

WIC Infant Formula Rebate System

Invitation for Bids # 1003030348

QUESTIONS AND ANSWERS

1. The IFB mentioned New York evaluating WIC management information systems—will the transition be completed internally or via contractor?

Answer:

This project is in the very early stages. Project specifics such as this have yet to be determined.

2. Can the awardee of this contract also bid on the WIC management information system procurement (if one is planned)?

Answer:

Please see the response to question 1 of this document.

3. The transition will be to a new WIC system in the near future and then to a EBT in a few years time?

Answer:

Please see the response to question 1 of this document.

4. IFB, Background, Section B, page 4 – In the most recent 6 months, on average, how many children with qualifying medical conditions were issued infant formula?

Answer:

During the six-month period for which statistics are provided in the IFB (May – October 2009), a monthly average of approximately 2,100 children were issued non-exempt infant formula – all of it milk-based or soy-based contract infant formula. This number dropped significantly with the approval of soy beverage for NYS WIC participants in January 2010, and as of May 2010 was about 1,500 children.

5. IFB, Background, Section B, page 4
 - a. Please confirm that there are no children other than children with qualifying medical conditions who are receiving infant formula. If this is not the case, please describe circumstances where children without qualifying medical conditions are receiving infant formula.

Answer:

This is confirmed.

6. IFB, Background, Section B, page 6 – Please describe the circumstances that would cause the State to change its current policy of not using non-contract non-exempt formulas?

Answer:

One possible circumstance would be if the contractor(s) receiving awards as a result of this IFB does not produce a special purpose infant formula (for example, a thickened formula) that NYS WIC determines to be a necessary component of its formulary. In that event, a different manufacturer's special-purpose infant formula may be included in the NYS WIC formulary on a non-contract basis.

Future policy changes cannot be foreseen at this time. There are no current plans for policy changes regarding non-contract non-exempt formula issuance. Factors that influence policy decisions on an ongoing basis include federal regulations, nutritional science findings, and fiscal constraints.

7. IFB, Background, Section B, page 6 – Please provide the timeline that has been established for implementing EBT and transitioning to a new system.

Answer:

Please see the response to question 1 of this document.

8. IFB, Competitive Bid Rebate System – Contractor, Section C.4.b, page 9
 - a. This provision states that “The contractor is responsible for ensuring that a purchasing system with prices at or near the contractor’s national wholesale prices is available to vendors who must buy small amounts of formula.” It is apparent that this provision can only refer to those retailers which purchase from a wholesaler or distributor. The manufacturer is prohibited by federal antitrust law from determining the prices at which wholesalers or distributors resell products to retailers. Please remove this requirement.
 - b. If not removed, please provide the reasons why this section cannot be removed.

Answer:

The requested amendment is not necessary because this provision applies to the contractor's distribution system and the access provided to NYS WIC vendors. It is understood that contractors cannot be held responsible for how other distributing entities price their formulas. Contractors may ensure vendor access to formula at the lowest possible wholesale price for small orders by allowing small vendors to purchase directly from their businesses. Contractors are not expected to analyze distributor prices; it is sufficient for the contractors to respond affirmatively to WIC vendors who approach them to place direct orders.

9. IFB, Competitive Bid Rebate System – Contractor, Section C.4.c, page 10 - Please confirm that the Contractor will not be billed for rebates on food instruments with a “first use by date” that is after the last day of the contract. If not confirmed, please provide the reason why a contractor would be responsible for rebates on food instruments that can only be redeemed after the contract end date.

Answer:

It is confirmed that the Contractor(s) will not be billed for rebates on food instruments redeemed with a “first use by date” that is after the last day of the contract(s).

10. IFB, Competitive Bid Rebate System – Contractor, Section C.4.c.i, page 10 – Column C on Attachments 11 & 12 refers to the Reconstituted Ounces Per Container: Bid Formula. Please correct this reference to Column G which is Rebate Bid Divided by TL Wholesale.

Answer:

This reference is corrected to say “Column G” rather than “Column C.”

11. IFB, Competitive Bid Rebate System – Contractor, Section C.4.d.ii, page 10
- a. Please confirm that “all the forms and container sizes...” referenced in this section includes only the can sizes listed in Section C.4.a.
 - b. If not confirmed, please list the container sizes or range of sizes.

Answer:

This is not confirmed. The can sizes listed in Section C.4.a. are the minimally-required forms and container sizes for the bid formula. Federal regulations indicate that solicitations must require the winning bidder to supply and provide a rebate on all (milk-based for the milk-based contractor and soy-based for the soy-based contractor) non-exempt infant formula it produces that the State agency chooses to issue. Rebates must also be paid on any new infant formulas that are introduced after a contract is awarded.

12. IFB, Competitive Bid Rebate System – Contractor, Section C.4.e, page 11 - Please revise this section to read “Cent-for-cent increases or decreases in rebate amounts will take effect on the month after the month in which the price increase or decrease occurs” to be reflective of when the price change would actually be reflected on retail shelves.

Answer:

This section is not revised. It is our determination (based on past experiences) that price increases (the vast majority of all price changes) tend to be reflected on retail shelves shortly after they are announced, regardless of the future effective date specified by the manufacturer.

13. IFB, Competitive Bid Rebate System – Contractor, Section C.4.h, page 11 - Please revise this provision to read that the rebate on another company’s formula will only be paid when the contractor’s formula is unavailable *due to the fault of the contractor*. As this section is currently written, it could be misconstrued to apply as an unlawful penalty to the contractor if a vendor does not sufficiently supply its shelves with the contractor’s formula even when the contractor has taken all efforts to make sure its products are available.

Answer:

Please note that this provision does not apply to situations in which WIC retail outlets have failed to adequately order and stock the manufacturer’s formula. This provision applies when the manufacturer is unable to fill direct orders within its usual shipping timeframes.

14. IFB, Competitive Bid Rebate System – Contractor, Section C.4.h, page 11 - Please revise this section to allow the contractor to supply an alternate brand in addition to an alternate form if the primary contract formula is unavailable. If this is not revised, please give the reasons why this would not be acceptable.

Answer:

This section is not revised. In the circumstances described in Section C.4.h., NYS WIC will issue the “other” form (concentrate or powder) of the formula used by the participant if that other form is available. Otherwise, the Department of Health reserves the right to issue the alternative formula product that best meets the needs of the individual WIC participant, and to invoke this section of the IFB if the alternative formula was produced by a manufacturer other than the contractor. The alternative product may be an alternate brand of the contractor’s formula if such alternatives are appropriate for the participant and available in the marketplace. However, NYS WIC will need the ability to respond to unusual circumstances in a manner that best serves WIC participants and will not commit to a rigid substitution scheme in advance.

15. IFB, Competitive Bid Rebate System – Contractor, Section C.4.i, pages 11 & 12
- a. Will invoices be electronically submitted?
 - b. In order to help the Contractor comply with the Sarbanes-Oxley Act, your invoice should be received before payment can be processed. If the State plans to submit hard copy invoices, please confirm that payments can be submitted 30 days from receipt date rather than postmark date.

Answer:

Invoices will be sent by U.S. Postal mail or by fax. Language regarding payment being due within 30 days of an invoice postmark or fax date is standard business language that will not be amended.

16. IFB, Competitive Bid Rebate System – Contractor, Section C.4.j, page 12
- a. Please confirm that there is no time limit on disputes arising from fraud or other illegal activity that prevents the contractor from being able to identify the incorrect billing earlier.
 - b. If not confirmed, please provide all the reasons why the Contractor would be required to forfeit the right to recover a rebate paid on past invoices when both the overbilling and the inability to identify it sooner result from fraudulent or illegal infant formula purchases.

Answer:

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

17. IFB, Competitive Bid Rebate System – Contractor, Section C.4.k, page 12
- a. In order to validate that invoices are correct, please confirm that the contractor will be allowed to request various pieces of information. These would include, but not be limited to, redacted food instruments, baby age and food package of infant associated to the food instrument, completion of questionnaires, operating policies and procedures, vendor manual, vendor store listing, vendor handbook, listing of WIC approved infant formulas and infant formula (standard and exempt) issuance data from all manufacturers for a time period selected.
 - b. Please confirm that the contractor will be allowed to schedule short visits to your offices to discuss findings resulting from review of information listed above.
 - c. If you do not confirm (a) and (b) above, please describe what is allowed for audit purposes.

Answer:

Contractors are welcome to request information. Whether information not required by the contract will be provided will be determined based on the

request itself. Contractor visits will be arranged according to the needs of both the contractor and the State. Information available for audit purposes is described in Section C.5.f. on page 14.

18. IFB, Competitive Bid Rebate System – New York State, Section C.5.d, pages 13 & 14
- a. Is vendor pricing available to the Contractor for its calculation of partial redemption of food instruments?
 - b. With the new food package regulations, the issuance of infant formula varies by baby age. The Contractor needs to have a process to check the accuracy and integrity of each monthly invoice. Please confirm that in addition to what is listed in the IFB as provided on the data file, the following items will be added: redeemed amount, age of infant or birth date of infant, and food package. If not confirmed, please list what elements can be added.

Answer:

Individual vendor pricing is not applicable to any calculations performed in the preparation of rebate invoices and will not be supplied. The average redeemed amount for each adjusted formula type in each vendor management area is available upon request as described in Section C.5.k. on page 14.

None of the elements listed above in question 18.b. are planned to be added to the data file. Contractors may use NYS WIC caseload reports, which are broken down into 16 categories for infants, and proportions such as those provided on page 16 of the IFB, to determine that the total amount of formula invoiced represents appropriate issuance amounts. Since each participant's issuance is divided across multiple checks, analyzing individual records is not productive.

19. IFB, Bid Requirements, Section D.1, page 15 - This section states that the Certifications Form must be signed by a company representative with authority to commit the company to the bid package. Is it necessary to submit with the bid proof of authority for the individual signing the bid documents, such as a copy of a Certificate of Corporate Resolution?

Answer:

We are not requiring that proof of authority documentation be submitted with your bid proposal.

20. IFB, Table V – NYS WIC Infant Formula Utilization Proportions, pages 16 & 17 – The reconstituted ounces on the bid sheets are based on the infant numbers provided in Tables V and VI. Children are not included in the calculations so please confirm the State will not be submitting rebates on infant formula provided to children.

Answer:

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

Federal regulations specify the methodology for calculating the standardized number of units of infant formula for bid evaluation. The required method was intended to simplify the bidding process and does not address every variable that can occur, such as children requiring infant formula, or infant caregivers requesting less than the maximum formula allowed or forgetting to redeem one of their checks for infant formula. Given that the required bid sheet method produces a maximum amount for infants, the totals on the bid sheet are sufficiently overstated to cover actual infant formula redemptions for infants and children under current circumstances.

21. IFB, Correspondence, Section D.4.b, page 18 – How will all bidders be notified of the award (i.e. hard copy letter or email)?

Answer:

All bidders will be notified by way of hard copy letter transmitted by the U.S. Postal Service.

22. IFB, Submission of Bids, Section E.3, page 20
- a. Please identify the room on the 6th floor where the bid packages should be delivered.
 - b. Please identify the room on the 6th floor where the bid packages will be opened.

Answer:

A. If bids are being delivered by the U.S. Postal Service or other courier service, they should be addressed to:

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

If bids are being hand delivered, please follow the signs for the “Division of Nutrition” posted on the 6th floor to locate our offices. Please review Sections E.3. and E.4. of the IFB for packaging and labeling instructions.

B. Bids are scheduled to be opened in the Harvest Room located on the 5th floor of Riverview Center. Signs will be posted near the elevators in the main lobby of Riverview Center and on the 5th floor directing interested parties to the Harvest Room. Bidders are welcome to send up to two representatives to witness the package openings.

23. IFB, Payment, Section E.6, page 24

- a. Please confirm that any over-issuance and redemptions from WIC Federal Guidelines will not be billed to the contractor and if they are rebated in error, the amount associated with the over issuance and redemption will be reimbursed to the contractor.
- b. If not confirmed, please provide the reasons why the contractor would be responsible for the rebates that are over the USDA specified amounts.

Answer:

The NYS WIC information system calculates the maximum allowed amount for each formula/form and each participant’s age/feeding method category. It will not allow system users to issue more than the maximum determined by the system. As a result no over issuance will be included in rebate invoices.

24. IFB, Contract Period and Renewals, Section E.7, page 24

- a. Contracts with mutual extension options can be more attractive to potential bidders. Please consider changing this section to make the extension options subject to mutual agreement.
- b. If mutual extensions options are not acceptable, please allow the contractor termination rights with 180 days notice. The 180 days notice would allow the State time to bid for a new contract if the contract were terminated.

Answer:

A. The provision regarding contract extensions will not be amended. Pursuant to 7CFR Part 246, the New York State Department of Health has discretion in administering the WIC Program. The Department has determined that the approach being pursued through this IFB best serves the interests of the state. The USDA recommends that infant formula rebate solicitations include a statement that extensions are at the state’s option.

B. This provision will not be amended.

25. IFB, New York State Standard Vendor Responsibility Attestation (Attachment 4), Section E.9, page 25

- a. If a vendor has submitted a hard copy of Attachment #5 – Vendor Responsibility Questionnaire in the last 3 months, is it required to submit a new one with a bid proposal?
- b. If it is acceptable not to resubmit, please confirm that a Contractor can just check the first box Attachment 4 with an additional note that a hard copy was submitted and make the same note on Item D on the Bid Form.

Answer:

As stated next to the second checkbox on the Vendor Responsibility Attestation, “A hard copy Vendor Responsibility Questionnaire is included with this proposal/bid and is dated within the last six months”, submission of a hard copy of a Vendor Responsibility Questionnaire is requested with your bid proposal. This hard copy should be dated within six months of the date that the Organization Official signs the Vendor Responsibility Attestation (Attachment 4) and should reflect the most current information available regarding the responses provided on the Vendor Responsibility Questionnaire.

26. IFB, M/WBE Utilization Plan For Subcontracting And Purchasing, Section E.15, page 28
- a. This is a rebate contract under which the Contractor will be paying money to the State; the State will not be paying any money to the Contractor. Therefore, please confirm that a M/WBE Utilization Plan is not required for this rebate contract. If not confirmed, please answer the following questions:
 - i. The Contractor’s primary performance under this contract is the payment of rebates to the State, which is done by Contractor’s employees from Contractor’s offices in Evansville, Indiana and therefore cannot be performed by New York State certified M/WBEs. Therefore, if the State determines that a M/WBE Utilization Plan is required, please confirm that such a Plan can relate to all of the work performed by Contractor whether or not it is pursuant to this Contract and can include any M/WBEs not just New York M/WBEs.
 - ii. The M/WBE forms require the Contractor to assign dollars back to products and/or services. Such provisions are inapplicable to this contract since contractors will be rebating dollars to the State. Please confirm that these forms do not need to be submitted as part of the bid package and this item will be removed as a requirement on the Bid Checklist.
 - iii. If the M/WBE requirements do apply as stated, explain how these requirements apply to an infant formula rebate contract and how a Contractor should fill out the forms related to applicable dollar values.

Answer: Bidders should submit the forms and state “Not Applicable” on the forms.

27. Attachment 1, Bid Form, page 34

- a. Please confirm what measure should be completed for the \$ amount space for Item A. Is it the Total Net Wholesale Cost Per Month?
- b. If so, and a Contractor bids on both milk and soy, should they be totaled together?

Answer:

- A. Yes.
- B. Yes.

28. Attachment 3, Vendor Information Form, page 41 – If a Contractor does not meet the requirements for NYS Small Business Certification, please confirm that this part of the form should be completed with either N/A or left blank.

Answer:

Both pages of the Vendor Information Form should be completed. The questions on page two are answered Yes/No. Please check the appropriate boxes and have a company official sign the form.

29. Attachment 7, WIC Infant Formula Rebate System IFB Checklist, page 54
- a. Please confirm that the method the State wants the bid documents submitted in is for all of the required originals and copies to be together in one section if a bound version is submitted.
 - b. Please confirm that the sealed Technical Proposal envelope and the sealed Cost Proposal envelope can be submitted in one envelope with the outside of the envelope labeled as requested on the bottom of page 54.

Answer:

A. All of the documents indicated under Technical Response on the IFB Checklist must be packaged together and sealed in a separate envelope and labeled as requested in the IFB.

B. The NYS WIC confirms that the sealed Technical Proposal envelope and the sealed Cost Proposal envelope can be submitted in one envelope and labeled as requested in the IFB.

30. Attachment 14, Sample Contract, Miscellaneous/Consultant Services form – The order of precedence on this form conflicts with the order of precedence set forth on page 31 of the IFB. Please confirm that the order of precedence set forth on the Miscellaneous/Consultant Services form will govern any Contract resulting from this IFB. If not confirmed, please state the order of precedence that will apply.

Answer:

The order of precedence set forth in Attachment 14, Sample Contract is correct. The order of precedence stated on page 31 of the IFB is incorrect.

To restate, precedence shall be given to contract appendices in the order listed below:

- **Appendix A**
- **Appendix X**
- **State of New York Agreement**
- **Appendix D**
- **Appendix B (Invitation for Bids)**
- **Appendix C (The winning proposal)**
- **Appendix E-1**
- **Appendix E-2**
- **Appendix G**

31. Attachment 14, Sample Contract, Section II.B – Please confirm that, if the State submits any supplemental invoices, they will only be for redemptions in the current federal fiscal year.

Answer:

This is not confirmed.

32. Attachment 16, Appendix D – General Specifications, Section R

- a. This section requests the Contractor to submit evidence on the necessary experience and qualifications to perform the required services. Since this element is not listed on the Bid Checklist, please confirm that this is not a requirement for the bid package.
- b. If not confirmed, please revise the Bid Checklist to include this as a requirement and identify where it should be put in the bid package.

Answer:

The NYS WIC confirms that documentation described in Appendix D, Section R is not a requirement to be submitted with the bid package.

33. Attachment 16, Appendix D – Provision Upon Default, Section T.2 - This section allows for termination of the contract if "... the Contractor acts in such a way which is likely to or does impair or prejudice the interests of the State." Please identify the types of actions which the State would consider as a basis for terminating the Agreement under this section?

Answer:

This is a broad provision that provides the State with discretion, on a case by case basis, to evaluate the circumstances of any particular set of circumstances and employ reasonable judgment as to what type of Contractor action is likely to impair the interests of the State. Examples

might include but would not be limited to, criminal indictment or conviction, conflict of interest, fiscal irresponsibility or insolvency, loss of necessary licenses, and many other types of situations and behaviors.

34. Page 4 – “This uniform delivery system is utilized statewide through contracts with approximately 4500 retail grocery stores and pharmacies that agree to accept WIC checks issued for specified authorized foods.”
- a. How many of 4,500 are pharmacies and what percentage of the average monthly formula volume goes through these pharmacies?
 - b. Please confirm that the State of NY does not use any WIC only stores.
 - c. If the state does use WIC only store please specify how many and are they already included in the 4,500? Also, approximately what percentage of the average monthly formula volume goes through these WIC only stores?

Answer:

- A. Of the 4500 authorized WIC vendors, currently 156 are pharmacies. The percentage of average monthly formula volume that goes through pharmacies has not been compiled. Please note that many retail grocery stores also have pharmacies within the stores and thus fall under the grocery store designation.**
- B. The NYS WIC Program does not authorize WIC only stores.**
- C. Please see the response to questions 34.b. above.**

35. How many powder cans per infant would the state issue on a monthly basis for if a can reconstituted to 90 oz (if there is no pre-determined amount please use the average issued per infant from May 2009 through October 2009):
- a. Fully Formula Fed
 - (a) 0-3 Months
 - (b) 4-5 Months
 - (c) 6-11 Months
 - b. Partially Breastfed
 - (a) 0 Months
 - (b) 1-3 Months
 - (c) 4-5 Months
 - (d) 6-11 Months
 - c. Mostly Breastfed
 - (a) 0 Months

- (b) 1-3 Months
- (c) 4-5 Months
- (d) 6-11 Months

Answer:

The following are the maximum allowed numbers of cans; these numbers can be adjusted downward based on how much formula is needed.

- A. (a) 9 cans
(b) 10 cans
(c) 7 cans**

- B. (a) 9 cans
(b) 9 cans
(c) 10 cans
(d) 7 cans**

- C. (a) 1 can
(b) 4 cans in month 1, 4 cans in month 2, and 5 cans in month 3
(c) 5 cans
(d) 4 cans**

C. Detailed Specifications

36. Section 4 - i (page 12) – “Payments will be forwarded to the state by the contractor via wire transfer within thirty (30) days of postmark, fax marked or electronically transmitted date of the invoice...”
- a. Please confirm that the state will send all rebate invoices electronically.
 - b. If not, then please amend this section such that payments will be submitted to the state 30 days after the contractor has received the invoice.

Answer:

Please see the response to question 15 of this document.

37. Section 4 - j (page 12) – “Notify the state, in writing, of any intent to dispute or investigate a potential error in the rebate invoice within 30 days of receipt of the invoice. After this 30-day period, any requirement to return funds to the contractor as a result of a dispute or over billing error is waived.”
- a. Please amend this section to allow the contractor 90 calendar days after the invoice date to notify the state of any intent to dispute any errors or discrepancies. This could be very important since the state is planning on transitioning to issue vouchers via EBT.

- b. Also please add, the state has to notify the contractor in writing within the same timeframe the contractor has to notify the state which is specified in this section (suggested 90 calendar days) after the date of the invoice for any errors, discrepancies or omissions which would benefit the state. If the state fails to notify the contractor within this timeframe then the state waives the right to bill any supplemental invoices to the contractor.

Answer:

This section is unchanged. Please note that the 30-day requirement contained in item j. on page 12 of this IFB is only for notification that the manufacturer disputes or believes that there may be an error in the invoice. It is not necessary that full documentation and presentation of the contractor's concerns be completed within that period. The 30-day notification timeframe is necessary for the NYS WIC program to comply with USDA/FNS financial reporting requirements; disputed receipts must be treated as potential un-liquidated obligations. NYS WIC confirms that the 30-day requirement will not apply if the state uncovers errors in billing resulting in under- or over-billing to the contractor.

38. Section 5 – d (page 14) – “The NYS WIC program will calculate on a monthly basis, two sided 95% percentile confidence intervals for per-container redemption prices for each frequently-issued product (100 or more checks redeemed within a vendor management area and month) for each of four major vendor management areas in New York.”
- a. We suggest that instead of separating the vendors by area the state should separate them by volume. The higher volume vendor could potential have an average lower retail price. This would then provide a more accurate calculation for partial redemptions.

Answer:

The suggestion is appreciated. NYS WIC, however, does not use a volume-related peer group system for any purpose. All price analyses are based on vendor management region. In addition, NYS WIC does not allow partial redemptions. The purpose of the procedures outlined in Section C.5.d. of the IFB is to identify checks redeemed for amounts that are unusually low (which can happen for any number of reasons), and to adjust the rebate invoice accordingly.

39. Section 5 – f (page 14) – In the event the contractor would perform an audit, would the state also provide a participant ID code (which would not provide any confidential data about the participants per federal regulations) along with the usage associated with these participants to verify the state didn't accidentally extend excess benefits to a participant. If the state chooses not too please explain why.

Answer:

The state will not provide participant-specific information even with confidential data removed. Contractors may use NYS WIC caseload reports, which are broken down into 16 categories for infants, and proportions such as those provided on page 16 of the IFB, to determine that the total amount of formula invoiced represents appropriate issuance amounts. The NYS WIC information system calculates the maximum allowed for each formula/form and each participant's age/feeding method category. It will not allow system users to issue more than the maximum determined by the system. As a result no over-issuance will be included in rebate invoices.

D. Bid Requirements

40. Section 3 (page 16) – “At present, there are no NYS WIC infants receiving non-contract, non-exempt formula.”
- a. Please identify any other New York State programs which an infant could receive non-contract, non-exempt formula.
 - b. Do you disallow reimbursement to a retailer if they mistakenly issue a non-contract non-exempt formula?
 - c. In the event of issuing a manual voucher, would your current system be able to track which formula was issued and redeemed?

Answer:

- A. We do not have a listing of other NYS programs that provide infant formula.**
- B. The program integrity procedures and activities in place prevent this situation from occurring. When compliance activities uncover program abuse (i.e.; allowing the purchase of incorrect formula) the vendor would not be reimbursed.**
- C. Yes. Our manual checks are preprinted with the quantity, form and name of the contract formula to be purchased; those data elements are associated with the check record.**

41. Section (page 16) – Would the state please provide all exempt units (by name and form) that were issued from May 2009 – October 2009?

Answer:

NYS WIC does not compile this information. However, queries of the information system are run periodically to determine the number of

participants issued each type of formula. Please see Exhibit 1 at the end of this document. With this being a query rather than a formal report, these results do not completely correct for infants changing formulas or reaching age one (1) during the month, and thus slightly overstate (by about 1.7%) the number of infants receiving formula.

42. Section 4 (page 18) – “In the event of a tie, the determining factor(s) for award, in descending order of importance, will be...:

- a. In the event of a tie would the state please consider rebidding the contract and omit the current tie-breakers?

Answer:

The Department of Health requires that all Invitation for Bids specify tiebreakers in the event of a tie. The three tiebreakers stated in the IFB are standard tiebreakers included in Department IFBs. Specific to this procurement, the lowest cost will win the award(s). The award process having to go to the tiebreakers is highly unlikely as the bid sheets are formatted to carry out totals four decimal places.

E. Administrative

43. Section 6 (page 24) – “The state may also issue supplemental invoices if it discovers that any infant formula redemptions were not accounted for in the regular invoices. The contract entitles the State to rebates for all WIC contract infant formula checks issue to WIC program infants during the contract period and redeemed by WIC program infants as the redemption period is defined within WIC program procedures.”

- a. Please amend this section so after the state issues the initial invoice which will be calculated per section 4-I & 5-d, any supplemental invoices will have to be issued within the same timeframe that the contractor has to notify the state of errors, discrepancies or omissions. (see section 4-j). If the state fails to notify the contractor within this timeframe then the state waives the right to bill any supplemental invoices to the contractor.

Answer:

This section is not changed. Please see the response to question 37 of this document regarding contractor timeframes for notifying the state.

44. Section 6 (page 24) – Please confirm that the state will send all invoice by electronic mail. If not then please change this section so the contractor has 30 to remit payment after the contractor receives the rebate invoice.

Answer:

Please see the response to question 15 of this document.

45. Section 7 (page 24) – “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.”
- a. Please change this section such that any extensions are mutual. If the state chooses not to do so please explain why.

Answer:

Please see the response to question 24 of this document.

46. The attached bid sheets provide an estimated net cost based on each participant receiving the maximum benefit (for CL) per the federal guidelines. Is it the intent of the state not to issue anything over this maximum even though (for other forms PWD & RTF) the federal guidelines allow the state to do so? Also the total reconstituted ounces per the bid sheets could fluctuate due to amount issued by state and different can sizes.
- a. This current estimate does not capture the true cost of the program and we suggest that the State change the bid sheet to calculate how many cans each participant will receive for the three (or four) different segments. (This should take into account the forms used and the various powder can sizes) Then multiplying the cans issues by segment to the number of participants within that segment. After adding up all the units, multiply by the net cost and this would provide a more accurate estimate.

Answer:

As indicated in Section B. of the IFB, NYS WIC issues infant formula in accordance with §246.10(e)(1) through (e)(3) and (e)(9), of the WIC Program regulations. In addition, NYS WIC does, if necessary to provide the full nutritional benefit (FNB), use the methodology outlined in §246.10(h) in the WIC Program regulations when issuing infant formula.

Please note the response to question 20 of this document. It is agreed that there are multiple ways to project the amount of formula that may be

rebated each month. The federally-required method for constructing the bid sheet provides a reasonable number for bidding purposes.

47. Page 4, Section B – This section states that NY has contracts with approximately 4,500 retail grocery stores and pharmacies.
- a. How many pharmacies are authorized in NY?
 - b. How many of these pharmacies accept WIC checks for contract infant formula?
 - c. Do all authorized retail vendors accept WIC checks for contract infant formula?

Answer:

- A. Please see the response to questions 34 of this document.**

- B. All WIC pharmacies are authorized to accept WIC checks for any formula, contract or exempt, printed on the check.**

- C. All WIC retail vendors (pharmacies and grocery stores) are authorized to accept WIC checks for any formula, contract or exempt, printed on the check.**

48. Page 4-5, Section B – This section states that a “series of pre-payment edits are performed by the contract bank on each check to ensure that specific requirements are met.”
- a. Please detail the pre-payment edits that are performed by the contract bank.
 - b. What types of errors are identified that would cause a WIC check not to be paid.
 - c. Are the WIC checks that are not paid further analyzed and paid at a later date, or are they never paid if they fail to pass the edit system.
 - d. Are any of the WIC checks failing the pre-payment edit system ever later submitted to the infant formula contractor for payment of rebates?
 - e. Please provide additional summary information on how the pre-payment edits are performed, analyzed, and used to make payments.

Answer:

- A. The following pre-payment edits are performed by the contract bank.**
 - 1. Purchase price exceeds price limitations**
 - 2. Purchase price missing**
 - 3. Altered purchase price**
 - 4. Vendor ID missing or illegible**
 - 5. Invalid/counterfeit vendor/farmer identification**
 - 6. Transacted before specified period**
 - 7. Transacted after specified period**
 - 8. Redeemed after specified period**
 - 9. Altered dates**

10. Missing signature
11. Altered signature
12. Authorized bank of deposit
13. Post-dated check
14. Duplicate check
15. Voided check
16. Missing issuance
17. Counterfeit check

B. Please see the response to question 48.A. above.

C. NYS WIC does not initiate analysis of individual rejected checks.

Vendors whose checks were rejected, however, may seek such analyses. There are a limited number of rejection types where the check can be reconsidered and reimbursed subsequent to rejection by the WIC banking contractor. These include: Vendor ID missing or illegible (the vendor may stamp, or restamp, the check with a clear image); and purchase price exceeding price limitations or altered amount (the check can be resubmitted and paid at the area average for that particular check.)

D. Only checks where the vendor ultimately received payment are included in infant formula rebate invoices.

E. Pre-payment edits are performed by the NYS WIC banking contractor according to the terms of the contract. Instances where vendors are paid at the area average are the responsibility of state program staff, who then provide the allowed payment amount to the banking contractor for processing.

49. Page 5, Table II – How many “children with qualifying medical diagnoses” receive contract infant formula in a typical month? Can the State provide a breakdown of the number of units redeemed each month (by form) by children with qualifying conditions?

Answer:

An average of approximately 2,100 children were issued contract infant formula from May through October 2009. This number dropped significantly with the approval of soy beverage for NYS WIC participants in January 2010, and as of May 2010 was about 1,500 children. We do not compile the units redeemed each month separately from those redeemed by infants.

50. Page 6, Section B – This section states “Non-contract non-exempt formulas are not currently among the choices available to be prescribed for infants or for children or women with qualifying medical conditions.”
- a. How does the State define “non-contract non-exempt” infant formulas?
 - b. Does the State have a zero tolerance policy with respect to issuance of “noncontract non-exempt” formulas?
 - c. Has the State ever issued a non-contract non-exempt infant formula to a participant in the last year? If yes, how many infants who were issued such formulas in an average month.
 - d. If a physician or other qualified health provider writes a prescription for a non-contract non-exempt formula, does the State challenge these prescriptions or does the State issue the formula requested by the physician?
 - e. Please provide a copy of the State’s written policy with respect to issuance of non-contract non-exempt infant formulas.
 - f. Under what circumstances might the State change its current policy with respect to issuance of non-contract non-exempt formulas?
 - g. Does the State make exceptions to this policy for participants seeking Kosher and Halal products?
 - h. How many infants require Kosher and Halal infant formulas in an average month?
 - i. How many participants require Kosher or Halal WIC foods? How many infants require other Kosher or Halal products, such as infant foods? Is the State able to provide this information broken out by infant food package?
 - j. If the new contractor does not provide Kosher and Halal infant formulas, would the State make an exception to its non-contract non-exempt policy for these types of products?

Answer:

- A. Non-contract non-exempt infant formula is milk-based infant formula (as defined by Section 412 of FDA regulations) manufactured by a company that does not hold the NYS WIC infant formula rebate contract for milk-based infant formula. It can also be a soy-based infant formula (as defined by Section 412 of FDA regulations) manufactured by a company that does not hold the NYS WIC infant formula rebate contract for soy-based infant formula.**
- B. Yes.**
- C. No non-contract non-exempt infant formulas were issued in the last year.**

- D. The WIC local agency notifies the health care provider that we are not able to issue the formula requested and informs them that of the infant formulas that can be provided.**
- E. Please see Exhibit 2 at the end of this document.**
- F. Please see the response to question 6 of this document.**
- G. At this time, our infant formula contractors provide products for these preferences.**
- H. NYS WIC does not collect this information.**
- I. NYS WIC does not collect this information.**
- J. Please see the response to question 6 of this document.**

51. Page 6, Section B – This section states “this IFB will cover WIC checks for nonexempt infant formulas with “not good before” dates beginning July 1, 2011.” Please provide additional information about the transition from the old contract to the new contract.

- a. When a participant visits the clinic and receives WIC checks for infant formula, is the participant able to use the first check immediately or do most New York WIC Infant Formula checks have a first date to use that starts with the 1st day of the next month or the 1st day of the current month?
- b. Under what circumstances would a participant entering a clinic on April 1, 2011 receive a WIC check with a “not good before” date of July 1, 2011 (see also p.7, top of page)?
- c. If a participant visits the clinic on April 29, 2011, will she receive three checks for the current contract infant formulas? Is there a scenario in which she might receive two checks for the current contract formulas and one check for the new contract formulas? Please provide further details on how the transition will be implemented?
- d. If a participant enters the clinic on June 15, 2011, will she be provided one check for the current contract formulas and two checks for the new contract formulas? Again, please provide more details on the transition from old contract to new.
- e. How many cans of formula can be purchased with a single WIC check? How many infant formula checks are provided to participants each month? Please provide this information for all three forms.

Answer:

- A. NYS WIC “NOT GOOD BEFORE” dates are based on participant certification dates rather than the first day of a month.**
- B. If a participant has an issuance cycle (based on certification date) that happens to begin on the first of the month, and exercises the option of picking up their checks 30 days in advance, that participant could come to the WIC site on April 1 to pick up her checks with “NOT GOOD BEFORE” (NGB) dates of May 1, June 1, and July 1.**
- C. Contract formula will be issued based on the NGB date of the check (which is related to participant certification date). Any check with a NGB date before or on June 30, 2011 will be for a current contract formula; any check with a NGB date of July 1, 2011 will be for formula manufactured by the contractor(s) receiving award(s) based on this IFB.**

If a participant’s issuance cycle begins on April 29, 2011 all three month’s sets of checks (NGB dates April 29, 2011, May 29, 2011 and June 29, 2011) will be for the current contract formulas.

- D. If a participant’s issuance cycle begins on June 15, 2011, the first month’s sets of checks (NGB date June 15, 2011) will be for the current contract formulas. The second and third month’s sets of checks (July 15, 2011 and August 15, 2011) will be for formula manufactured by the contractor(s) receiving award(s) based on this IFB.**
- E. This varies according to the participant’s amount of formula and number of shopping visits per month. Regardless of form, the default is three shopping visits per month, with each monthly check containing approximately one-third of the total number of containers allowed.**

52. Page 6, Section B – Contract Extension/Renewal – We have the following questions:

- a. This section states that the two options for 1-year contract extensions will be “at the sole discretion of New York State.” In order to attract the best possible bids on this contract, we strongly encourage the state to require mutual consent for extensions. Will the State consider making this change to the IFB (see also p. 24, Section E.7.)?

- b. This section also provides for a “final three-month extension.” What is the purpose of this additional three-month extension? Has the State ever exercised its option to request this additional extension?

Answer:

- A. Please see the response to question 24 of this document.**
B. The purpose of the additional three-month extension is to accommodate any unforeseen delays in the procurement process. To date, the State has not needed to execute a three-month extension for a rebate contract.

53. Page 6, Section B – EBT Transition – Please describe the status of a WIC EBT system in NY. Does the State expect to be piloting an EBT system during the term of this contract? Is it likely the State will have a statewide EBT system in place prior to the end of this contract period?

Answer:

Please see the response to question 1 of this document.

54. Page 8, Section C.3. – This section states “approximately 53% of eligible infants were participating in the NYS WIC program.” We have the following questions:
- How does the State define “infants potentially eligible for WIC program services” in NYS? Does the State define all births as “potentially eligible for WIC” (i.e., the estimated 248,840 infants referenced in this section refers to the number of births in 2008)?
 - What percentage of infants who meet the program and income requirements for the WIC program, actually participate in the program? Is it likely this percentage could increase substantially during the new contract?
 - How many infants in NYS are certified based on Medicaid participation?
 - What is the income threshold for participation in the NYS Medicaid program? Is it 185% of the federal poverty level or some other percentage?

Answer:

- A. The State develops estimates of counts of infants that meet the program and income eligibility criteria. The methodology used in arriving at the 2008 estimates was based on data from NYS vital records, 2000 Census Summary File 3, 2008 March Supplement of the Current Population Survey, and recommendations outlined in the Final Report of the Panel to Evaluate the USDA's Methodology for Estimating Eligibility and Participation for the WIC Program. During any month, the count of infants eligible for WIC includes infants born in the previous eleven months. The estimate of counts of eligible infants is developed as an average count of infants for the entire year. The State does not assume that all births are potentially eligible for WIC.**

B. The State estimated in 2008 that approximately 53% of infants who met the program and income requirements participated in the program. At the national level, the United States Department of Agriculture estimated that, in 2007, 81% of eligible infants enrolled in WIC. It is possible that the economic situation will improve, the poverty rate will decrease, and the estimated number of infants eligible will go down. This may result in an increase of the percent of infants eligible served in the program, but would not necessarily translate in an increase in the number of infants enrolled.

For example, past reports showed that the variation in the percent of infants served was mainly determined by the estimated number of infants eligible. An increase in the percent of infants eligible served did not necessarily result in an increase in the number of infants served.

	Infants Eligible	Infants Served	Percent Served
2005	155,241	123,959	80
2006	167,627	114,210	68
2008	248,840	132,285	53

C. Based on the average data for the two month period of December 2009 through January 2010 , 8,226 out of 11,889 infants (70%) of the new infants certifications in the NYS WIC program were certified on the basis of Medicaid adjunctive eligibility.

D. In New York, the income threshold for infants to age one and pregnant women is 200% of the federal poverty level. For children age 1 through 5 years old the threshold is 133% of the federal poverty level. Please see http://www.health.state.ny.us/health_care/medicaid/#income

55. Page 8, Section C.3. – This section also states that “each successful bidder will be responsible for making contract infant formula available to all of the program’s authorized retailers (vendors) through currently used channels or for making any distribution changes needed to ensure availability.” We have the following questions:

- a.** Is the State able to provide information about the number of small neighborhood stores that are authorized vendors? What method does the State use to classify its vendors by peer group? Is this classification based on the number of cash registers, sales, or some other measure?

- b. How many small neighborhood stores are authorized in each program region (as best determined by the State's classification system)?
- c. What additional control procedures are in place for small, neighborhood stores? What percentage of these stores is audited with compliance buys or other auditing methods?
- d. Based on the State's vendor compliance systems (audits, compliance buys, etc.), does the State believe there are differences in compliance among small stores in the NY metro area and other areas, or among small stores and large stores?
- e. How many stores have been removed as authorized vendors based on compliance violations in NYS in the last two years? How often are stores removed as authorized vendors because of compliance violations (i.e., is this done throughout the year or at set times during the year)?
- f. What assurances can the State provide to the winning bidder that adequate systems are in place to ensure only the contractor's infant formulas can be purchased by WIC participants and not products made by its competitors?
- g. What assurances can the State provide to ensure that WIC checks are only used to purchase WIC-eligible foods?
- h. When auditing authorized vendors, particularly smaller stores, does the State review data to compare the number of infant formula units purchased by the vendor against the number of infant formula units redeemed for rebates?
- i. Are there any WIC-only stores in the state? If yes, how many such stores currently operate in New York State?

Answer:

- A. NYS WIC does not classify stores in this manner – only as pharmacies or grocery stores within vendor management areas. We do not classify vendors according to peer groups.**
- B. Please see the response to question 55.A. of this document.**
- C. All stores authorized by the NYS WIC program are held to the same standards. Stores are selected for compliance activities based on various criteria. Public information on compliance activities is available on the following web site:
www.fns.usda.gov/wic/RetailerInfo/TIPreport.htm**
- D. Observations made about any particular vendor classification is addressed through the Division of Nutrition Bureau of Special Investigation's vendor risk identification system which is confidential, determined through policy and not subject to disclosure as it would compromise program integrity.**

E. NYS WIC compliance data that has been reviewed and finalized by the United States Department of Agriculture is available on the following web site listed above in the response to question 55.C. of this document.

F. Program compliance is safeguarded through vendor training, vendor monitoring, vendor investigations (including compliance buys) and sanctions for program violations. Enforced minimum stock requirements ensure that the appropriate foods are available for participants to purchase with their WIC checks. The minimum stock requirements for contract formula specifically name the primary contract milk-based and soy-based formulas.

G. Please see the response to questions 55.F. above in this document.

H. Yes.

I. There are no authorized WIC-only stores in New York State.

56. Page 11 – Section C.4.h. requires the contractor to provide rebates “for the nonexempt infant formula products on each redeemed food instrument used to purchase another company’s infant formula product when the primary contract infant formula is unavailable to WIC vendors and another company’s infant formula must be substituted to provide the participant with his/her monthly prescription.”

- a. We request the State amend this clause to define the phrase “unavailable to WIC vendors” more specifically. Please consider “when the contractor is unable to supply all major wholesalers for more than 5 consecutive days.”
- b. Under what circumstances will an authorized retail vendor be authorized to accept a product that is not printed on the WIC voucher? Would participants be required to go back to the clinic for new vouchers if there is a shortage of the contract formula?
- c. Who within the State’s WIC program will have authority to permit purchases of products not printed on the WIC vouchers? Will local agencies have this authority?
- d. Please confirm that should there be a temporary shortage of the particular product brand issued to NYS WIC participants, the state will first substitute alternate forms (i.e., powder, concentrate, RTF) of that brand to WIC participants if the temporary shortage is of a particular form – or that, in the alternative, the state will first provide an alternate brand of the contractor’s formula to relieve any temporary supply problems, before resorting to the use of a non-contract brand.

Answer:

- A. Please see the response to question 13 of this document.**
- B. Under no circumstances will a WIC retail vendor be authorized to provide a product that is not printed on a WIC check. If another infant formula must be substituted to provide the participant with his/her prescribed formula, the WIC checks that cannot be redeemed due to product unavailability will be returned to the WIC local agency, voided, and replaced with WIC checks specifying the substituted product.**
- C. Please see the response to question 56.B. above.**
- D. Please see the response to question 14 of this document.**

57. Page 12 – Section C.4.j. states the contractor must notify “the state, in writing, of any intent to dispute or investigate a potential error in the rebate invoice within 30 days of receipt of the invoice. After this 30-day period, any requirement to return funds to the contractor as a result of a dispute or over billing error is waived.”

- a. This time period does not allow enough time for the contractor to evaluate the information contained in the invoices. We request this provision be amended to permit the contractor a minimum 180 days to notify the state of any dispute or error in the invoice. Please confirm this provision will be amended.
- b. Please confirm this provision will not apply when the state uncovers errors in billing resulting in over-billing to the contractor. Please confirm the state will reimburse the contractor when it learns of any over-billing occurring more than 30 days after the invoice is received by the manufacturer.
- c. If the state is unwilling to answer yes to question b above, please confirm the state will not request reimbursement from the contractor more than 30 days after original invoicing, if audits reveal under-billing to the contractor.
- d. In order to ensure the most efficient use of resources for both the State and the contractor, we request the State permit biannual audits by the contractor. We further request that if the results of these audits uncover overbilling or underbilling errors, the State agrees to make adjustments to the invoices. We believe it is in the interests of both the State and the contractor to establish an efficient system for audits. Restrictive timeframes for raising disputes may require monthly audits, which we believe would not be in the interest of the State or the contractor. We respectfully request the State consider amending the IFB to permit biannual audits and to allow for invoice adjustments based on the results of those audits.

Answer:

- A. Please see the response to question 37 of this document.**
- B. Please see the response to question 37 of this document.**
- C. Please see the response to question 37 of this document.**
- D. Please see the response to question 17 of this document. Please note that Section C.5.f. on page 14 of the IFB does not prohibit biannual audits.**

NYS WIC is committed to correcting any errors it may have made in applying the calculation methods described in the IFB.

58. Page 14, Section C.5.d. – This section refers to WIC checks that list a single formula product and checks that list a combination of products. We have the following questions:
- a. How many WIC checks are issued each month that list a combination of infant formula products?
 - b. What percentage of all checks issued for infant formula are combination checks?
 - c. Do these checks allow for a specified number of units for one form and a specified number of units for a different form, or do the checks allow the participant to purchase the specified number of either form.
 - d. Please provide sample copies of combination checks used for infant formulas.
 - e. Why are combination checks issued to participants?
 - f. Why are combination checks excluded from the State’s auditing procedures?
 - g. We request the State agree to include combination checks in its auditing procedures. Please confirm the State will agree to this request.
 - h. Please confirm that no other WIC foods are ever listed on WIC checks for infant formula.
 - i. How does the State calculate the “per-container redemption price”?
 - j. How does the State calculate the “average price for that product”? We assume the State is referring to the average retail price? Please confirm this is a correct understanding.
 - k. What data is used to determine the average price? Does the State conduct surveys of retail vendors, or does the State purchase retail price data (i.e., Nielsen)?
 - l. Is a different average retail price determined for small stores and large stores?
 - m. How often does the State update the “average price” (i.e., average retail price)?
 - n. Does the State analyze every check that lists a single formula product or only a sample of those checks? If only a sample, what percentage of single formula checks is analyzed?
 - o. We request the State agree to analyze every check for partial redemptions rather than simply analyzing a small percentage of the checks issued. Other States have procedures in place to analyze every check. Please confirm the will agree to this request.
 - p. Please provide an example of how the calculations are made based on the methodology summarized on page 14. Please use actual numbers so potential bidders can fully understand the methodology employed by the State.

Answer:

- A. The number issued has not been compiled. For the period of May 2009 through October 2009, an average of approximately 1,100 checks that contained a contract formula, plus one (or more) other formula brand names and/or forms, was redeemed each month.**

B. The percentage issued has not been compiled. For the period of May 2009 through October 2009, a monthly average of approximately 0.3% of contract formula checks redeemed contained a contract formula plus one (or more) other formula brand names and/or forms.

C. These checks indicate a specified number of units for a particular form of a particular formula and, on a second line, a specified number of units for a particular form of a different formula. Up to five (5) different units-form-formula combinations may be printed on a check. The participant is required to purchase all the items listed on the check.

D. Below is a sample check containing more than one formula product.

STATE OF NEW YORK DEPARTMENT OF HEALTH WIC PROGRAM	PARTICIPANT 53705081 - Murphy, Test AGENCY 281 - Test Agency 281	NOT GOOD BEFORE 08/07/2010 NOT GOOD AFTER 09/05/2010
	FOR THESE ITEMS ONLY - REFER TO WIC ACCEPTABLE FOOD CARD 3 12.9-Ounces Powder Good Start Soy Plus 1 13-Ounce Concentrated Good Start Soy Plus	PAY TO:
KeyBank, Albany, NY 29-70-213 10188	CHECK NOT VALID UNLESS STAMPED ABOVE BY NYS AUTHORIZED WIC VENDOR AND DEPOSITED BY 10/06/2010	
THE BACK OF THIS CHECK CONTAINS A SECURITY MARK. DO NOT ACCEPT WITHOUT HOLDING AT AN ANGLE TO VERIFY SECURITY MARK. IMPROPER USE OF THIS CHECK IS SUBJECT TO STATE AND FEDERAL PROSECUTION.	X SIGNATURE OF PARTICIPANT AT REDEMPTION MUST BE THE SAME AS SIGNATURE ON WIC I.D. CARD. NOT NEGOTIABLE UNLESS SIGNED.	
@381975137 021300705 710 00 354 9		

E. An infant participant’s caregiver may request any combination of the concentrate and powdered forms of the contract formulas. For example, a mother may prefer to reconstitute concentrate at home, but needs a can of powder to provide to a babysitter. In a different situation, a participant’s health care provider may provide documentation of the need for some contract formula and some exempt infant formula.

F. “Combination checks” are included in the invoice adjustment procedure. Please note the adjustments on the sample invoices included with this IFB. The third page of the invoices for milk-based products, and the second page of the invoices for soy-based products, show that the containers (cans) listed on checks with multiple formulas (cans on all checks less cans on single-product checks) are adjusted at the same rate as single-product checks.

- G. Please see the response to 58 F. above.**
- H. No WIC foods are included on checks for infant formula, exempt infant formula and medical foods. However, exempt infant formula and/or medical foods may occur on a check that also contains contract infant formula.**
- I. Per-container redeemed price can be calculated for single-product checks by dividing the total redeemed amount by the number of units printed on the check.**
- J. The average price of a product is the average per-can redeemed price for that product for that redemption month for that vendor management region. It is a straightforward average calculation using each check for that product (and no other products) within the vendor management region.**
- K. Please see the response to 58 J. above.**
- L. Average per-can redeemed price is calculated by vendor management region and redemption month. Store size is not included in the calculations.**
- M. NYS WIC calculates the average per can redeemed price per vendor management region each month using the redemption month's redeemed amounts.**
- N. NYS WIC reviews each single product check's per can redeemed amount to determine the area average and the 2.5 percentile cutoff. Those falling below the 2.5 percentile are analyzed further.**
- O. NYS WIC does not allow partial redemptions. The purpose of the procedures outlined in Section C.5.d. of the IFB is to identify checks redeemed for amounts that are unusually low (which can happen for any number of reasons), and to adjust the rebate invoice accordingly.**

P. The description of the method in Section C.5.d. of the IFB, combined with the sample invoice provided with the IFB, adequately explains the NYS WIC invoice adjustment process for the purposes of this IFB.

59. Page 16, Section D.3. – This Section states that at “present, there are no NYS WIC infants receiving non-contract, non-exempt formula.” When did the State first adopt this zero tolerance policy with respect to non-contract non-exempt infant formulas? Has the State many any exceptions to this policy within the last year?

Answer:

This policy was adopted in 2004. No exceptions have been made to this policy within the past year.

60. Page 18, Section D.4. – This section states that at “the discretion of the Department of Health, all bids may be rejected.” What factors might lead the State to invoke this clause?

Answer:

This is standard language included in all Department of Health procurements. In the event that the best interests of the State will not be met as determined by the evaluation of all responsive bids received, the State may reject all bids received in response to the procurement opportunity.

61. Page 18, Section D.4. – Minority/Woman-owned Business Enterprise (MWBE) utilization – Please confirm all references to MWBE apply only to those enterprises who participate as subcontractors for the winning contractor for work directly related to this particular contract. Please also confirm these requirements do not apply to ingredient or packaging suppliers.

Answer: Bidders should submit the forms and state “Not Applicable” on the forms.

62. Page 21, Section E.3. – This section states “every offer shall be firm and not revocable for a period of 180 days or until released by the state, whichever occurs first.” We strongly urge the State to reduce this period to 120 days, which provides ample time for the State to complete a contract with the winning bidder. As written, this provision is unnecessarily burdensome and makes it more difficult for bidders to provide their best bid to the State. Please confirm the State will amend this provision (see also p. 24, Section E.5.o.).

Answer:

This provision will not be amended. Up to 180 days may be needed to secure all necessary approvals for this procurement process.

63. Page 24, Section E.6. – This section refers to issuance of “supplemental invoices if the State discovers that any infant formula redemptions were not accounted for in the regular invoices.” We have the following questions:
- a. What might cause infant formula redemptions to not be accounted for in the regular invoices?
 - b. Have supplemental invoices been issued during the term of the current contract?
 - c. Were these supplement invoices disputed by the current contractor?
 - d. Please provide copies of all supplemental invoices issued during the term of the current contract?
 - e. Please clarify the length of the “redemption period” referenced in the second paragraph of this section, and the underlying CFR citation relevant to this definition.

Answer:

- A. The primary reason that supplemental invoices have been issued in the past is information system changes. Such changes can inadvertently result in NYSWIC’s not capturing all the relevant redemptions in its rebate reports.**
- B. No supplemental invoices have been issued during the term of the current contract.**
- C. Same as B.**
- D. Same as B.**
- E. As an example, a check with a “NOT GOOD BEFORE” (NGB) date falling in January 2012 will be invoiced if it clears the bank before the end of April 2012. WIC participants must spend their WIC checks within 30 days of the NGB date. WIC vendors must deposit WIC checks within 60 days of the NGB date. A check’s “redeemed date” is the date that the check is paid by the NYS WIC banking contractor. The redeemed date is generally within a couple of business days of the vendor’s deposit, but banking issues (such as those described in the response to question 48 of this document) can delay the redeemed date. Thus a check with a NGB date of January 28, 2012 might be spent by the participant on February 24th and deposited by a vendor on March 17th. If there are any banking complications, that check will not clear the bank until April. The check will appear on the rebate invoice for April redemptions; it will be listed under January issuance. Any January NGB checks clearing the bank after April 30, 2012 will not be included in any rebate invoice. The basis of these timeframes, the 60-day time period within which vendors must deposit WIC checks, can be found in 7 CFR 246.12(f)(2)(iv).**

64. Page 24, Section E.7. – This section states 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.” (See also Section III.E. of the sample contract) We request this provision be changed to provide require a 180-day written notice. We note the State will need that additional time in order to rebid the contract. Please confirm this change will be made.

Answer:

This provision will not be amended. In the event of termination, the state is entitled to a rebate payment for all infant formula food instruments issued to WIC program participants on or before the cancellation date of the Agreement and redeemed before or after said cancellation date as the redemption period is defined within WIC program procedures.

65. Page 28-29 – Is a “Plan” required from bidders who do not have an office location or plant in NYS, and who will not source any of the products required for this bid from a M/WBE? If a “Plan” is still required, please provide additional guidance on the information to be provided if the bidder will not be sourcing any product from a M/WBE.

Answer: Bidders should submit the forms and state “Not Applicable” on the forms.

66. Page 31, Section F. (Appendix H – Health Insurance Portability) – Please confirm this Appendix is not applicable to this contract.

Answer:

Appendix H will not be incorporated into the contract(s) established from this procurement. The sample contract provided in the IFB indicates that Appendix H will not be attached to the contract.

67. Page 31, Section G. – Conflict of Terms and Conditions – We have the following questions:

- a. Please confirm the answers to bidders questions will be incorporated into the resulting contract.
- b. We request answer to bidder’s question take precedence over all other bid documents, except Appendix A (Standard Clauses). Bidders questions are due to ambiguities, clarifications, concerns with language in the IFB so it necessarily follows that responses to bidders questions should take precedence unless the IFB is amended to address all the issues raised by bidders in the Q&As. Please confirm this change will be made.

Answer:

A. Answers to bidder’s questions will be incorporated into Appendix B of the resulting contract(s).

B. Please see the answer to question 30 of this document for the order of precedence of contract appendices attached to the resulting contract(s). Since the answers provided in this document are incorporated into Appendix B, they will address any changes made to the original IFB. In the unlikely event that there is a language change made to Appendix D or the State of New York Agreement, these changes will be incorporated into an Appendix Q which will be attached to the resulting contract(s) and will only be superseded in the order of precedence by Appendix A and Appendix X respectively.

68. Page 34, Attachment 1, Bid Form – Please specify what is meant by “bids a total price of \$_____ on line A of this form? Is the State requesting that bidders include an amount from the bid sheet on this form as well? To minimize confusion, we request the dollar amount on this form be removed so that the bid sheet is the only document that includes information about the actual bid pricing submitted.

Answer:

Please see the answer to question 27 of this document.

69. Page 54 – Vendor Responsibility Attestation – Please confirm, per page 36 of the IFB, that Attachments 4 and 5 are not required to be submitted with the bid, but must be submitted upon award (per p. 36 of IFB)? Please also amend page 54 by including the word “Optional” preceding the second check box in the Technical Response section on this page.

Answer:

In order to expedite the award and contracting processes, we are requesting that Attachments 4 and 5 be enclosed within the Technical Response of the bid package. Bids received that do not contain these Attachments in the Technical Response will still be evaluated.

70. Page 54 – Form ST-220-TD – Please confirm that this form (Attachment 9) is not required to be submitted with the bid and may be submitted prior to award.

Answer:

Per instructions listed on Form ST-220-TD, this form is to be submitted directly to the New York State Department of Taxation and Finance.

71. Page 71 – M/WBE Procurement Forms – Please confirm that bidders who do not have a physical presence in New York State, or who do not intend to subcontract with other businesses as part of its performance requirements under this contract, are not required to complete the form included on page 71 (utilization plan and projected usage). If this form

must be completed, please provide an example of an acceptable response from bidders who do not have a physical presence in New York State.

Answer: Bidders should submit the forms and state “Not Applicable” on the forms.

72. Pages 72-78 – M/WBE Forms – Again, as in question 15 above, please confirm these forms are not applicable to bidders who will not be subcontracting as part of its performance under this contract. If any are applicable, please provide specific examples to show how and why each form is applicable where the vendor is based out of state.

Answer: Bidders should submit the forms and state “Not Applicable” on the forms.

73. Section III.B. of Sample Contract – This section provides the State to cancel this contract for cause effective 10 business days from receipt of notice.
- a. Please amend this section to provide the contractor with an opportunity to cure any alleged breach of the contract.
 - b. Please also amend the notice provision by requiring a minimum of 180 days rather than 10 days.

Answer:

A. This is standard Department of Health contract language. This termination provision will not be amended. The provision as written states that “*This Agreement may be terminated by the Department...*” This gives the NYS WIC the latitude to work with the Contractor to cure any alleged breach of contract.

B. This termination provision will not be amended. It’s purpose is to give the State the ability to terminate the contract “*upon the failure of the Contractor to comply with the terms and conditions of this Agreement.*”

74. Section C – Please confirm this Section does not apply to this contract. If unable to confirm, please further describe the meaning of the term “excess cost” as it is used in the Section.

Answer:

Section C is applicable to any contract to which it is attached and incorporated. For purposes of this contract, one example of “excess cost” is addressed in Section C.4.h. on page 11 of the Invitation for Bids.

75. Appendix D – Section W – Please confirm this section does not apply to this contract, and specifically the requirement for the filing of a staffing plan, if the bidder is not using subcontractors in NY.

Answer:

If the bidder is not using subcontractors in New York, the M/WBE Utilization Plan should still be submitted with “Not Applicable” entered on the pages.

76. Are there any restrictions as to the method of delivery of the bid package (e.g., FedEx, hand-delivery, U.S. Postal Service), or to the number of originals that may be sent, in order to ensure that at least one identical original bid arrives on time?

Answer:

There are no restrictions on the type of service used to deliver bids. As stated on page 22 of the IFB:

“Proposals that do not include the following will be rejected:

- *two signed originals of the Certifications Form (Attachment 6),*
- *two signed originals of the Milk-Based Infant Formula Bid Sheet (Attachment 11) and/or Soy-Based Infant Formula Bid Sheet (Attachment 12)*
- *the vendor’s National Wholesale Price List”*

77. Please confirm that the award winner will receive notification of the award by e-mail in order to facilitate the timing of subsequent meetings and mailings. Please further confirm that any bidder who so requests may receive notification of the award by e-mail.

Answer:

Please see the answer to question 21 of this document.

78. Are there any WIC-only stores in the state? If yes, how many such stores currently operate in New York State?

Answer:

Please see the response to question 34.b. of this document.

79. Why is there such a lengthy period of time between the bid opening date and the “estimated award selection date?” It is extremely burdensome to have open bids outstanding for long periods of time without knowing whether the bidder will have a contract and the resulting obligations that flow from these contracts. We strongly urge the State to consider making an intent to award notification within 30 days of the bid opening date. Please confirm the State will amend the IFB accordingly.

Answer:

The stated timeframes will not be amended. The timeframes are needed to adequately evaluate all responsive bids received, and to secure Department of Health, Office of the Attorney General, and Office of the State Comptroller approval of the procurement. In the event that all necessary approvals are secured ahead of schedule, then award letters/non-award letters may be sent sooner than indicated on the cover of the IFB.

Exhibit 1 – Number of Infants Issued Exempt Formula, May–October 2009, Average

Formula Name	Formula Form	Formula Can Size	Six Month Average
Alimentum	Ready-to-Feed 32 oz	32-Ounce	81
Alimentum	Powder	16-Ounce	2,040
EleCare (Unflavored)	Powder	14.1-Ounce	138
EleCare with DHA & ARA	Powder	14.1-Ounce	46
EnfaCare LIPIL	Ready-to-Feed 32 oz	32-Ounce	36
ENFACARE LIPIL	Powder	12.8-Ounce	736
Enfamil-Premature LIPIL-20 cal	Ready-to-Feed	6-Pack 2oz	1
Enfamil-Premature LIPIL-24 cal	Ready-to-Feed	6-Pack 2oz	6
Ensure	Ready-to-Feed 8 oz	6-Pack 8oz	1
MCT Oil		Quart	3
Neocate Infant	Powder	14-Ounce	112
Neocate Infant with DHA & ARA	Powder	14-Ounce	145
NeoSure	Ready-to-Feed 32 oz	32-Ounce	349
NeoSure	Powder	12.8-Ounce	1,455
Nutramigen LIPIL	Ready-to-Feed	32-Ounce	389
Nutramigen LIPIL	Concentrated	13-Ounce	1,327
Nutramigen LIPIL	Powder	16-Ounce	1,479
Pediasure Enteral	Ready-to-Feed	6-Pack 8oz	371
Pediasure Enteral with Fiber	Ready-to-Feed	6-Pack 8oz	370
Pediasure with DHA (Any Flavo	Ready-to-Feed	6-Pack 8oz	27
Pediasure With Fiber and DHA	Ready-to-Feed	6-Pack 8oz	1
Phenex - 1	Powder	14.1-Ounce	1
Phenyl-Free 1	Powder	16-Ounce	0
Polycose	Powder	12.3-Ounce	1
Pregestimil LIPIL	Powder	16-Ounce	52
Similac PM 60/40	Powder	14.1-Ounce	24
Similac Special Care 24	Ready-to-Feed	8-Pack 2oz.	6
TOTAL			9,193

Exhibit 2 - NYS WIC Program Manual – WIC Formulas

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POLICY

1. *The Competent Professional Authority must provide any of the contract milk-based or contract soy-based infant formulas to infant participants upon request.*
2. *Infants requiring an exempt infant formula and children requiring any infant formula must obtain medical documentation from a Health Care Provider substantiating a qualifying condition.*
3. *Infant formula must be issued in concentrated or powdered form as requested by the infant’s parent/caretaker, unless the criteria for issuing ready-to-use infant formula are met.*
4. *All requests for infant formula by a breastfeeding mother must be assessed by a Competent Professional Authority or Breastfeeding Coordinator to determine the appropriateness of supplementation for the infant.*
5. *Ready-to-use infant formula or exempt infant formula may be authorized when the Competent Professional Authority determines and documents that at least one of the following conditions exists:*
 - *Unsanitary or restricted water supply*
 - *Inadequate refrigeration*
 - *Caretaker has difficulty diluting concentrated or powdered formula*
 - *Formula product is available only in the ready-to-use form*
6. *Ready-to-use exempt infant formula or WIC-eligible medical food may be authorized when the Competent Professional Authority determines that the ready-to-use form better accommodates the participant’s condition or improves the participant’s compliance in consuming the prescribed formula.*
7. *The amount of WIC formula must be provided to the participant as prescribed by the Health Care Provider and must not exceed the Monthly Maximums of NYS Approved Formulas.*
8. *Returned formula product must be disposed of appropriately. Contract infant formulas may be donated to a local food pantry or emergency food relief organization.*

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BACKGROUND

Federal Regulations 7 CFR 246.16a on cost containment requires that all state agencies must continuously operate a cost containment system for infant formula. In general and in

New York State, this system consists of contracts with infant formula manufacturers to issue their formula and receive a rebate on every can of contract infant formula purchased with a WIC check.

DEFINITIONS

Child – A person over one year of age who has not reached his/her fifth birthday.

Full Nutritional Benefit – Maximum monthly allowance of reconstituted fluid ounces of liquid concentrate infant formula for the food package category and feeding option.

Infant - A person under one year of age (prior to first birthday).

Refer to Acronyms and Definitions.

PROCEDURE

1. If infant formula is requested by the parent/caretaker of an infant, the Competent Professional Authority (CPA) must issue a contract milk-based or soy-based infant formula. If the parent/caretaker requests a non-contract infant formula, the CPA must explain the NYS WIC policy prohibiting the issuance of any infant formula other than contract formula.

2. A child participant who is prescribed infant formula after the age of 12 months by a Health Care Provider (HCP) must meet the criteria for Food Package III for participants with qualifying conditions.

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3. Medical documentation containing the required information must be provided to issue any infant formula to a child participant.

4. The CPA must issue formula in accordance with federal regulations. Utilize the Monthly Maximums of NYS WIC Approved Formulas reference document for formula issuance.

5. The CPA must encourage breastfeeding mothers to choose powdered formula to minimize the amount of formula that is prepared at one time and to reduce the amount that is wasted.

6. The CPA must inform parents/caretakers of fully formula fed infants that the amount of formula that may be obtained from the WIC Program is limited to the maximum allowed.

7. The reason for issuance of ready-to-use formula must be documented in the participant’s record.

8. If ready-to-use formula is issued due to an unsanitary water supply, the 32 ounce can of ready-to-use formula must be issued. If the participant has an unsanitary water supply and refrigeration problems, then the 8 ounce can of ready-to-use formula may be issued.

9. The local agency must maintain documentation for returned formula. Returned formula must not be given to WIC participants.

10. Local agencies must accept unused (unopened) formula from participants when there has been a change in formula or form ordered by the participant’s HCP.

GUIDANCE

The Monthly Maximums for NYS WIC Approved Formulas reference document provides information on the number of cans of NYS WIC approved formula which may be issued to a participant. This resource is available electronically to all local agencies whenever a revision occurs.

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As the infant grows and requires more calories and nutrients, the amount of formula provided by the WIC Program may not be sufficient. Parents/caretakers may ask if it is advisable to purchase less expensive milk-based or soy-based infant formula. The CPA should counsel parents/caretakers appropriately and consider the health and nutrition assessment of the infant when responding to this question.

For the infant with a breastfeeding status of Mostly in the first month of life there is no Full Nutritional Benefit for food package IA. The maximum amount is 1 can powdered formula or 104 reconstituted ounces.

Verification of unsanitary or restricted water supply should be obtained when possible and maintained in the participant’s record. Unsanitary water includes conditions of viral/bacterial contamination, presence of organic contaminants, toxins, or levels of substances considered by local government entities to be harmful if ingested.

If the household has inconsistent access to refrigeration or inadequate refrigeration, but has a safe water supply, powdered formula may be appropriate. The CPA should evaluate the participant’s situation to determine the safest form of formula product to issue.

Refer to the following policies:

- Food Package III Participants with Qualifying Conditions
- WIC Approved Foods and Formula
- Food Packages I, II, IV, V, VI, VII, VII x 1.5
- Food Package Modifications for Homeless Participants
- Food Packages for Breastfeeding Participants