foregoing, nothing in this requirement should be construed as a waiver of the legal rights of either party to continue efforts to arrive at a satisfactory resolution of a dispute after the closeout

of the federal fiscal year in the event that a satisfactory resolution cannot be reached before the closeout of the federal fiscal year.

D. PROPOSAL REQUIREMENTS

1. Form and Detail

Bid proposals must consist of two (2) separate parts, a Technical Proposal and a Cost Proposal.

Part 1 shall be submitted separately, in a sealed envelope labeled as the bidder's Technical Proposal. Part 2 shall be submitted separately in a sealed envelope labeled as the bidder's Cost Proposal.

Bidders who fail to respond to each of the items in this section as well as the items listed in Section E.3. of this IFB shall be considered unresponsive and shall not continue in the bid process.

The bid in the Cost Proposal must be submitted as a specific dollar and cent amount carried to the fourth decimal point, on the Bid Sheet (Attachment 10) or the bid will be disallowed.

a. Technical Proposal

Bid responses shall provide a concise description of the bidder's capabilities to satisfy the requirements of this bid. The proposal submitted shall address at least the following indicated areas. The Technical Proposal shall be "pass/fail," based solely on written submission of the requested information. It shall include the following:

1. Certifications and Scope of Services

- A certifications page covering all the provisions outlined in Section C.3. (Services to Be Provided) of this IFB, including:
 - ◆ Being an infant cereal manufacturer,
 - ◆ Providing rebates on four types of dry, plain infant cereal,
 - ◆ Ensuring that all required cereal types contain 45 milligrams of iron per 100 grams of dry cereal,
 - ◆ Ensuring that all infant cereal to be supplied under the contract meet federal, state and local regulations governing foods, and
 - ◆ Producing sufficient infant cereal to meet the needs of 100 percent of the potentially-eligible WIC infant population.

- A narrative describing the plans and approach for accomplishing the scope of services described in Section C.3. (Services to Be Provided) of this IFB. An insufficient response in this area will result in a

failure of the technical proposal. The information presented shall be in enough detail to enable the State to ascertain the bidder's understanding of the effort to be accomplished and should include, but not be limited to:

- ◆ A description of the manufacturer's production capabilities sufficient to allow for the production of the actual and potential volume of NYS WIC infant cereal purchases throughout the duration of the contract.
- ◆ A description of the manufacturer's quality control procedures to ensure the wholesomeness of its infant cereal products and the compliance of the contractually-required infant cereal products with the specifications outline in Section C.3. of this IFB.

If the manufacturer deems it necessary to provide proprietary information to address this portion of the technical proposal, the information should be clearly marked as proprietary and the State will ensure that the information is maintained in a confidential manner. However, it is preferred that the manufacturer not submit proprietary information.

2. Experience in the field of work:

- The bidder shall provide, if applicable, a listing of work performed within the past five years which is similar in nature to the services requested in this IFB. This listing shall include:
 - ◆ name of the company/entity for which work was performed
 - ◆ contact person
 - ◆ telephone number
 - ◆ address
 - ◆ brief description of work performed

The bidder must indicate if no such work has been performed within the past five years.

- If applicable to the bidder's experience, the bidder shall provide a description of mechanisms used to assist a WIC State agency and/or Indian Tribal Organizations (ITO) in a changeover from one cereal manufacturer to another in the past five years. This description should include:
 - ◆ WIC State agency name/contact person
 - ◆ date changeover occurred
 - ◆ procedures used to educate WIC vendors, WIC local agencies, health care providers, and WIC participants about the changeover
 - ◆ samples of educational materials used during the transition

The bidder must indicate if no such assistance has been provided within the past five years.

3. Current market presence in New York State.

- The bidder must provide documentation (e.g., ACNielsen, IRI) of market share and sales volume in New York State. The bidder must also provide documentation of the average retail prices of its four required cereals statewide and in the State's regions as defined by the documentation source.
- The bidder must provide documentation of its current distribution network in New York State including a list of wholesale distributors and direct retail accounts that carry the bidder's cereals.

4. Infant Cereal Products

- Information on each of the manufacturer's infant cereal products, including, for each product:
 - ◆ UPC Code
 - ◆ Product Name
 - ◆ Package Size
 - ◆ Product label or package flat
 - ◆ Kosher certification letter

B. Cost Proposal

The Bid Sheets (Attachment 10) will be reviewed for all bidders whose proposals pass the Technical Review.

- a. The bidder shall include a rebate amount per 8-ounce unit for rice, barley, oatmeal, and mixed dry infant cereal, listed on the attached Bid Sheet (Attachment 10). The rebate amount must be submitted as a specific dollar and cent amount carried to the fourth decimal point
- b. The bidder shall use the manufacturer's reported base wholesale price (as defined in Section C.1. of this IFB) for 8-ounce dry infant cereals without added fruit, vegetables or formula as of August 1, 2008.
- c. All Bid Sheets will be reviewed to determine the lowest total net wholesale cost to the State. Net wholesale cost is defined as the result of subtracting the rebate bid from the wholesale price. The total net wholesale cost is the unweighted average of the net wholesale costs of the four types of cereals (average rebate per box) multiplied by the estimated number of 8-ounce boxes for the contract period.

2. Method of Award

a. Vendor Selection

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

1. The compliance of the submission with the directions provided in this IFB,
2. Whether the technical proposal passes review, and
3. The total net wholesale cost of the bidder's products.

A single contract will be awarded to the manufacturer whose technical proposal passes the Department of Health review and whose bid results in the lowest total net wholesale cost to the State for the contract period.

b. Correspondence

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

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

- ◆ A contract for signature to be returned to the State via overnight mail within 10 days of the manufacturer's receipt of the contract.
- ◆ The telephone numbers, electronic mail addresses, and fax number of the director of the Bureau of Supplemental Food Programs and bureau staff responsible for contract management and able to confirm receipt of communications from the manufacturer.

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

E. ADMINISTRATIVE

1. Issuing Agency

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

The WIC program is an equal opportunity program. In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TTY). USDA is an equal opportunity provider and employer. In addition, "New York State prohibits discrimination based on creed, marital status and sexual orientation. Persons who believe they have been discriminated against based on the New York State Human Rights Law should call the Growing Up Healthy Hotline at 1-800-522-5006, or write to the WIC Program Director, Riverview Center, FL6W, 150 Broadway, Albany, New York, 12204."

2. Inquiries/Updates

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

Questions may be submitted in hard copy to:

New York State Department of Health
Division of Nutrition
Riverview Center
150 Broadway 6th Floor West
Albany, NY 12204-2719
Attention: Jo-Ann Tyler
Bureau of Supplemental Food Programs

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

nyswicinfantcereal@health.state.ny.us

Questions may not be faxed.

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

3. Submission of Proposals

Interested manufacturers must submit one (1) original and six (6) duplicate copies of the Technical Proposal and one (1) original and six (6) duplicate copies of the Cost Proposal not later than the date and time indicated on the cover of this IFB. Faxed or electronically mailed submissions are not acceptable.

The Technical Proposal and the Cost Proposal must be delivered to:

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

It is the responsibility of the bidder to assure that bids are physically received at this address by the required deadline date and time. Late bids will not be considered under any circumstances. Late bids properly identified will be returned to the bidder unopened.

The Technical and Cost Proposals should be sent in one package containing:

- ◆ A packing slip indicating the name and principal place of business of the bidder and the name, mailing address, phone number, fax number and electronic mail address of a contact person and;
- ◆ Two separate, sealed envelopes clearly marked on the outside front:

WIC INFANT CEREAL REBATE - TECHNICAL PROPOSAL
CONFIDENTIAL - DO NOT OPEN
NAME OF BIDDER _____

WIC INFANT CEREAL REBATE - COST PROPOSAL
CONFIDENTIAL - DO NOT OPEN
NAME OF BIDDER _____
- ◆ The Bid Form, which must be filled out in its entirety and be included in the cost proposal envelope. The responsible corporate officer for contract negotiation must be listed. This document must be signed by the responsible corporate officer.
- ◆ The completed Vendor Responsibility Attestation (Attachment 8).
- ◆ The completed form ST-220-CA (Attachment 7), certifying that the bidder has filed a form ST-220-TD with the New York State Department of Taxation and Finance.

Please note that:

- ◆ The certifications page of the Technical Proposal and the certification line of the Cost Proposal (Bid Sheet) must be signed by a company representative with authority to commit the company to this bid.
- ◆ The costs for preparing the bid are solely the responsibility of the bidder. New York State will not provide reimbursement for such costs.
- ◆ All evidence and documentation requested under Section D of this IFB (Proposal Requirements) must be provided at the time the proposal is submitted.

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

At the opening, the bidders' company names will be announced, the cost proposal envelopes will be opened, and the amounts entered into the Bid Sheets (Attachment 10) 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, Vendor Responsibility Attestations, and ST-220-CA forms for completeness and signature.
- ◆ Submission to, and receipt of approval from, State executive staff of documentation of the contractor selection process.

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

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

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

4. Reserved Rights

The Department of Health reserves the right to:

- a. Reject any part of or all bids received in response to this IFB.
- b. Waive or modify minor irregularities in proposals received after prior notification to the bidder.
- c. Adjust or correct cost or cost figures with the concurrence of bidder if errors exist and can be documented to the satisfaction of DOH and the State Comptroller.
- d. Negotiate with vendors responding to this IFB within the requirements to serve the best interests of the State.
- e. Modify the detail specifications should no bids be received that meet all these requirements.
- f. Eliminate mandatory requirements unmet by all offerers.
- g. If the Department of Health is unsuccessful in negotiating a contract with the selected vendor within an acceptable time frame, the Department of Health may begin contract negotiations with the next qualified vendor(s) in order to serve and realize the best interests of the State.

5. Payment

The manufacturer shall make monthly rebate payments to the State, based on the documented purchases submitted by the State (i.e., food instrument redemptions supported by electronic data files subject to audit) as indicated on the State's invoice. Invoices shall reflect the total number of 8-ounce units redeemed within the preceding calendar month, with a breakdown for each redemption month of the months in which the infant cereal check was issued. If any 16-ounce containers were purchased, they will count as two (2) 8-ounce units within this total. This 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 manufacturer via wire transfer within thirty (30) days of the postmark, fax marked, 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 marked 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.

6. Term of Contract

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

The anticipated start date is February 1, 2009 (for WIC cereal checks dated May 1, 2009 or later) or another date as specified, and be effective through April 30, 2012. The contract may be extended at the sole discretion of the state for up to two additional one-year renewals and a final three-month extension. The contract(s) may be canceled by the state at any time, with or without cause, upon a 90-day written notice to the manufacturer. The contract(s) may be modified only by written amendment executed by the parties hereto and approved by the appropriate State official(s).

7. Debriefing

Once an award has been made, bidders may request a debriefing of their technical proposal. Please note the debriefing will be limited only to the reason why their technical proposal did not pass review, and will not include any discussion of other proposals. Requests must be received no later than three months from the date of the award announcement.

8. 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. 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 <http://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. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Department of Health or the Office of the State Comptroller for a copy of the paper form. Bidders must also complete and submit the Vendor Responsibility Attestation (Attachment 8).

9. State Consultant Services Reporting

This section is not applicable to this IFB.

10. Lobbying Statute

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

- a. makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- b. requires the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that
- c. the public knows who is contacting governmental entities about procurements;
- d. 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;
- e. 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;
- f. 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;
- g. requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
- h. expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal–State Agreements, and procurement contracts;
- i. modifies the governance of the New York State Commission on Public Integrity;

- j. provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
- k. increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- l. 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 (Lobbying Commission) regarding procurement lobbying, the Lobbying 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 Lobbying Commission.

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

Any web-based intranet and internet information and applications development, or programming delivered pursuant to the contract or procurement will comply with NYS Office for Technology Policy P04-002, “Accessibility of New York State Web-based Intranet and Internet Information and Applications”, and NYS Mandatory Technology Standard S04-001, 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 NYS Mandatory Technology Standard S04-00, as determined by quality assurance testing. Such quality assurance testing will be conducted by Department of Health, contractor or other, and the results of such

testing must be satisfactory to the Department of Health before web content will be considered a qualified deliverable under the contract or procurement.

12. Information Security Breach and Notification Act

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

<http://www.cscic.state.ny.us/security/securitybreach/>

13. New York State Tax Law Section 5-a

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

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

contract awarded to an offerer meeting the registration requirements but who is not so registered in accordance with the law.

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

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

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 - Invitation for Bids
- APPENDIX C - 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**:
 - **WC/DB-100**, 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**:
 - **WC/DB-100**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers’ Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - **DB-120.1** – Certificate of Disability Benefits Insurance
 - **DB-155** – Certificate of Disability Benefits Self-Insurance
- Appendix H - Health Insurance Portability and Accountability Act (HIPAA) (if applicable)

G. ATTACHMENTS

1. Bid Form
2. No Bid Form
3. Sample Contract Framework
4. Appendix A – Standard Clauses for All New York State Contracts
5. Appendix D – General Specifications
6. N.Y.S. Taxation and Finance Contractor Certification Form ST-220-TD
7. N.Y.S. Taxation and Finance Contractor Certification Form ST-220-CA
8. Vendor Responsibility Attestation
9. NYS WIC Program Regions
10. Bid Sheet

If yes, please answer the next questions:

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

No Yes

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

No Yes

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

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

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

No Yes

2b. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

(Add additional pages as necessary)

NEW YORK STATE DEPARTMENT OF HEALTH
NO-BID FORM

PROCUREMENT TITLE: _____ FAU # _____

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

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

- Please retain our firm on your mailing list.

_____ (Firm Name)

_____ (Officer Signature) _____ (Date)

_____ (Officer Title) _____ (Telephone)

_____ (e-mail Address)

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

ATTACHMENT 3

NEW YORK STATE DEPARTMENT OF HEALTH

Sample Contract Framework

MISCELLANEOUS / CONSULTANT SERVICES

STATE AGENCY (Name and Address):

New York State Department of Health
Division of Nutrition
100 Broadway, 6th Floor
Albany, NY 12204-2719

NYS COMPTROLLER'S NUMBER:

ORIGINATING AGENCY CODE: 12000

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

N/A

CONTRACT TERM

FROM:

TO:

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

FUNDING AMOUNT FOR CONTRACT TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

MUNICIPALITY NO. (if applicable):

N/A

STATUS:

CONTRACTOR IS () IS NOT () A
SECTARIAN ENTITY

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

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

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

BID OPENING DATE:

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

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

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

CONTRACTOR

STATE AGENCY

By: _____

By: _____

Printed Name

Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

State Agency Certification:

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

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

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

(Signature and office of the individual taking acknowledgement)

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

Title: _____

Title: _____

Date: _____

Date: _____

STATE OF NEW YORK
AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

- A. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.
- B. The maximum compensation for the contract term of this AGREEMENT shall not exceed the amount specified on the face page hereof.
- C. This AGREEMENT may be renewed for additional periods (PERIOD), as specified on the face page hereof.
- D. To exercise any renewal option of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (the attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT. The modification agreement is subject to the approval of the Office of the State Comptroller.
- E. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.
- F. For the purposes of this AGREEMENT, the terms "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 submit invoices to the STATE's designated payment office:
 - . New York State Department of Health
Division of Nutrition
Bureau of Supplemental Food Programs
100 Broadway, 6th Floor West
Albany, NY 12204-2719
 - .

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

III. Term of Contract

- A. Upon approval of the NYS Office of the State Comptroller, this AGREEMENT shall be effective for the term as specified on the cover page.
- B. This Agreement may be terminated by 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:

1. WC/DB-100, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
2. C-105.2 – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
3. SI-12 – Certificate of Workers' Compensation Self-Insurance, OR GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.

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

1. WC/DB-100, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
2. DB-120.1 – Certificate of Disability Benefits Insurance OR
3. DB-155 – Certificate of Disability Benefits Self-Insurance

ATTACHMENT 4

NEW YORK STATE DEPARTMENT OF HEALTH

Appendix A – Standard Clauses for All New York State Contracts

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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ATTACHMENT 5

NEW YORK STATE DEPARTMENT OF HEALTH

Appendix D – General Specifications

APPENDIX D
GENERAL SPECIFICATIONS

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

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

- H. Contractor will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.
- I. **Non-Collusive Bidding**
By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
 - a. The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
 - b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
 - c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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

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

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

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

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

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

N. YEAR 2000 WARRANTY

1. Definitions

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

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

2. Warranty Disclosure

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

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

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

3. Warranty Statement

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

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

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

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

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

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

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

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

T. Provisions Upon Default

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

U. Termination Provision

Upon termination of this agreement, the following shall occur:

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

V. Conflicts

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

W. MINORITY AND WOMEN OWNED BUSINESS POLICY STATEMENT

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

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

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

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

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

X. Contract Insurance Requirements

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

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

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

Y. Certification Regarding Debarment and Suspension

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

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

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

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

Instructions for Certification

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

those regulations.

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

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

Z. Confidentiality Clauses

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

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

AA. Provision Related to Consultant Disclosure Legislation

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

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

BB. Provisions Related to New York State Procurement Lobbying Law

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

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

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

ATTACHMENT 6

NEW YORK STATE DEPARTMENT OF HEALTH

N.Y.S. Taxation and Finance Contractor Certification Form ST-220-TD



Contractor Certification

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

ST-220-TD

(5/07)

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

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

General information

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

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and Individual, Corporation, Partnership, or LLC Acknowledgement on page 4. If you do not complete these areas, the form will be returned to you for completion.

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

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

Mail completed form to:

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

Privacy notification

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

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

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

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

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227.

Need help?



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



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



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

To order forms and publications: 1 800 462-8100
Sales Tax Information Center: 1 800 698-2909
 From areas outside the U.S. and outside Canada: (518) 485-6800

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



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

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

Complete Sections 1, 2, and 3 below. Make only one entry in each section.

Section 1 — Contractor registration status

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

Section 2 — Affiliate registration status

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

Section 3 — Subcontractor registration status

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

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

ATTACHMENT 7

NEW YORK STATE DEPARTMENT OF HEALTH

N.Y.S. Taxation and Finance Contractor Certification Form ST-220-CA



Contractor Certification to Covered Agency

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

ST-220-CA

(6/06)

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

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

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

(name)

(title)

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

(Mark an X in only one box)

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

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

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

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General information

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

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

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

When to complete this form

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

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

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

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

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

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

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

Notary Public

Registration No.

Privacy notification

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

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NEW YORK STATE DEPARTMENT OF HEALTH

VENDOR RESPONSIBILITY ATTESTATION

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

Choose one:

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

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

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

Signature of Organization Official: _____

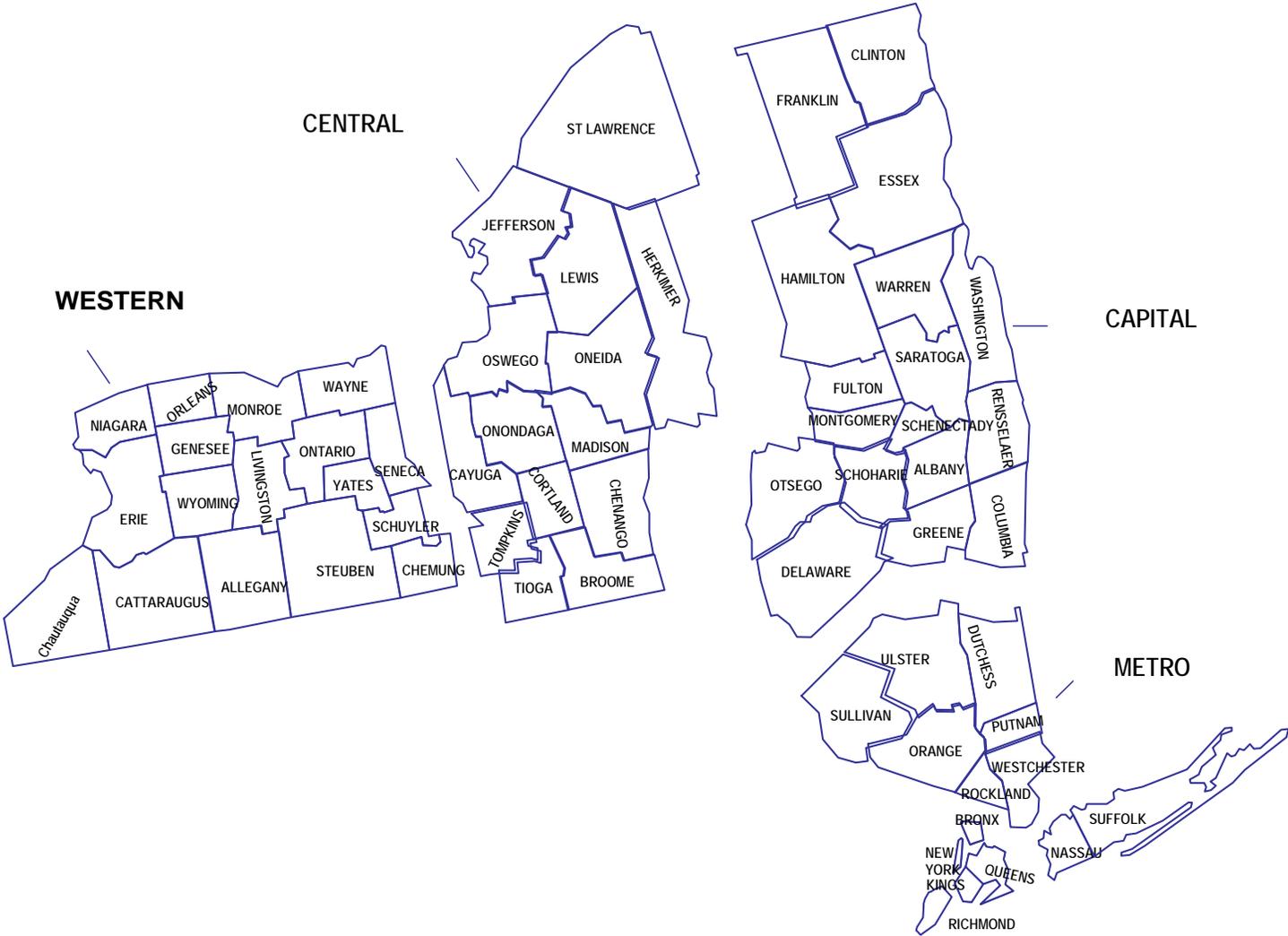
Print/type Name: _____

Title: _____

Organization: _____

Date Signed: _____

NEW YORK STATE DEPARTMENT OF HEALTH
NYS WIC PROGRAM REGIONS



NEW YORK STATE DEPARTMENT OF HEALTH

INFANT CEREAL REBATE BID SHEET

Company Name: _____

Address: _____

By the signature hereon affixed, the bidder hereby certifies that neither the bidder nor the firm corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State, Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

 Signature of Company Representative

 Title

 Date

Column A: Manufacturer's reported base wholesale price as of August 1, 2008 for an 8-ounce unit of each type of dry, plain infant cereal.

Column B: The bidder shall include a rebate bid for four types of dry infant cereal. Each bid shall be carried to the fourth decimal point.

Column C: The bidder shall subtract the number in Column B from the number in Column A.

	Column A	Column B	Column C
TYPE/DRY INFANT CEREAL	Base Wholesale Price Per 8-Ounce Unit	Rebate Bid Per 8-Ounce Unit	Net Wholesale Cost per 8-Ounce Unit
Rice Cereal Product Name:	\$	\$	\$
Barley Cereal Product Name:	\$	\$	\$
Oatmeal Cereal Product Name:	\$	\$	\$
Mixed Cereal Product Name:	\$	\$	\$
Sum of Net Wholesale Costs (Sum of net wholesale costs for each type listed above)			\$
Average Net Wholesale Cost per Box (Sum of net wholesale costs ÷ 4)			\$
Estimated Number of 8 oz. Boxes for Contract Period			4,379,400*
Total Net Wholesale Cost to State (Average net wholesale cost per box x 4,379,400*)			\$

*121,650 per month for 36 months