

Q and A for WIC Program Infant Cereal Rebate Invitation to Bid

August 8, 2008

The following questions were received by July 21, 2009 regarding the New York State WIC Program Infant Cereal Rebate Invitation to Bid.

1. Q: The IFB states, the bid will be opened on August 22, 2008. When will the bid be awarded?

A: No exact date has been established for the bid award.

The following reviews will be completed after August 22, 2008:

- 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 ST220-CA forms for completeness and signature.
- Submission to and receipt of approval from State executive staff including a review of documentation for the contractor selection process.

After these reviews are successfully concluded and approvals received, the winning bidder will be notified in writing.

2. Q: The IFB states, the bid submission is due on August 22, 2008 at 10:00am. Please confirm that the time is 10:00 am Eastern Standard Time?

A: The bid submission is due on August 22, 2008 at 10:00 am, Eastern Daylight Time. The bid opening will occur at 10:15 am, Eastern Daylight Time that same morning.

3. Q: Page 2, Section B: The IFB states, (in regards to the new Federal WIC Food Package change and the eligibility of infant cereal from 4-12 months to 6-12 months) "By federal regulation, the latest implementation date falls in early August 2009". The USDA released an adjusted implementation date of October 1, 2009. Please clarify with which implementation date New York State will comply?

A: New York State will meet the required October 1, 2009, implementation date.

4. Q: Page 2, Section B: The IFB states, "No assurance is given as to any minimum or maximum number of infant participants". If the number of infant participants materially increases, to levels which cannot be reasonably anticipated, will the State provide reasonable notification to the manufacturer, so that the manufacturer can adjust manufacturing and raw material supply needs in order to meet the increasing needs of the State?

A: No assurance is given as to any minimum or maximum number of infant participants. Please note that page 4, Section C.3. of the IFB provides the estimated upper limit of the number of infants that are potentially eligible for WIC in New York State and indicates that bidders must have the capacity to serve that many infants. Any trends over time of increasing or decreasing infant participation will be clear from the number of 8-ounce units contained on monthly invoices. To the extent that the State has prior knowledge of events or program changes that have the potential for significantly changing infant participation levels, the State will share relevant information with the contractor in as timely a manner as possible.

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New York State works in cooperation with its business partners to meet the needs of WIC participants.

5. Q: Page 3, section C.1: The IFB states, the desired contract start date is February 1, 2009 and the desired contract effective date is May 1, 2009. When will the Contract start and effective dates be confirmed?

A: The contract start date and the contract effective date will be confirmed upon notification to the winning bidder.

6. Q: Page 4, section C.3: The IFB states, “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.” Can the State set forth specific criteria or examples of documentation that sufficiently substantiate this claim, or otherwise support this requirement?

A: Bidders are to provide documentation that the manufacturer has the production capacity to meet and supply the estimated need of WIC eligible infants with the full infant cereal benefit as determined by federal regulation. This is estimated to be 190,000 eight- ounce boxes each month.

7. Q: Page 4, section C,3: The IFB states, “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.” If the manufacturer identifies a suitable substitute product that meets Federal, State, and local program requirements, what is the effect or implication to the manufacturer if the manufacturer chooses to discontinue one of the required cereal types based on market conditions or other extraneous or unforeseen factors?

A: The manufacturer will be required to provide the infant cereals specified in its bid submission for the duration of the contract as indicated.

8. Q: Page 5, section C.3.c: The IFB states, “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.”

Please confirm that the word “formula” is in error?

A: Yes; Please replace the word “formula” with “infant cereal.”

9. Q: Please clarify or provide the definition of “purchasing system”?

A: This phrase is used to establish that the manufacturer has a current policy in place whereby any vendor located in any region within New York State who meets the manufacturer’s account relationship standards can obtain the WIC Infant Cereal products at or close to the manufacturer’s national wholesale price with minimal restriction due to the size of the order.

10. Q: While a manufacturer may be required to have a distribution system in place that gives vendors access to its products, anti-trust laws prohibit manufacturers from dictation or

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influencing pricing by its distributors. Please confirm that this clause will be amended accordingly.

A: The New York State WIC Program requires that the successful bidder will be responsible for making contract infant cereal available to all of the program's authorized retailers. This clause does not refer to pricing by the WIC vendors and accordingly will not be amended.

11. Q: Page 7, section C.4.i: The IFB states, the manufacturer is to provide “pamphlets, free of charge, in English, Spanish, and other language as determined by the State”. Please provide a list of the languages in which pamphlets will need to be printed?

A: Printed pamphlets needed are in English, with translations into Spanish, Russian, Traditional Chinese, Arabic, and Bengali. The contractor may be asked to provide other language translations of the pamphlets to be made available in the form of PDF files for WIC Local Agencies to print materials in infrequently used languages.

12. Q: Page 7, section C.4.l: The IFB states, the manufacturer is to 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.”

We request this provision be amended to apply when a product has a factory backorder of seven calendar days. Three days is impractical due to weekends & holidays. Please confirm this provision will be amended as requested.

A: The requirement remains as indicated in the IFB.

13. Q: We further request the State to first provide an alternate type of the manufacturer's infant cereal to relieve any temporary supply problems, prior to using an off-contract brand. Please confirm the State agrees to amend the contract consistent with this request.

A: The requirement remains as indicated in the IFB.

14. Q: Page 8, section C.4.n: With respect to this provision would the State agree that costs refer to all “reasonable costs?” Please confirm and amend the first sentence in this paragraph to read, “responsible for all *reasonable* costs related to the manufacturer’s request for audits, inspections . . .”

A: The requirement remains as indicated in the IFB.

15. Q: Page 8, section C.4.o: The IFB states, that the manufacturer “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.” Thirty days is not enough time for the manufacturer to determine whether a billing error occurred, and therefore is not practical. Does this provision only apply to mathematical or computation errors on the rebate invoice?

A: This applies to any dispute or error in the rebate invoice. The requirement remains as indicated in the IFB.

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16. Q: What supporting documentation will the State provide with the invoices?

A: Upon request, data elements can be provided to the manufacturer to support the monthly invoices. These will include the Check Number, Food Package Code, Issue Date, and Redemption Date.

17. Q: We request this provision be amended to provide for “notice within 120 days from receipt of the invoice”. Please confirm this change will be made.

A: New York State WIC Program is required to comply with federal reporting standards. The requirement remains as indicated in the IFB.

18. Q: Please confirm this provision will not apply when the State uncovers errors in billing resulting in over-billing to the manufacturer. Please confirm the State will reimburse the manufacturer when it learns of any over-billing, regardless of the number of days that have passed after the invoice was received by the manufacturer.

A: Yes, this provision will not apply when the State has made a billing error. If the State uncovers errors in billing resulting in over-billing to the manufacturer, the State will reimburse the manufacturer regardless of the number of days that have passed after the invoice was received by the manufacturer, subject to the availability of funds.

19. Q: Page 9, Section C.4.u: The IFB states, the manufacturer must “Assist the State with providing contract infant cereal to WIC participants on an emergency basis”. The form of assistance described as an example is to sell cereal directly to the State at wholesale base cost less rebate amount, but the assistance is not limited to this form. Would the State provide other examples of forms of assistance?

A: Another similar example is that the State may require assistance from the manufacturer to deliver infant cereal product directly to WIC Local Agencies for distribution directly to WIC participants under emergency circumstances.

20. Q: Page 10, section C.4.d: The IFB states, the data elements that will be provided to the manufacturer to support the monthly invoices. This paragraph states that only the check number, food package codes, issue date, and redemption date will be provided to the manufacturer. How will the manufacturer be able to determine the number of 8 oz. containers eligible for purchase on each check?

A: The invoice will be issued each month with the number of billable units (8 oz), the number of checks redeemed during that month, the applicable rebate amount and the rebate total. Please note that, as indicated on page 10, Section C.4.d., the food package codes include the quantity of 8-ounce units contained on each check.

21. Q: How will the manufacturer be able to determine the number of 8 oz. containers that are actually purchased by the participant?

A: In New York State, participants are required to purchase all the units printed on the check. This requirement is reinforced through participant and vendor education, monitoring and

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investigations. The State is committed to ensuring that all WIC checks are redeemed exactly as printed. Each infant is prescribed a number of ounces of infant cereal per month. Each instrument will be redeemed for the full prescribed amount.

22. Q: We request the State include the redemption amount in the data it provides to the manufacturer.

A: This data is not used in the preparation of the invoices and therefore will not be provided.

23. Q: What process does the State currently have in place to ensure the manufacturer is not billed for partial redemptions of infant cereal?

A: Based on program requirements communicated to the participants and vendors, partial redemptions of checks are not allowed.

24. Q: What process does the State currently have in place to ensure infant formula manufacturers are not billed for partial redemptions?

A: This is not applicable to this IFB or the resulting contract.

25. Q: Page 19, section E.6: The IFB states, the contract will be effective through April 30, 2012. Please confirm that the contract will be effective through April 30, 2012, or, in the alternative, that the contract will be effective three years from the confirmed Contract effective date?

A: The contract will be effect through April 30, 2012.

26. Q: Page 19, Section E.6: The IFB states, “The contract may be canceled by the State at any time, with or without case, upon a 90-day written notice to the manufacturer.” However, Attachment 3, Sample Contract Framework, indicates “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”. Please confirm the State will provide a minimum notice of 90 days if it intends to cancel this contract, notwithstanding paragraph III.E. In Attachment 3. We request this provision be amended to require 180 days notice to the manufacturer, as it should be noted that, the State will need this amount of time to solicit new bids and enter into a contract with a new provider.

A: The final contract will require a 90-day written notice of termination consistent with the IFB.

27. Q: Appendix D, section M.3: The IFB states, “Any contract entered into pursuant to an award of this IFB shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York.”

Please explain in detail how this provision might work in practice.

What other State agencies in New York are authorized to purchase infant cereals?

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Does this provision provide the right for other New York State agencies to purchase infant cereal in accordance with the contract terms?

If so, have other State agencies in New York purchased infant cereals pursuant to this provision in the past? If so, please describe in more detail which State agencies and the approximate quantities of product purchased.

A: This is a general provision that is not applicable to this contract. It pertains to technology services and purchases that are not relevant to the Infant Cereal Rebate Contract.

28. Q: Will the State issue minimum stocking requirements for Infant Cereal? If so, what are the minimum stocking requirements?

A: There is an existing minimum stock requirement. Vendors are required to stock six 8-ounce boxes of any variety at all times.

29. Q: We request the infant cereal manufacturer be given an opportunity to review WIC materials sent by the State Department of Health. It has been our experience that without such a review, our products are often described incorrectly and/or our trademarks are not properly represented. This review can be completed expeditiously and would not delay distribution of these materials. Please confirm the State agrees to this request.

A: The New York State WIC Program agrees to work with the manufacturer to reach mutual agreement with the understanding that the interests of the WIC Program are predominant.

30. Q: In order to ensure the most attractive bids for this contract, we request that all contract extensions require the mutual consent of the parties. Will the State agree to mutuality in regards to contract extension?

A: The requirement remains as indicated in the IFB.

31. Q: How far in advance of the termination date will requests for renewals/extensions be communicated to the manufacturer? We request the State communicate such requests in writing at least 180 days prior to the annual termination date.

A: If the State intends to renew the contract, written notification will be provided to the contractor at least 90 days prior to the end date of the contract. In the past, the NYS WIC program has provided written notice of contract renewals much earlier than 90 days in advance, but the program cannot ensure a longer notification period for future renewals.

32. Q: When will New York implement the new food package, thereby changing the cereal checks to start at 6 months? Please specify the approximate date.

A: New York State intends to implement the new Food Package on January 1, 2009.

33. Q: Does the State intend to implement all of the new Food Packages at the same time, or will the State implement the new packages in stages? If by stages, which Food Packages will be implemented first? Will the Infant Food Packages be implemented at the same time?

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A: The State intends to implement all of the new food packages, including the new infant food packages, at the same time.

34. Q: Of the 121,661 infants participating in the New York WIC program, how many are fully breast-fed, how many are partially breastfed, and how many are fully formula fed?

A: This information is not currently available and is not pertinent to this IFB or contract. A WIC participant's breastfeeding status does not affect the amount of infant cereal prescribed.

35. Q: If the bid is awarded to a manufacturer other than the current provider, is there a time period after the effective date during which checks for the previously contracted brand would be accepted at approved retail locations?

A. Yes, however the prior contractor is responsible for providing the rebate on those purchases. WIC checks are valid for a 30-day period and may be dated any day of the month; thus checks with "Not Good Before" dates that fall in the last month of a contract period will still be valid for up to 30 days after the contract period ends. With which rebate contract a check is associated is system-determined by the "Not Good Before" date of the check. The contract brand cereal named on a check is also determined by the "Not Good Before" date of the check.

36. Q: Should the contracted manufacturer expect to receive any rebate invoices past the expiration of the contract?

A: Yes, the manufacturer is responsible for the rebate on all infant cereal checks issued during the term of agreement in accordance with the rebate contract.

37. Q: Would the State consider providing a specific "checklist" as part of the IFB, describing the items that must be contained in the bid submission?

A: A separate checklist is not provided. Bidders will find detailed instructions for completion of the proposal requirements beginning on page 11 through page 13 of the IFB.

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 (August 22, 2008 ; 10:00 AM). Faxed or electronically mailed submissions are not acceptable.

38. Q: Will all of the questions submitted in response to the IFB be made available along with the respective responses?

A: Yes, all questions submitted in response to the IFB are available along with their responses.

39. Q: Will the questions submitted in response to this IFB be made available anonymously or will the bidder be identified?

A: Responses to questions submitted in response to this IFB are without identifiers.