

# INVITATION FOR BID

<b>TITLE</b>	<b>WIC Infant Formula Rebate System</b>
<b>IFB NUMBER</b>	<b>IFB #16429</b>
<b>BID DUE DATE</b>	<b>November 18, 2015</b>
<b>CONTRACT PERIOD</b>	<b>July 1, 2016 – June 30, 2021</b>

## Schedule of Key Events

Issue Date:	September 24, 2015
Deadline for Submission of Questions:	October 15, 2015
Written Questions and Answers Release Date:	November 5, 2015
Bid Due Date (by 2:00 PM, ET):	November 18, 2015
Public Bid Opening (at 2:15 PM, ET):	November 18, 2015
Estimated Award Selection Date:	February 2, 2016
Anticipated Contract Start Date:	July 1, 2016

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

**DESIGNATED CONTACTS:**

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

*Elizabeth Wood*  
*Bureau of Contracts*  
*New York State Department of Health*  
*Corning Tower, Room 2834*  
*Albany, New York 12237*  
*Phone: 518-474-7896*  
*E-mail: [Elizabeth.Wood@health.ny.gov](mailto:Elizabeth.Wood@health.ny.gov)*

**Permissible Subject Matter Contacts:**

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

Submission of written bids:

*April Hamilton*  
*Bureau of Supplemental Food Programs*  
*Division of Nutrition*  
*New York State Department of Health*  
*Riverview Center*  
*150 Broadway, Suite 650*  
*Albany, NY 12204*

Debriefings

*Stacey Johnson*  
*Bureau of Supplemental Food Programs*  
*Division of Nutrition*  
*New York State Department of Health*  
*Riverview Center*  
*150 Broadway, Suite 650*  
*Albany, NY 12204*

Submission of Written Questions:

*April Hamilton*  
*Bureau of Supplemental Food Programs*  
*Division of Nutrition*  
*New York State Department of Health*  
*Center*  
*150 Broadway, Suite 650*  
*Albany, NY 12204*

Negotiation of Contract Terms after Award:

*Stacey Johnson*  
*Bureau of Supplemental Food Programs*  
*Division of Nutrition*  
*New York State Department of Health Riverview*  
*Riverview Center*  
*150 Broadway, Suite 650*  
*Albany, NY 12204*

**FOR FURTHER INFORMATION REGARDING THESE STATUTORY PROVISIONS, SEE THE LOBBYING STATUTE SUMMARY IN SECTION E, 10 OF THIS SOLICITATION.**

## TABLE OF CONTENTS

<b>A.</b>	<b>INTRODUCTION</b> .....	<b>5</b>
<b>B.</b>	<b>BACKGROUND</b> .....	<b>5</b>
<b>C.</b>	<b>DETAILED SPECIFICATIONS</b> .....	<b>7</b>
1.	TERMINOLOGY .....	7
2.	USE OF WIC SERVICE MARKS.....	8
3.	BIDDER QUALIFICATIONS/CERTIFICATIONS .....	9
4.	COMPETITIVE BID REBATE SYSTEM - CONTRACTOR .....	10
5.	COMPETITIVE BID REBATE SYSTEM – NEW YORK STATE .....	14
6.	COMPETITIVE BID REBATE SYSTEM – CONTRACTOR AND NEW YORK STATE .....	16
<b>D.</b>	<b>BID REQUIREMENTS</b> .....	<b>16</b>
1.	CERTIFICATIONS FORM.....	17
2.	NYS DEPARTMENT OF HEALTH LOBBYING FORM.....	17
3.	NATIONAL WHOLESALE PRICE LIST .....	17
4.	BID SHEET(S) .....	17
5.	METHOD OF AWARD .....	20
<b>E.</b>	<b>ADMINISTRATIVE</b> .....	<b>21</b>
1.	ISSUING AGENCY .....	21
2.	INQUIRIES/UPDATES .....	21
3.	SUBMISSION OF BIDS.....	21
4.	BID PREPARATION .....	23
5.	THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO.....	24
6.	PAYMENT.....	25
7.	CONTRACT PERIOD AND RENEWALS.....	26
8.	DEBRIEFING.....	26
9.	PROTEST PROCEDURES.....	26
10.	VENDOR RESPONSIBILITY QUESTIONNAIRE.....	26
11.	STATE CONSULTANT SERVICES REPORTING .....	27
12.	LOBBYING STATUTE .....	27
13.	ACCESSIBILITY OF STATE AGENCY WEB-BASED INTRANET AND INTERNET INFORMATION AND APPLICATIONS .....	29
14.	INFORMATION SECURITY BREACH AND NOTIFICATION ACT .....	29
16.	PIGGYBACKING .....	30
17.	CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY AND WOMAN OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN. ....	30
18.	IRAN DIVESTMENT ACT .....	33
19.	ENCOURAGING USE OF NEW YORK BUSINESSES IN CONTRACT PERFORMANCE .....	34
<b>F.</b>	<b>APPENDICES</b> .....	<b>34</b>
<b>G.</b>	<b>ATTACHMENTS</b> .....	<b>35</b>
	ATTACHMENT 1 - SAMPLE TRANSMITTAL LETTER TEMPLATE.....	37
	ATTACHMENT 2 - LOBBYING FORM.....	39
	ATTACHMENT 3 - NO-BID FORM.....	41
	ATTACHMENT 4 - VENDOR RESPONSIBILITY ATTESTATION.....	42
	ATTACHMENT 5 - NEW YORK STATE DEPARTMENT OF HEALTH M/WBE PROCUREMENT FORMS.....	43
	- M/WBE FORM #1 - .....	44
	-M/WBE FORM #2 – .....	47

- M/WBE FORM #4 - .....	48
- M/WBE FORM #5 - .....	49
ATTACHMENT 6 - ENCOURAGING USE OF NEW YORK BUSINESS IN CONTRACT PERFORMANCE.....	53
ATTACHMENT 7 - VENDOR COVER SHEET .....	54
ATTACHMENT 8 - CERTIFICATIONS FORM.....	55
ATTACHMENT 9 - WIC INFANT FORMULA REBATE SYSTEM IFB CHECKLIST .....	57
ATTACHMENT 10 - INSTRUCTIONS FOR COMPLETING BID SHEETS.....	58
ATTACHMENT 11 - BID SHEET – MILK-BASED INFANT FORMULA.....	59
ATTACHMENT 12 - BID SHEETS – SOY-BASED INFANT FORMULA.....	60
ATTACHMENT 13- SAMPLE STANDARD NEW YORK STATE BOILERPLATE CONTRACT WITH APPENDICES .....	61
ATTACHMENT 13.A – APPENDIX A.....	63
ATTACHMENT 13.B - APPENDIX X .....	71
ATTACHMENT 13.C - STATE OF NEW YORK AGREEMENT.....	73
ATTACHMENT 13.D - APPENDIX D .....	76
ATTACHMENT 13.E - APPENDIX G.....	85
ATTACHMENT 13.F - APPENDIX M .....	86
ATTACHMENT 14 - NYS WIC PROGRAM REGIONS.....	91
ATTACHMENT 15 – NYS WIC INFANT FORMULA REBATE INVOICES .....	91
ATTACHMENT 16 – OSC LOBBYING TRANSMITTAL FORM .....	93

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

**Invitation for Bids**  
**WIC Infant Formula Rebate System**

**A. INTRODUCTION**

New York State (NYS) is seeking to maximize the number of WIC participants served with available federal and state funds. New York State distributes WIC-approved foods and formula(s) through a retail food delivery system, and is requesting rebates on infant formulas purchased with WIC checks to reduce program costs.

The purpose of this Invitation for Bids (IFB) is to implement a system that lowers the cost of retail infant formula purchases by NYS WIC participants. It is planned that one contract will be awarded for milk-based non-exempt infant formulas, and another contract will be awarded for soy-based non-exempt infant formulas. The two contracts may be with two different manufacturers or both may be with the same manufacturer, depending on the bids that are submitted. As required by federal law, the milk-based formula specified by the bidder awarded the contract for milk-based formula will be the first choice of issuance to infants utilizing milk-based formula and the soy-based formula specified by the bidder awarded the contract for soy-based formula will be the first choice of issuance to infants utilizing soy-based formula. It is anticipated that a contract(s) resulting from this IFB will be for a period of five years, from July 1, 2016 – June 30, 2021.

**B. BACKGROUND**

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is a federally- and state-funded program carried out pursuant to provisions of the Child Nutrition Act and to federal and New York State laws, regulations and policies. The program is funded through the Food and Nutrition Service (FNS) of the United States Department of Agriculture and the Division of Nutrition of the New York State Department of Health. The WIC Program serves low-income pregnant, postpartum, and breastfeeding women, infants, and young children who are at nutritional risk due to medical conditions or inadequate dietary intake. WIC is an adjunct to health care, providing nutrition education and prescribed food packages to the targeted population. In New York State, 93 WIC local agencies are under contract to provide services to over 500,000 persons per month at 400 clinics statewide.

The New York State WIC Program recognizes the importance of breastfeeding and encourages women to exclusively breastfeed their infants. Infant formula is only provided to an infant when a mother is unable to breastfeed or has made an informed decision not to breastfeed. When infant formula is issued, it is provided to participants via checks that are redeemed with WIC-approved retailers.

The retail food delivery system is utilized statewide through contracts with approximately 3,800 retail grocery stores and pharmacies that agree to accept WIC checks issued for specified authorized foods. All contractors must comply with federal requirements set forth in 7 CFR, Part 246.12 and state regulations in 10 NYCRR Part 60-1. The contract with the vendor specifies the responsibilities of both the state program and vendors and outlines sanctions for violations. Vendors are reviewed for compliance on a continual basis.

WIC checks are issued by local WIC agencies at clinic sites throughout the state to certified eligible participants or participants' caregivers. While infant formula is primarily issued to infants, it may also be issued to children with qualifying medical conditions if it is prescribed by the health care provider. Checks may be issued for up to a three-month period, and may be issued up to 30 days before the first "not good before" date on the checks. Formula checks specify the quantity, can size, form and brand name of the infant formula which may be purchased at an authorized retail vendor within the 30-day timeframe noted on the check. After a vendor accepts a WIC check, it is processed through the Federal Reserve System to a contract bank for payment. A series of pre-payment edits are performed by the contract bank on each check to ensure that specific requirements are met. Checks failing these edits are not paid by the NYS WIC program.

The table below depicts the NYS WIC program's caseload over a recent six-month period, with detail provided on the number of formula-fed infants. More details on subcategories of formula-fed infants are provided in section D.3. of this IFB.

**TABLE I – NYS WIC Caseload Statistics**

<b>MONTH</b>	<b>TOTAL CASELOAD</b>	<b>ALL INFANTS</b>	<b>FULLY BREASTFED INFANTS</b>	<b>INFANTS RECEIVING FORMULA</b>
<b>July 2014</b>	483,748	108,916	9,130	99,786
<b>August 2014</b>	481,530	108,817	9,224	99,593
<b>September 2014</b>	484,343	109,665	9,323	100,342
<b>October 2014</b>	485,855	110,153	9,440	100,713
<b>November 2014</b>	476,733	108,627	9,313	99,314
<b>December 2014</b>	472,268	107,847	9,313	98,534
<b>Six-Month Average</b>	480,746	109,004	9,291	99,714

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

The average monthly number of containers of milk- and soy-based contract infant formula redeemed and invoiced during July 2014 through December 2014 is shown in Table II below. These numbers include containers redeemed for children with qualifying medical diagnoses as well as those redeemed for infants. The infant formula rebate invoices compiled in this table are included with this IFB as Attachment 15.

**TABLE II - Infant Formula Distribution – Number of Cans**

<b>INFANT FORMULA TYPE</b>	<b>13-OUNCE CONCENTRATE</b>	<b>12- OR 12.9- OUNCE POWDERED</b>	<b>32-OUNCE READY-TO-FEED</b>	<b>TOTAL</b>
<b>Milk-Based:</b>	188,180	576,124	3,170	767,473
<b>Soy-Based:</b>	8,676	36,059	208	44,942
<b><i>TOTAL</i></b>	<b>196,856</b>	<b>612,182</b>	<b>3,377</b>	<b>812,415</b>

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

Formula-fed infants are issued contract formula unless their health care provider determines that an exempt formula is needed. Non-contract non-exempt formulas are not currently among the choices available to be prescribed for infants or for children or women with qualifying medical conditions. No assurance is given that this policy regarding non-contract non-exempt formula will remain unchanged during the term of the contract established as a result of this IFB.

The contract(s) expected to be awarded as a result of this IFB will cover WIC checks for non-exempt infant formulas with “not good before” dates beginning July 1, 2016. The new contract(s) will provide for five years of formula issuance (through June 30, 2021).

The NYS WIC program is currently working to implement a new information system, which includes electronic issuance of food and formula benefits, and will be transitioning to the new system during the term of the contract(s) to be awarded as a result of this IFB. The new system will affect many processes relevant to the infant formula rebate system, such as participant certification, food/formula issuance, and reconciliation of redeemed food/formula instruments. To the extent that these system changes affect the language of the contract(s) to be awarded (which will incorporate this IFB), NYS WIC will communicate these effects to the infant formula contractor(s) and discuss how they can be aligned with the contract language. For example, this IFB contains many references to printed food instruments or checks; with a transition to e-WIC, the State may state that electronic specification of contract formula UPC codes is considered to be the equivalent of printing contract brand formulas on WIC food instruments. NYS WIC and the contractor will defer to USDA guidance if there are instances where NYS WIC and the contractor(s) disagree on how “new system” features equate to “old system” contract language.

**C. DETAILED SPECIFICATIONS**

1. Terminology

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

“Contract effective date” refers to the earliest “not good before” date on checks printed under the terms of the awarded contract(s). The desired notification of award is April 1, 2016, to select a vendor for a contract execution date of July 1, 2016. WIC checks with July 1, 2016 “not good before” dates may be printed and distributed to WIC participants as early as April 1, 2016.

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

“WIC food instrument” means a WIC check (currently), drawn on the account of the State Department of Health exchangeable for WIC-approved products.

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

## 2. Use of WIC Service Marks

By submitting a bid in response to this IFB, the bidder, who must be an infant formula manufacturer, indicates that:

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

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

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

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

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

### 3. Bidder Qualifications/Certifications

A winning bidder must be an infant formula manufacturer registered with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act and producing infant formula products that are in compliance with Federal regulations issued pursuant to P.L. 100-137. The bidder winning the milk-based formula contract award shall enter into a contract to provide a rebate on all non-exempt milk-based infant formulas manufactured by the bidder. The bidder winning the soy-based formula contract award shall enter into a contract to provide a rebate on all non-exempt soy-based infant formulas manufactured by the bidder. The contract for milk-based formula and the contract for soy-based formula will contain the documents referenced in sections F. and G. of this IFB.

All formulas are to be complete formulas not requiring the addition of any ingredients other than water prior to being served in a liquid state. All formulas, excluding low iron varieties, will contain at least 10 milligrams of iron per liter of formula at standard dilution, which supplies 67 kilocalories per 100 milliliters (i.e., approximately 20 kilocalories per fluid ounce of formula at standard dilution). The primary contract infant formula must be suitable for issuance to generally healthy full-term infants.

Only those companies that can produce and distribute infant formula products in sufficient quantity to serve 100 percent of potential WIC infant participants' milk-based infant formula needs in New York State can bid for the milk-based formula contract. Only those companies that can produce and distribute infant formula products in sufficient quantity to serve 100 percent of potential WIC infant participants' soy-based infant formula needs in New York State can bid for the soy-based formula contract. The majority (~94%) of the NYS WIC program's infants who receive non-exempt infant formula receive milk-based formula. The balance - approximately 6% - utilize soy-based formula. This capacity must be maintained for the duration of the contract(s).

In 2013, there were an estimated 138,513 infants potentially eligible for WIC program services in New York State. This estimate was calculated by obtaining the number of infants below 185% of the federal poverty line as estimated by the American Community Survey (ACS) 2009-2013, table B17024. This count is stratified by the proportion of infants as reported in the 2010 Census Summary File 1, table QT-P2. These estimates are adjusted for adjunctive eligibility, monthly income fluctuation, and nutritional risk according to a report provided annually by the USDA 'National and State-Level Estimates of Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Eligibles and Program Reach, 2012', Table A.1a.

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

**TABLE III – Regional\* Distribution of Eligible Infants and WIC Vendors**

Category	Capital/ Central (#)	Capital/ Central (%)	Western (#)	Western (%)	Metropolitan (#)	Metropolitan (%)
Infants Eligible for WIC Participation	21,300	15%	18,868	14%	98,345	71%
Number of Vendors per Region	520	14%	334	9%	2,901	77%

\*See Attachment 14 - New York State WIC Program Regions

4. Competitive Bid Rebate System - Contractor

Relative to non-exempt infant milk-based formulas, the contractor for milk-based formula shall, and relative to non-exempt infant soy-based formulas, the contractor for soy-based formulas shall:

- a. Produce infant formula in the following forms: 12-to-13-ounce concentrate, 12-to-16-ounce powder, and 32-ounce ready-to-feed in sufficient amounts to meet WIC requirements, as described in section C.3., “Bidder Qualifications/ Certifications,” for purchase with food instruments issued during the contract period. The contractor will not be required to provide clinic samples to WIC local agencies. (Comparably-sized containers may also be acceptable; prospective bidders producing such sizes should submit an inquiry about the acceptability of their container sizes via the inquiry process described in section E.2. of this IFB. The formula specified on the Infant Formula Bid Sheets (Attachments 11 and 12) must be in production and listed on the bidder’s national wholesale price list as of the date of the bid submission. All these products shall be packaged in containers which are not different from the containers distributed by the contractor to retail vendors for sale to the general public.

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

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

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

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

- c. Remit to the state a rebate per can for all non-exempt formulas produced by the contractor prior to or during the contract period and offered by the New York State WIC program. The state is entitled to a rebate payment for all WIC food instruments for such formulas issued to WIC program participants (women, infants and children) during the term of the contract and redeemed before or after the expiration date of the food instrument as the redemption period is defined within WIC program procedures. The initial rebate for each such formula approved for issuance by the New York State WIC program prior to the contract effective date will be computed as follows:

- ◆ Identify the discount percentage for each form (concentrate, powder and ready-to-feed bid) using Column C from the relevant Bid Sheet (Attachment 11 or 12 to this IFB).
- ◆ Multiply the lowest national wholesale price per unit for a full truckload of each of the contractor's non-exempt formulas at the time of bid submission by the appropriate per-form percentage. The results will be the initial rebates for each formula. If no wholesale price is provided for a formula at the time of bid submission because of planned discontinuation, the initial rebate for that formula will be computed using the most recently published lowest national wholesale price per unit for a full truckload of the formula. No rebates are due for formulas whose production ceased more than six months prior to the bid submission date.

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

- d. Remit to the state a rebate per can for all non-exempt formulas newly approved for issuance by the NYS WIC program on or after the contract effective date. With the exception of the primary contract infant formula specified on the relevant Bid Sheet (see Attachment 11 or 12 to this IFB), which will be approved by NYS WIC, the Department reserves the right to determine whether any infant formula produced by the contractor at the time of bid submission or any new infant formula introduced by the contractor during the term of the contract will be approved for use in the New York State WIC program. In the event that an existing or new non-exempt infant formula is approved by the New York

State WIC program during the contract term, the rebate for the added product will be computed as follows:

- ◆ Identify the three discount percentages (one for concentrate, one for powder and one for ready-to-feed) calculated under section C.4.c. of this IFB.
- ◆ Apply these per-form percentages to the lowest truckload wholesale prices of all the forms and container sizes of the newly-approved product. The wholesale prices must be those in effect at the time that the Department approves the formula. The results will be the rebates for the newly-approved infant formula.

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

- e. Remit to the state a revised rebate per can when the contractor changes its lowest national wholesale price for a full truckload of a rebateable NYS WIC-approved formula. When the contractor increases its lowest national wholesale price for a full truckload of a rebateable formula, the rebate will automatically increase for each affected formula product on a cent-for-cent basis. When the contractor decreases its lowest national wholesale price for a full truckload of a rebateable formula, the rebate will automatically decrease for each affected formula product on a cent-for-cent basis. Cent-for-cent increases or decreases in rebate amounts will take effect on the first day of the month in which the price increase or decrease occurs, and will apply to all checks with “not good before” dates falling on or after the first day of the month. Any increase or decrease in the lowest national wholesale price for a full truckload of a rebateable formula between the date of bid submission and the effective date of the contract will be added to or subtracted from the initial rebate amount for that formula according to the calculations described above in this section.
- f. Remit to the state a revised rebate per container if any form/size of the primary contract infant formula undergoes a container size change or if it is replaced by another product. Rebates for container sizes or products replacing any form/size of the primary contract infant formula must be calculated to yield the same net wholesale cost per ounce as the primary contract infant formula product in the old container size or the discontinued primary contract infant formula product. These rebate amounts will subsequently increase or change automatically with wholesale price changes as discussed above in section C.4.e. of this IFB.
- g. Notify the state of any wholesale price changes by electronic mail on the day the price adjustment is released to the contractor’s regular customers, or another earlier date, as agreed to by the contractor and the state.
- h. Rebate the state for the non-exempt infant formula products on each redeemed food instrument used to purchase another company's infant formula product when the primary contract infant formula is unavailable to WIC vendors and another company’s infant formula must be substituted to provide the participant(s) with his/her monthly prescription. The rebate shall be calculated to yield the same net wholesale cost per ounce to the state as the product which is unavailable. If only one form – concentrate or powder - of the primary contract infant formula is unavailable, the state will issue the available form (concentrate or

powder) of the primary contract infant formula prior to issuing another company's infant formula.

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

- i. Make rebate payments to the state, based on the documented purchases submitted by the state, i.e., food instrument redemptions supported by electronic data files subject to audit, as indicated on the state's invoice. Invoices shall reflect, for each rebateable formula, the formula name, form, container size and applicable per-container rebate amount as well as the total number of containers redeemed within the invoice period month, with a breakdown of the months in which the formula was issued. The total number of containers redeemed within the invoice period will be adjusted downward to reflect checks redeemed for unusually low amounts, as detailed in section C.5.d. of this IFB.

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 according to specifications that will be provided by the state. If payment is not forwarded to the state within 30 days of the postmark or email marked date of the invoice, the contractor shall pay the state, in addition to the amount due, interest at a rate of one (1) percent per month, or portion thereof, on the unpaid balance from the expiration of such 30-day period until such time as payment is received by the state.

- j. Notify the state, in writing, of any intent to dispute or investigate a potential error in the rebate invoice within 30 days of receipt of the invoice. After this 30-day period, any requirement to return funds to the contractor as a result of a dispute or over billing error is waived. Payments cannot be withheld by the contractor in the event of a dispute or billing error. The contractor may not withhold rebate payments based on rebate invoices issued by the state under any circumstances.
- k. Be totally and exclusively responsible for all costs related to the contractor's request for audits, inspections, and reviews of WIC program records created solely for this purpose, outside of the usual documents required to support invoices reflecting redeemed instruments. Access to actual or microfilmed food instruments or other confidential records shall be subject to federal and state confidentiality requirements.
- l. Meet with the state biennially or more frequently as determined by either party. The location shall be in the offices of the Division of Nutrition or, at the discretion of the state, by conference call.
- m. Address correspondence and communications to the New York State Department of Health, Division of Nutrition, Director, Bureau of Supplemental Food Programs,

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

- n. Agree to fully indemnify and save harmless the State, as well as its officers, agents and employees without limitation from suits, actions, damages and costs of every name and description arising out of the acts or omissions of Contractor, its officers, employees, subcontractors, partners, or agents, in any performance under this contract, including but not limited to personal injury caused by use of contractor's formula furnished pursuant to this contract, provided that the State shall give Contractor written notice of any action, claim, or other suit within 30 days of receiving notice of such action, claim, or other suit. Further, the Contractor shall be given the opportunity to take over, settle or defend itself in such action, claim or suit at Contractor's sole expense, together with reasonable cooperation from the State in the defense of any such action, also at the Contractor's expense.

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

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

5. Competitive Bid Rebate System – New York State

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

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

- b. Print contract brand formulas on the WIC food instruments unless another formula has been prescribed for a participant, the participant requires a package type not produced by the manufacturer (e.g. eight-ounce containers of ready-to-feed formula due to a participant's unsafe water supply and lack of access to reliable refrigeration), or the contractor is unable to make enough formula available for purchase by WIC vendors. As required by federal law, the milk-based formula specified by the bidder awarded the contract for milk-based formula will be the first choice of issuance to infants utilizing milk-based formula and the soy-based formula specified by the bidder awarded the contract for soy-based formula will be the first choice of issuance to infants utilizing soy-based formula.
- c. Prepare invoices for each contractor's rebate payment; each invoice shall contain the time period, formula names, forms, container sizes, quantities and rebate amounts used to calculate the rebate payment. The state shall mail the invoice to the contractor via Certified Mail, return receipt requested, or transmit via FAX. Invoices will be prepared regularly on at least a monthly basis. Supplemental invoices or credits will be prepared if ongoing state data system maintenance activities identify additional or corrected amounts.
- d. Adjust invoices to account for instances where a WIC check for a rebateable formula is redeemed for an unusually low dollar amount as detailed below.

Checks that list a single formula product (with any number of containers) rather than two or more products (such as a combination of the concentrated and powdered forms of the primary contract infant formula) will be analyzed. 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 invoice time period) for each of four major vendor management areas in New York. Per-container redemption prices falling below the lower limit of the two-sided 95% confidence interval for the product, vendor group and time period will be compared to the average price for that product, group and time period.

Checks with per-container redemption prices falling below the lower limit will have their total redemption amount divided by the average redemption price for the product, vendor group, time period and number of containers listed on the check. The dividend will be rounded to the nearest whole number using normal rounding rules, and subtracted from the number of containers listed on the check. The result will be the number of containers to remove from the rebate invoice for that check.

The number of containers to be removed from each check statewide will be summed for each formula product, then divided into the total number of containers of that product listed on single-product checks, to arrive at an adjustment rate. The adjustment rate will then be applied to the total number of containers listed on all checks – single-product checks and multiple-product checks - to arrive at the number of cans to exclude from the rebate invoice.

The results of applying this methodology is shown on the invoices attached to this IFB (Attachment 15).

- e. Upon resolution of a dispute, promptly disburse in accordance with prompt payment provisions of Article 11 of the State Finance Law, any funds due the contractor.
- f. Supply records directly related to the monthly billings to the contractor for review. This review shall be limited to books, records, and documents related to the generation of monthly invoices and shall include and be limited to the following data elements:

- Check Number
- Issue Date
- Redemption Date
- Formula Product Code
- Quantity of Formula Containers Issued

In addition, the state is willing to provide (on a regular or upon-request basis) the following data elements for each check whose number of cans was adjusted as described in section C.5.d.: check number, issue date, redemption date, formula product code, quantity of formula containers issued, redeemed amount, and average per-can redeemed amount for the formula product/vendor management area represented on the check.

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

- g. Meet with each contractor biennially or more frequently as determined by either party. The location shall be in the offices of the Division of Nutrition or, at the discretion of the state, by conference call.

6. Competitive Bid Rebate System – Contractor and New York State

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

#### **D. BID REQUIREMENTS**

In addition to the administrative requirements listed below in Section E. of the IFB, bidders must submit the items listed below. Please note that the Certifications form, NYS Department of Health Lobbying Form and Bid Sheets require original signatures. Please include four (4) handwritten signed originals and four (4) handwritten signed copies.

1. Certifications Form

Bidders must review, sign and submit the Certifications Form (Attachment 8) that addresses all the provisions outlined in Section C. of this IFB. The Certifications Form must be signed by a company representative with authority to commit the company to the bid package.

2. NYS Department of Health Lobbying Form

3. National Wholesale Price List

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

4. Bid Sheet(s)

Bidders must include:

- a. A completed and signed Bid Sheet – Milk-Based Infant Formula (Attachment 11),  
**OR**
- b. A completed and signed Bid Sheet – Soy-Based Infant Formula (Attachment 12),  
**OR**
- c. A completed and signed Bid Sheet - Milk-Based Infant Formula (Attachment 11)  
**AND** a completed and signed Bid Sheet – Soy-Based Infant Formula (Attachment 12).

All bid sheets will be reviewed for completeness and signature, and to determine the lowest total net wholesale cost to the state. All sheets must be signed by a company representative with authority to commit the company to the bid package.

On each bid sheet that the bidder chooses to submit, bidders must indicate one rebate bid per unit for concentrated formula, one rebate bid per unit for powdered formula, and one rebate bid per unit for ready-to-feed formula.

The numbers of reconstituted ounces solicited on Attachments 11 and 12 are based on federal regulations and USDA guidance applied to NYS WIC caseload reports and formula issuance queries, including:

- The monthly average number of infants receiving formula (See Table I), broken down by age (in months) and feeding category. “FF” refers to infants who receive more than 50% of the maximum amount of formula allowed. “PBF” refers to infants who are partially breastfed and are supplemented with formula up to 50% of the maximum amount allowed.
- The monthly average number of infants receiving contract infant formula (See Table IV). Each age and feeding status category Shown in Table I was multiplied by the proportion of formula-fed infants who receive contract formula (just over

92%). At present, there are no NYS WIC infants receiving non-contract, non-exempt formula.

- The number of infants (for each age/feeding category combination) receiving each type of contract formula. This was done by multiplying the amounts in Table IV (farthest right column) by the proportion of contract-formula-fed infants who receive each type of formula: milk-based concentrate, milk-based powder, milk-based ready-to-feed, soy-based concentrate, soy-based powder and soy-based ready-to-feed. These proportions are shown in Table V. The resulting amounts are shown in Table VI.
- The Maximum Monthly Allowances (MMA), in reconstituted ounces that are allowed for each infant by age, feeding status and type of contract formula. These amounts are shown in Table VII.

Attachments 11 and 12 show how these reconstituted ounce amounts are converted to numbers of containers. Bids are then based on per-container amounts multiplied by the total number of containers. Instructions for completing these attachments are provided in Attachment 10.

**TABLE IV – NYS WIC Formula-Fed Infant Caseload Breakdown**

<b>Infant Feeding Category</b>	<b>Age Breakdown</b>	<b>Average Caseload of Infants Receiving Any Formula</b>	<b>Estimated Caseload of Infants Receiving Contract Formula</b>
<b>FF: Fully Formula Fed + Minimally Breastfeeding</b>	0 to <4 Months	28,918	26,808
	4 to <6 Months	15,252	14,136
	6 to <12 Months	44,313	41,078
<b>PBF: Mostly Breastfeeding</b>	0 to <4 Month	4,660	4,320
	4 to <6 Months	1,935	1,795
	6 to <12 Months	4,634	4,296
<b>TOTAL</b>		<b>99,712</b>	<b>92,433</b>

**TABLE V – NYS WIC Contract Formula Issuance**

<b>Type of Formula</b>	<b>Proportion of All Infants Issued Contract Formula</b>
<b>Milk-Based Concentrate</b>	7.65%
<b>Milk-Based Powder</b>	86.16%
<b>Milk-Based Ready-to-Feed</b>	0.16%
<b>Soy-Based Concentrate</b>	.33%
<b>Soy-Based Powder</b>	5.69%
<b>Soy-Based Ready-to-Feed</b>	0.01%
<b>TOTAL</b>	<b>100.00%</b>

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

Infant Age Categories	Milk-based Formula: Estimated Average Infant Caseload by Form		Soy-based Formula: Estimated Average Infant Caseload by Form	
	FF	PBF	FF	PBF
<b>Powder</b>				
0 to <4 Months	23,096	3,722	1,526	246
4 to <6 Months	12,181	1,546	804	102
6 to <12 Months	35,391	3,701	2,338	244
<b>Concentrate</b>				
0 to <4 Months	2,051	330	88	14
4 to <6 Months	1,081	137	46	6
6 to <12 Months	3,143	329	136	14
<b>Ready to Feed</b>				
0 to <4 Months	43	6	4	2
4 to <6 Months	22	3	2	1
6 to <12 Months	65	7	5	1

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

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

Instructions for completing Attachments 11 and 12 are provided in Attachment 10. The number of reconstituted ounces discussed above will be converted to a number of containers of the bidder’s formula on the Bid Sheets.

To evaluate each bid, the state will subtract the rebate bid per unit from the lowest wholesale full truckload price per unit to obtain a net cost per unit. In each of the Powdered, Liquid Concentrate and Ready-to Feed rows of each bid sheet, the net cost per unit will be multiplied by the total monthly units to arrive at a total net cost for that form. The Total Net Costs of each of the three

forms will be summed. As described in section D.4.a. of this IFB, the bidder with the lowest total Net Cost for milk-based formula will be awarded the milk-based contract, and the bidder with the lowest total Net Cost for soy-based formula will be awarded the soy-based contract.

5. Method of Award

a. Vendor Selection

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

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

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

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

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

b. Correspondence

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

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

- A contract for signature to be returned to the State via overnight mail within 30 days of the manufacturer's receipt of the contract.
- The telephone numbers, electronic mail addresses, and fax numbers of the director of the Bureau of Supplemental Food Programs and bureau staff responsible for contract management and able to confirm receipt of communications from the manufacturer.

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

## E. ADMINISTRATIVE

### 1. ISSUING AGENCY

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

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age or disability. To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TTY). USDA is an equal opportunity provider and employer.

In addition, New York State prohibits discrimination based on creed, marital status and sexual orientation. Persons who believe they have been discriminated against based on the New York Human Rights Law should call the Growing Up Healthy Hotline at 1-800-522-5006, or write to the WIC Program Director, Riverview Center, FL6W, 150 Broadway, Albany, NY, 12204.

### 2. INQUIRIES/UPDATES

Questions concerning this solicitation must be submitted in writing by the date and time located in the Schedule of Key Events on the cover of this IFB # 16429 via an email to [wicifbs@health.ny.gov](mailto:wicifbs@health.ny.gov) or by delivery to the following address:

NYS Department of Health  
Division of Nutrition  
Riverview Center  
150 Broadway, Suite 650  
Albany, New York 12204-2719  
Attention: April Hamilton  
Bureau of Supplemental Food Programs

Questions may not be faxed.

Questions and answers, as well as any IFB updates and or modifications related to this IFB, will be posted on the Department of Health's website at <http://www.health.ny.gov/funding/> on or about the date indicated on the cover of this IFB.

### 3. SUBMISSION OF BIDS

**Interested vendors should submit four (4) handwritten signed originals and four (4) handwritten signed copies of their Bid Proposal. The Bid Proposal must be received not later than the date and time noted in the Schedule of Key Events.**

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

Responses to this solicitation should be clearly marked “IFB # 16429 WIC INFANT FORMULA REBATE” and should submit their bid packages no later than the time and date indicated on the cover of this IFB to the following address:

NYS Department of Health  
Division of Nutrition  
Riverview Center  
150 Broadway, Suite 650  
Albany, New York 12204-2719  
Attention: April Hamilton  
Bureau of Supplemental Food Programs

In addition, please label the outside of the bid package in which both the Technical and Cost proposals are enclosed, with the following:

WIC INFANT FORMULA REBATE BID  
CONFIDENTIAL - DO NOT OPEN  
NAME OF BIDDER \_\_\_\_\_

Please see Section E.4 Bid Preparation for detailed information on preparing bids in response to this IFB and assembling the components for submission.

**It is the bidder’s responsibility to see that bids are delivered to the address above prior to the date and time noted on the Schedule of Key Events.** Bidders must allow extra time to comply with the security procedures in effect at the Riverview Center building when hand delivering bids or delivering by independent courier services.

**LATE BIDS due to the delay by the carrier or not received in the department’s mail room will not be considered. E-mail bid submissions are not acceptable and will not be considered.**

Bid packages will be opened on the date and time indicated on the cover of this IFB in the offices of the Division of Nutrition (Riverview Center, 150 Broadway, Suite 650, Albany, NY 12204-2719). Bidders are welcome to send up to two representatives to witness the package openings. There will be at least two representatives from the State present at the opening. Photo identification is required.

At the opening, the bidders’ company names will be announced, and the formula names and the amounts entered into the Bid Sheets (Attachments 11 and 12) will be read aloud. No other information will be opened or shared. The contract will not be awarded at the time of the bid opening.

The following steps must be completed by the Bureau of Supplemental Food Programs after the bid opening and before a written award is made:

- ◆ Pass/fail review
- ◆ Review of Proposals and Vendor Responsibility
- ◆ Verification of all calculations on the Bid Sheets.
- ◆ Submission to and receipt of approval from, State executive staff of documentation of the contractor selection process.

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

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

Please note that the costs for preparing the bid are solely the responsibility of the bidder. New York State will not provide reimbursement for such costs.

#### 4. BID PREPARATION

**Interested vendors should submit four (4) handwritten signed originals and four (4) handwritten signed copies of their Bid Proposal. The Bid Proposal must be received not later than the date and time noted in the Schedule of Key Events.** Attachment 9 of this IFB contains a checklist that can be completed to assist with assembling a complete bid package. Print the name of your company on each form included in your bid package in the space provided.

#### IMPORTANT NOTICE TO POTENTIAL BIDDERS:

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

The bid package must contain two separately sealed envelopes for the technical proposal and the cost proposal. See attachment 9 for instructions for labeling both the technical and cost proposals. Please place both the technical and cost proposals in one envelope and label the outside of the bid package with the following information:

1. WIC INFANT FORMULA REBATE BID
2. CONFIDENTIAL - DO NOT OPEN
3. NAME OF BIDDER \_\_\_\_\_

The Bid proposal must include:

- ◆ Certifications Form (Attachment 8)
- ◆ NYS Department of Health Lobbying Form (Attachment 2)
- ◆ Milk-Based Infant Formula Bid Sheet(Attachment 11) and/or Soy-Based Infant Formula Bid Sheet (Attachment 12)
- ◆ Vendor's National Wholesale Price List

The Bid proposal should also include the following completed forms:

- ◆ Transmittal Letter (Attachment 1)
- ◆ Vendor Responsibility Attestation (Attachment 4)
- ◆ Vendor Cover Sheet (Attachment 7)
- ◆ M/WBE Utilization Plan (Attachment 5)
- ◆ Encouraging Use of New York Businesses (Attachment 6)
- ◆ Proof of Workers' Compensation Coverage and Proof of Disability Insurance Coverage (See Page 35)
- ◆ ST-220-CA Contractor Certification to Covered Agency (See Link in Section E.15) and Form ST-220-TD Contractor Certification (See Link in Section E.15) - These forms must be submitted to DOH prior to award.
- ◆ NYS WIC Infant Formula Rebate Invoices (Attachment 15)
- ◆ OSC Lobbying Transmittal Form (Attachment 16) - This form must be submitted to DOH prior to award.

**NOTICE TO NON-BIDDERS:**

Manufacturers choosing not to bid are asked to submit a *No-Bid Form* (Attachment 3 of this IFB) to the above address by the Bid Due date and time indicated on the cover of this IFB. Failure to do so may result in the manufacturer being removed from the State's mailing list for future procurements.

5. THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO

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

agency's request for clarifying information in the course of evaluation and/or selection under the IFB;

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

## 6. PAYMENT

The contractor shall make monthly rebate payments to the State, based on the documented purchases submitted by the State (i.e., food instrument redemptions supported by electronic data files subject to audit) as indicated on the State's invoice. Invoices shall reflect the total number of each contract formula redeemed within the preceding calendar month, with a breakdown for each redemption month of the months in which the infant formula check was issued, and adjustments, if any, resulting from the analyses described in section C.5.d. of this IFB. Each total will be multiplied by the applicable rebate amount. The products of these calculations will be summed to arrive at the total invoice amount.

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

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

7. CONTRACT PERIOD AND RENEWALS

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

The anticipated start date is July 1, 2016 (for WIC infant formula checks dated July 1, 2016 or later) or another date as specified, plus a final three-month extension at the sole discretion of New York State. Prices shall remain firm for the five year term of the contract and, if executed, the final three-month extension. The contract(s) may be canceled by the state at any time, with or without cause, upon a 90-day written notice to the manufacturer. The contract(s) may be modified only by written amendment executed by the parties hereto and approved by the appropriate State official(s).

8. DEBRIEFING

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

9. PROTEST PROCEDURES

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

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

10. VENDOR RESPONSIBILITY QUESTIONNAIRE

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us). Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or

may contact the Department of Health or the Office of the State Comptroller for a copy of the paper form. The winning bidder must also complete and submit the Vendor Responsibility Attestation (Attachment 4).

#### 11. STATE CONSULTANT SERVICES REPORTING

Chapter 10 of the Laws of 2006 amended certain sections of State Finance Law and Civil Service Law to require disclosure of information regarding contracts for consulting services in New York State.

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

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

State Consultant Services Form A: Contractor's Planned Employment and Form B: Contractor's Annual Employment Report may be accessed electronically at:  
<http://www.osc.ny.gov/procurement/>.

#### 12. LOBBYING STATUTE

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

- a. makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- b. requires the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
- c. requires governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
- d. authorizes the New York State Commission on Public Integrity to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;

- e. directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website;
- f. requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
- g. expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal–State Agreements, and procurement contracts;
- h. modifies the governance of the New York State Commission on Public Integrity
- i. provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
- j. increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- k. establishes the Advisory Council on Procurement Lobbying.

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

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

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

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

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

14. INFORMATION SECURITY BREACH AND NOTIFICATION ACT

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

15. NEW YORK STATE TAX LAW SECTION 5-A

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

whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

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

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

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

Forms ST-220-TD and ST-220-CA may be accessed electronically at:

ST-220-TD:

[www.tax.ny.gov/pdf/current\\_forms/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st220td_fill_in.pdf)

ST-220-CA:

[www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)

16. PIGGYBACKING

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

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

## **NEW YORK STATE LAW**

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

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

### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, New York State Department of Health hereby establishes an overall goal of 0% for MWBE participation, 0% for Minority-Owned Business Enterprises ("MBE") participation and 0% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that New York State Department of Health may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>.

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

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

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual

MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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

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

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

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

#### Equal Employment Opportunity Requirements

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

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

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

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

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

#### 18. IRAN DIVESTMENT ACT

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

During the term of the Contract, should the Department of Health receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Department of Health will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its

engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Department of Health shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

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

19. ENCOURAGING USE OF NEW YORK BUSINESSES IN CONTRACT PERFORMANCE

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

F. APPENDICES

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

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

□ APPENDIX E

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

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

- **CE-200**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
- **C-105.2** – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the **U-26.3**; OR
- **SI-12** – Certificate of Workers' Compensation Self-Insurance, OR **GSI-105.2** – Certificate of Participation in Workers' Compensation Group Self-Insurance.

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

- **CE-200**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
- **DB-120.1** – Certificate of Disability Benefits Insurance
- **DB-155** – Certificate of Disability Benefits Self-Insurance

□ APPENDIX G - Notices

□ APPENDIX M – Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures

□ APPENDIX X – Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

G. ATTACHMENTS

1. Sample Transmittal Letter
2. NYS DOH Lobbying Form
3. No Bid Form
4. Vendor Responsibility Attestation
5. M/WBE Utilization Forms

6. Encouraging Use of New York Businesses in Contract Performance
7. Vendor Cover Sheet
8. Certifications Form
9. WIC Infant Formula Rebate System IFB Checklist
10. Instructions for Completing Bid Sheets
11. Bid Sheet – Milk-Based Infant Formula
12. Bid Sheet – Soy-Based Infant Formula
13. Sample Standard New York State Boilerplate Contract with Appendices
  - a. Appendix A – Standard Clauses for All New York State Contracts
  - b. Appendix X- Modification Agreement Form
  - c. State of New York Agreement
  - d. Appendix D – General Specifications
  - e. Appendix G- General Notices
  - f. Appendix M - Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures
14. NYS WIC Program Regions
15. NYS WIC Infant Formula Rebate Invoices
16. OSC Lobbying Transmittal Form

**ATTACHMENT 1 - SAMPLE Transmittal Letter Template**

[TO BE COMPLETED ON BIDDER'S LETTERHEAD]

Date:	Bidder Phone No.:
Bidder Name:	Bidder Fax No.:
Bidder Address:	Bidder Contact E-mail Address:
Federal Employee Identification Number:	NYS Vendor ID #:

Vendor IFB Designated Contact Person: *<bidder representative for IFB response>*

Vendor IFB Designated Contact Details: *<address [if different from above], telephone(s), fax, email>*

**[Insert Bidder's complete name and address, including the name, mailing address, email address, fax number and telephone number for both the authorized signatory and the person to be contacted regarding the proposal]** submits this firm and binding offer to the Department in response to the above-referenced IFB and agrees as follows:

1. Bidder provides the following statement which describes the legal structure of the entity submitting the proposal: **[Insert Bidder's Response]**;
2. Bidder accepts the contract terms and conditions contained in this IFB, including any exhibits and attachments;
3. Bidder acknowledges receipt of all Department amendments to this IFB, as may be amended;
4. Bidder (i) does not qualify its proposal, or include any exceptions from the IFB and (ii) acknowledges that should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the Department;
5. Bidder agrees that the proposal and all provisions of the proposal will remain valid for minimum of 365 calendar days from the closing date for submission of proposals;
6. Bidder certifies:
  - a. That there are business relationships and/or ownership interests for the above named organization that may represent a conflict of interest for the organization as bidder, as described in the IFB. Attached to this letter is a description of how the potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided; **OR**
  - b. That no conflict of interest relationship exists for the above named organization as bidder

7. Bidder is/is not [indicate one] proposing to utilize the services of any subcontractor(s). If a proposal is submitted which proposes to utilize the services of a subcontractor(s), the bidder provides, in an Appendix to this Transmittal Letter, a subcontractor summary for each listed subcontractor and certifies that the information provided is complete and accurate.

The summary document for each listed subcontractor should contain the following information:

- a. Complete name of the subcontractor;
- b. Complete address of the subcontractor;
- c. A general description of the scope of work to be performed by the subcontractor;
- d. Percentage of work the subcontractor will be providing;
- e. A statement confirming that the subcontractor is prepared, if requested by the Department, to present evidence of legal authority to do business in New York State, subject to the sole satisfaction of the Department; and
- f. The subcontractor's assertion that it does not discriminate in its employment practices with regards to race, color, religion, age (except as provided by law) sex, marital status, political affiliation, national origin, or handicap.

The undersigned individual affirms and represents that he/she has the legal authority and capacity to sign and submit this bid on behalf of **[Insert Bidder's Name]** as well as to execute a contract with the Department.

Signature of Authorized Official:

---

Printed Name of Authorized Official:

---



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

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

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

No                      Yes

2b. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

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

\_\_\_\_\_  
(Officer Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Officer Title)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(e-mail Address)

**ATTACHMENT 3 - NO-BID FORM**

PROCUREMENT TITLE: \_\_\_\_\_ IFB # \_\_\_\_\_

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Please retain our firm on your mailing list.

\_\_\_\_\_  
(Firm Name)

\_\_\_\_\_  
(Officer Signature)                      \_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Officer Title)                              \_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(e-mail Address)

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

## ATTACHMENT 4 - Vendor Responsibility Attestation

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

**Choose one:**

- An on-line Vendor Responsibility Questionnaire has been updated or created at OSC's website: <https://portal.osc.state.ny.us> within the last six months.
- A hard copy Vendor Responsibility Questionnaire is included with this proposal/bid and is dated within the last six months.
- A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.

Signature of Organization Official: \_\_\_\_\_

Print/type Name: \_\_\_\_\_

Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## **ATTACHMENT 5 - New York State Department of Health M/WBE Procurement Forms**

All DOH procurements have a section entitled “**MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE REQUIREMENTS.**” This section of procurement sets forth the established DOH goal for that particular procurement and also describes the forms that must be completed with their bid. Below is a summary of the forms used in the DOH MWBE Participation Program by a bidder.

**Form #1: Bidder MWBE Utilization Plan** - This document should be completed by all bidders responding to RFPs with an MWBE goal greater than zero. The bidder must demonstrate how it plans to meet the stated MWBE goal. In completing this form, the bidder should describe the steps taken to establish communication with MWBE firms and identify current or future relationships with certified MWBE firms. The second page of the form should list the MWBE certified firms that the vendor plans to engage with on the project and the amount that each certified firm is projected to be paid. Plans to work with uncertified firms or women and minority staffed firms do not meet the criteria for participation. The firm must be owned and operated by a Woman and/or Minority and must be certified by NYS Empire State Development to be eligible for participation. If the plan is not submitted or is deemed deficient, the bidder may be sent a notice of deficiency. It is mandatory that all awards with goals have a utilization plan on file.

**Form #2: MWBE Utilization Waiver Request** - This document should be filled out by the bidder if the utilization plan (Form #1) indicates less than the stated participation goal for the procurement. In this instance, Form #2 must accompany Form #1 with the bid. If Form #2 is provided and goal was initially set higher, revised goal approval will be necessary from DOB. When completing Form #2, it is important that the bidder thoroughly document the steps that were taken to meet the goal and provide evidence in the form of attachments to the document. The required attachments are listed on Form #2 and will document the good-faith efforts taken to meet the desired goal. A bidder can also attach additional evidence outside of those referenced attachments. Without evidence of good-faith efforts, in the form of attachments or other documentation, the Department of Health may not approve the waiver and the bidder may be deemed non-responsive.

New MWBE firms are being certified daily and new MWBE firms may now be available to provide products or services that were historically unavailable. If Form #2 is found by DOH to be deficient, the bidder may be sent a deficiency letter which will require a revised form to be returned within 7 business days of receipt to avoid a finding of non-compliance. DOH may work directly with firm to resolve minor deficiencies via e-mail.

**Form #3: Replaced by Online Compliance System - <https://ny.newnycontracts.com>** Contractors will need to login and submit payments to MWBE Firms in this online system once payments to these vendors commence.

### **Form#4 – MWBE Staffing Plan**

This form should be completed based on the composition of staff working on the project. Enter the numbers or counts in the corresponding boxes and add up the totals in each column. This form is for diversity research purposes only and has no bearing on MWBE goal achievement.

### **Form#5 – EEO and MWBE Policy Statement**

This is a standard EEO policy that needs to be signed and dated and submitted. If Bidder has their own EEO policy it may be submitted instead of endorsing this document.

**New York State Department of Health  
M/WBE UTILIZATION PLAN**

<b>Bidder/Contractor Name:</b>	
<b>Vendor ID:</b>	<b>Telephone No.</b>
<b>RFP/Contract Title:</b>	<b>Email:</b>
	<b>RFP/Contract No.</b>

**Description of Plan to Meet M/WBE Goals**

**PROJECTED M/WBE USAGE**

	<b>%</b>	<b>Amount</b>
<b>1. Total Dollar Value of Proposal Bid</b>	<b>100</b>	<b>\$</b>
<b>2. MBE Goal Applied to the Contract</b>		<b>\$</b>
<b>3. WBE Goal Applied to the Contract</b>		<b>\$</b>
<b>4. M/WBE Combined Totals</b>		<b>\$</b>

“Making false representation or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward MWBE utilization.”

**New York State Department of Health  
M/WBE UTILIZATION PLAN**

**MINORITY OWNED BUSINESS ENTERPRISE (MBE) INFORMATION**

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

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

**New York State Department of Health  
M/WBE UTILIZATION PLAN**

**WOMEN OWNED BUSINESS ENTERPRISE (WBE) INFORMATION**

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

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

-M/WBE Form #2 –  
**New York State Department of Health Waiver Request**

<b>Offeror/Contractor Name:</b> Click here to enter text.		<b>Federal Identification No.:</b> Click here to enter number.	
<b>Address:</b> Click here to enter text.		<b>Solicitation/Contract No.:</b> Click here to enter number.	
<b>City, State, Zip Code:</b> Click here to enter text.		<b>M/WBE Goal: MBE % % % WBE % % %</b> (From Lines 2 and 3 from Form #1)	
<b>By submitting this form and the required information, the officer or/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.</b>			
<b>Contractor is requesting a:</b> <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. Total Partial <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. Total Partial <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.) <b>Date of such filing with Empire State Development:</b> Click here to enter a date.			
<p>_____</p> <p><b>PREPARED BY (Signature)</b> _____ <b>Date:</b> _____</p> <p>SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR’S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.</p>			
<b>Name and Title of Preparer (Printed or Typed):</b>		<b>Telephone Number:</b>	<b>Email Address:</b>
<p>Submit with the bid or proposal or if submitting after award submit to: <a href="mailto:doh.sm.mwbe@health.ny.gov">doh.sm.mwbe@health.ny.gov</a></p>		<b>***** FOR DMWBD USE ONLY *****</b>	
		<b>REVIEWED BY:</b>	<b>DATE:</b>
		<b>Waiver Granted: <input type="checkbox"/> YES <input type="checkbox"/> NO</b> <b>MBE: <input type="checkbox"/> WBE: <input type="checkbox"/></b> <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued <p>_____</p> <b>*Comments:</b>	

- M/WBE Form #4 -

## New York State Department of Health M/WBE STAFFING PLAN

For project staff, consultants and/or subcontractors working on this grant complete the following plan. This has no impact on MWBE utilization goals, or the submitted Utilization Plan - Form#1. This is for diversity research purposes.

Contractor Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

STAFF	Total	Male	Female	Black	Hispanic	Asian/ Pacific Islander	Other
Executive/Senior level Officials							
Managers/Supervisors							
Professionals							
Technicians							
Administrative Support							
Craft/Maintenance Workers							
Laborers and Helpers							
Service Workers							
Totals							

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date

- M/WBE Form #5 -

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

#### M/WBE AND EEO POLICY STATEMENT

I, \_\_\_\_\_, the (awardee/contractor)\_\_\_\_\_ agree to adopt the following policies with respect to the project being developed or services rendered at \_\_\_\_\_

**M/WBE**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.

Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.

Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.

Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.

Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.

Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**EEO**

\_\_\_\_\_  
Signature & Date

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

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

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

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

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

\_\_\_\_\_  
Name & Title

**DETAILED MWBE FORMS INSTRUCTIONS**  
**Miscellaneous Specific**

**Form#1 – MWBE Utilization Plan**

**Page#1 of Form#1:**

**Description of Plan** - Describe any steps/details that support Bidder/Contractor plan to meet the MWBE goals stated in the procurement/contract.

**Line#1 - Total Dollar Value of Proposal Bid** – This line should represent the total dollar amount of bid. The total value is eligible for MWBE goal setting.

**Line#2 - MBE Goal Applied to the Contract**– Bidder/Contractor lists the amount to be paid/subcontracted to Certified Minority-owned Business Enterprise(s) and the percentage this amount represents of the Total Dollar Value of Proposal Bid listed on Line #1.

*Example:* If paying two MBE firms \$100,000 & \$50,000 each and Total Dollar Value of Proposal Bid listed on line#1 is \$1,000,000 list 15% and \$150,000 on Line#2.

**Line#3 - WBE Goal Applied to the Contract**– Bidder/Contractor lists the amount to be paid to a Certified Woman-owned Business Enterprise and states the percentage this amount is of the Total Value listed on Line #1.

*Example:* If Bidder/Contractor is paying two WBE firms \$50,000 & \$100,000 each and the Total Dollar Value of Proposal Bid listed on line#1 is \$1,000,000 Bidder/Contractor would list 15% and \$150,000 on Line#2 of the Utilization Plan.

**Line#4 - MWBE Combined totals** - Bidder/Contractor totals Line #2 and Line #3 for both Percentage and Amount to state the Combined M&W percentages and Combined M&W amount.

*Example:* Using the above Line #2 and Line #3 examples for payment data, Bidder/Contractor achieves a combined MWBE % of 30% and a combined MWBE amount of \$300,000. (15%M and 15%W; \$150,000M + \$150,000W). MWBE combined Total/Total Dollar Value Eligible = the MWBE % (300,000/1,000,000 = 30%).

**Page#2 of Form#1:**

**The first column** (left column): Bidder/Contractor lists any Minority-owned Business Enterprises (MBE) that Bidder/Contractor is subcontracting with or purchasing from and the MBE contact/company information.

**The second column** (center column): Bidder/Contractor describes what type of work certified MBE will be providing or what product certified MBE will be supplying to Bidder/Contractor.

**The third column** (right column): Bidder/Contractor states the amount to be paid to the certified MBE during the term of the contract. The amount totaled from Page #2 should equal the amount listed on Line#2 of Page#1.

**Page#3 of Form#1:**

**The first column** (left column): Bidder/Contractor lists any Woman-owned Business Enterprises (WBE) that Bidder/Contractor will be subcontracting with or purchasing from and WBE contact/company information.

**The second column** (center column): Bidder/Contractor describes what type of work certified WBE will be providing or what product certified WBE will be supplying to Bidder/Contractor.

**Third column** (right column): Bidder/Contractor states the amount to be paid to the certified WBE during the term of the contract. The amount totaled from Page#3 should equal the amount listed on Line#3 of Page#1.

**Form#2 – MWBE Utilization Waiver Request**

“Form#1 MWBE Utilization Plans” that commit to a goal % less than the stated MWBE goal percentage in procurement must be accompanied by a “Form#2 MWBE Utilization Waiver Request”. A Bidder/Contractor may qualify for a partial or total waiver of the MWBE goal requirements established on a State contract only upon the submission of a waiver form by a Bidder/Contractor, documenting good-faith efforts by the Contractor to meet the goal requirements of the state contract and a consideration of applicable factors. The ability to subcontract with M/WBEs and separately the ability to purchase from M/WBEs must be addressed in attachments on all waiver requests.

Fill out the header with the name of the Bidder/Contractor requesting the waiver under Offeror/Contractor Name, include your Federal Identification ID, Address, Solicitation/Contract Number, and M/WBE Goals. Check off the appropriate box for the type of waiver that is being requested and whether it is a total or partial waiver. If the Waiver is Pending ESD Certification, meaning the subcontractor has applied for certification with Empire State Development, check off that box and state the date that they applied for certification. Directly below the Pending ESD Certification area, sign and date the waiver. Provide the name of the preparer as well as a telephone number and email address (Bidder/Contractor direct contact number of person authorized to discuss submission).

The following attachments should be provided:

1. A statement setting forth your basis for requesting a partial or total waiver. The statement should at a minimum include the services being subcontracted out and why a portion of those services cannot be subcontracted to certified MWBE(s). In addition, statement must also include what purchases of equipment and supplies are being made and why those purchases cannot be provided by certified MWBE(s).
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals related to this contract.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses to your solicitations received by you from certified M/WBEs.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Bidder/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.

**\* All attachments are created by the entity requesting the waiver. These are self-generated attachments and are not provided by the agency.**

## ATTACHMENT 6 - Encouraging Use of New York Business in Contract Performance

### I. Background

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing service and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

### II. Required Identifying Information

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract?

\_\_\_\_\_  
YES NO

If yes, identify New York State businesses that will be used and attach identifying information. Information should include at a minimum: verifiable business name, New York address and business contact information.

Business Name	Business Address	Contact Name	Contact Phone	Contact Email Address

## ATTACHMENT 7 - Vendor Cover Sheet

<b>Name of Company</b>		<b>Federal Tax ID Number</b>
<b>Company Address</b>	<b>Vendor Identification Number</b>	
<b>Name of Company Official Submitting Bid (Print or Type)</b>	<b>Title</b>	
<b>Authorized Signature</b>		<b>Date</b>
<b>Phone</b>	<b>Extension</b>	
<b>Toll Free Phone</b>	<b>Extension</b>	
<b>Fax</b>	<b>Extension</b>	
<b>E-Mail Address</b>		
<b>Company Web Site</b>		

**Person or Persons to Contact for Expediting New York State Contract Orders:**

<b>Name (s)</b>	
<b>Phone</b>	<b>Extension</b>
<b>Toll Free Phone</b>	<b>Extension</b>
<b>Fax</b>	<b>Extension</b>
<b>E-Mail Address (es)</b>	

# ATTACHMENT 8 - CERTIFICATIONS FORM

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

### BIDDER CERTIFICATIONS FORM

**NAME OF BIDDER:** \_\_\_\_\_

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

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

1. Is an infant formula manufacturer registered with the Secretary of the United States Department of Health and Human Services (HHS) under the Federal Food, Drug and Cosmetic Act and producing infant formula products that are in compliance with Federal regulations issued pursuant to P.L. 100-137.
2. Agrees to provide a rebate on all non-exempt infant formulas manufactured by the bidder and covered under the contract resulting from this IFB.
3. Agrees to provide complete formulas not requiring the addition of any ingredients other than water prior to being served in a liquid state. All formulas, excluding low iron varieties, will contain at least 10 milligrams of iron per liter of formula at standard dilution, which supplies 67 kilocalories per 100 milliliter (i.e., approximately 20 kilocalories per fluid ounce of formula at standard dilution).
4. Can produce and distribute statewide infant formula products in sufficient quantity to serve 100 percent of potential New York State WIC participants' infant formula needs for the formulas covered under the contract resulting from this IFB.
5. Ensures that the primary contract infant formula is suitable for issuance to generally healthy full-term infants.
6. Ensures purchasing system with availability of product at or near the wholesale price to vendors who must buy small amounts of formula.
7. Certifies, along with each person signing on behalf of the company, under penalty of perjury, that to the best of their knowledge and belief:
  - A. This bid has been arrived at independently without collusion aimed at restricting competition;
  - B. The bidder has not disclosed, and will not knowingly disclose, the company's intent to bid (or not bid) and the amounts (rebate amount and percent discount) and formula name(s) included in this bid prior to the bids due date and time indicated on the cover of this IFB;
  - C. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

8. Accepts as lawful and binding, and will abide by, the bid submission requirements and rules, and the procurement procedures, processes, and specifications identified in the IFB, including any IFB addenda and all appendices to this IFB.

**SIGNATURE**

\_\_\_\_\_  
Name of Business

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Typed Copy of Signature

\_\_\_\_\_  
City, State, Zip

# ATTACHMENT 9 - WIC INFANT FORMULA REBATE SYSTEM IFB CHECKLIST

Vendor: \_\_\_\_\_

To assist with assembling a complete bid package, this checklist identifies all documents that are requested as part of your bid package. The cover page of this IFB identifies the due date for receipt of your bid package.

**Bidders assume all risks for timely, properly submitted deliveries.** Bidders are strongly encouraged to arrange for delivery of bids to DOH **prior** to the date of the bid opening. **LATE BIDS will be rejected. E-mail bid submissions are not acceptable and will not be considered.**

## **TECHNICAL RESPONSE**

- Four (4) handwritten signed originals and four (4) handwritten signed copies of the Vendor Cover Sheet (Attachment 7).
- Four (4) handwritten signed originals and four (4) handwritten signed copies of the Vendor Responsibility Attestation (Attachment 4).
- Four (4) handwritten signed originals and four (4) handwritten signed copies of the Certifications Form (Attachment 8).
- Four (4) handwritten signed originals and four (4) handwritten signed copies of the NYS DOH Lobbying Form (Attachment 2).
- Four (4) handwritten signed originals and four (4) handwritten signed copies of the M/WBE Utilization Plan (Attachment 5).
- Four (4) handwritten originals and four (4) handwritten signed copies Encouraging Use of New York Businesses (Attachment 6)
- WIC Infant Formula Rebate System IFB Checklist (This Form).
- (OPTIONAL) Transmittal Letter (Attachment 1)
- (OPTIONAL) Form ST-220-CA Contractor Certification to Covered Agency and Form ST-220-TD Contractor Certification (See Links in Section E.15).  
\* NOTE: These forms must be submitted to DOH prior to award.
- (OPTIONAL) OSC Lobbying Transmittal Form (Attachment 16).  
\*Note: This form must be submitted to DOH prior to award.
- (OPTIONAL) Proof of Workers' Compensation Coverage and Proof of Disability Insurance Coverage  
\* NOTE: These forms must be submitted to DOH prior to award.
- Sealed in separate envelope. Envelope marked with the following information:
  1. "TECHNICAL RESPONSE"
  2. "BID ENCLOSED".
  3. "IFB NUMBER" (from the cover page of this IFB).
  4. "BID OPENING DATE" (from the cover page of this IFB).

## **COST PROPOSAL**

- Four (4) handwritten signed originals and four (4) handwritten signed copies of the two-page Milk-Based Formula Bid Sheet (Attachment 11) and/or the two-page Soy-Based Formula Bid Sheet (Attachment 12).
- Four (4) copies of the Vendor's National Wholesale Price List.
- Sealed in separate envelope. Envelope marked with the following information:
  1. "COST PROPOSAL"
  2. "BID ENCLOSED".
  3. "IFB NUMBER" (from the cover page of this IFB).
  4. BID OPENING DATE (from the cover page of this IFB).

## **PLEASE LABEL THE OUTSIDE OF THE BID PACKAGE WITH THE FOLLOWING:**

1. "WIC INFANT FORMULA REBATE BID".
2. "CONFIDENTIAL – DO NOT OPEN"
3. NAME OF BIDDER \_\_\_\_\_

## **ATTACHMENT 10 - INSTRUCTIONS FOR COMPLETING BID SHEETS NEW YORK STATE DEPARTMENT OF HEALTH**

As part of their bid packages, bidders must include:

- 4 handwritten signed originals and 4 handwritten signed copies Bid Sheet – Milk-Based Infant Formula (Attachment 11), **OR**
- 4 handwritten signed originals and 4 handwritten signed copies Bid Sheet – Soy-Based Infant Formula (Attachment 12), **OR**
- 4 handwritten signed originals and 4 handwritten signed copies Bid Sheet - Milk-Based Infant Formula (Attachment 11) **AND** 4 handwritten signed originals and 4 handwritten signed copies Bid Sheet – Soy-Based Infant Formula (Attachment 12).

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

1. “Attachment 11 Milk-Based Infant Formula Bid Sheet.xls”
2. “Attachment 12 Soy- Based Infant Formula Bid Sheet.xls”

For each bid Excel file that the bidder chooses to submit, bidders must:

On the “Page 1” tab:

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

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

**ATTACHMENT 11 - BID SHEET – MILK-BASED INFANT FORMULA**

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

**ATTACHMENT 12 - BID SHEETS – SOY-BASED INFANT FORMULA**

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

ATTACHMENT 13- Sample Standard New York State Boilerplate Contract with Appendices  
MISCELLANEOUS / CONSULTANT SERVICES (SAMPLE CONTRACT)

STATE AGENCY (Name and Address):  
Department of Health  
Corning Tower  
Albany, NY 12237

NYS COMPTROLLER'S NUMBER: C#  
  
ORIGINATING AGENCY GLBU: DOH01  
DEPARTMENT ID: 345XXXX (Use unit ID)

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

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

FROM:  
TO:

FUNDING AMOUNT FOR CONTRACT  
TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

STATUS:  
CONTRACTOR IS ( ) IS NOT ( ) A  
SECTARIAN ENTITY

NYS VENDOR IDENTIFICATION NUMBER:

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

MUNICIPALITY NO. (if applicable)

CONTRACTOR IS ( ) IS NOT ( ) A  
N Y STATE BUSINESS ENTERPRISE

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

**BID OPENING DATE:**

**APPENDICES ATTACHED AND PART OF THIS AGREEMENT**

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

- X APPENDIX A Standard Clauses as required by the Attorney General for all State Contracts.
- X APPENDIX X Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)
- X STATE OF NEW YORK AGREEMENT
- X APPENDIX D General Specifications
- X APPENDIX B Invitation For Bid (IFB)
- X APPENDIX C Proposal
- X APPENDIX E-1 Proof of Workers' Compensation Coverage
- X APPENDIX E-2 Proof of Disability Insurance Coverage
- X APPENDIX G Notices
- X APPENDIX M Participation by Minority Group Members and Women with respect to State Contracts: Requirements and Procedures

Contract No.: C#

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
STATE AGENCY

\_\_\_\_\_  
By: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

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

\_\_\_\_\_  
STATE OF NEW YORK        )  
  )SS.:  
County of \_\_\_\_\_)

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

\_\_\_\_\_  
(Signature and office of the individual taking acknowledgement)

\_\_\_\_\_  
ATTORNEY GENERAL'S SIGNATURE

\_\_\_\_\_  
STATE COMPTROLLER'S SIGNATURE

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

ATTACHMENT 13.A – APPENDIX A

**APPENDIX A**

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with New York State Information Security Breach and Notification Act	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7

**STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

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

Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off.

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice

or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force

on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

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

NYS Department of Economic Development  
Division of Minority and Women's Business  
Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

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

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

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

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

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

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

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

**ATTACHEMENT 13.B - APPENDIX X**  
**GLBU: DOH01**

Contract Number: \_\_\_\_\_ Contractor: \_\_\_\_\_

Amendment Number X- \_\_\_\_\_ BSC Unit ID: 345<XXXX> \_\_\_\_\_

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through NYS Department of Health, having its principal office at Albany, New York, (hereinafter referred to as the STATE), and \_\_\_\_\_ (hereinafter referred to as the CONTRACTOR), for amendment of this contract.

This amendment makes the following changes to the contract (check all that apply):

- \_\_\_\_\_ Modifies the contract period at no additional cost
- \_\_\_\_\_ Modifies the contract period at additional cost
- \_\_\_\_\_ Modifies the budget or payment terms
- \_\_\_\_\_ Modifies the work plan or deliverables
- \_\_\_\_\_ Replaces appendix(es) \_\_\_\_\_ with the attached appendix(es) \_\_\_\_\_
- \_\_\_\_\_ Adds the attached appendix(es) \_\_\_\_\_
- \_\_\_\_\_ Other: (describe) \_\_\_\_\_

This amendment *is* / *is not* a contract renewal as allowed for in the existing contract.

All other provisions of said AGREEMENT shall remain in full force and effect.

Additionally, Contractor certifies that it is not included on the prohibited entities list published at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> as a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Contractor (or any assignee) also certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Prior to this amendment, the contract value and period were:

\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_.  
(Value before amendment) (Initial start date)

This amendment provides the following modification (complete only items being modified):

\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_.

This will result in new contract terms of:

\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_.  
(All years thus far combined) (Initial start date) (Amendment end date)

Signature Page for:

Contract Number: \_\_\_\_\_ Contractor: \_\_\_\_\_

Amendment Number: X- BSC Unit ID: 345<XXXX>

-----  
IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

**CONTRACTOR SIGNATURE:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(signature)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEW YORK )  
 ) SS:  
County of \_\_\_\_\_ )

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

\_\_\_\_\_  
(Signature and office of the individual taking acknowledgement)

-----  
**STATE AGENCY SIGNATURE**

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(signature)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

-----  
**ATTORNEY GENERAL'S SIGNATURE**

By: \_\_\_\_\_ Date: \_\_\_\_\_

**STATE COMPTROLLER'S SIGNATURE**

By: \_\_\_\_\_ Date: \_\_\_\_\_

## ATTACHMENT 13.C - STATE OF NEW YORK AGREEMENT

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

### WITNESSETH:

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

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

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

### I. Conditions of Agreement

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

### II. Payment and Reporting

- A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment to one of the following addresses:

- i. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: [DOHaccounts payable@ogs.ny.gov](mailto:DOHaccounts payable@ogs.ny.gov) with a subject field as follows:  
Subject: <<Unit ID: 345XXXX>> <<Contract #>>

(Note: **do not** send a paper copy in addition to your emailed voucher.)

- ii. Alternate Method: Mail vouchers to BSC at the following U.S. postal address:

**NYS Department of Health**  
**Unit ID 345<<xxxx>>**  
**PO Box 2093**  
**Albany, NY 12220-0093**

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

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [helpdesk@sfs.ny.gov](mailto:helpdesk@sfs.ny.gov) or by telephone at 1-855-233-8363. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9, must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.state.ny.us/vendors/vendorguide/guide.htm>.

### III. Term of Contract

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

#### IV. Proof of Coverage

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

- A. Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:
  - 1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
  - 2. C-105.2 – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
  - 3. SI-12 – Certificate of Workers' Compensation Self-Insurance, OR GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.
  
- B. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:
  - 1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
  - 2. DB-120.1 – Certificate of Disability Benefits Insurance OR
  - 3. DB-155 – Certificate of Disability Benefits Self-Insurance

#### V. Indemnification

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

**ATTACHMENT 13.D - APPENDIX D  
GENERAL SPECIFICATIONS**

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

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

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

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

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

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

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

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

N. Date/Time Warranty

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

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

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

2. Date/Time Warranty Statement

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

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

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

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

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

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

2. Except as otherwise provided in the Contract, the liability of the State for payments to the Contractor and the liability of the Contractor for services hereunder shall cease.

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

W. Contract Insurance Requirements

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

- a. A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).
- b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
  - i. Contractor's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
  - ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
  - iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

X. Certification Regarding Debarment and Suspension Regulations of the Department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and

activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government-wide effect.

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

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

##### Instructions for Certification

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

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

Y. Confidentiality Clauses

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

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

Z. Provision Related to Consultant Disclosure Legislation

1. If this contract is for the provision of consulting services as defined in Subdivision 17 of Section 8 of the State Finance Law, the CONTRACTOR shall submit a "State Consultant Services Form B, Contractor's Annual Employment Report" no later than May 15th following the end of each state fiscal year included in this contract term. This report must be submitted to:
  - a. The NYS Department of Health, at the following address New York State Department of Health, Bureau of Contracts Room -2756, Corning Tower, Albany, NY 12237; and
  - b. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany NY 12236 ATTN: Consultant Reporting -or via fax at (518) 474-8030 or (518) 473-8808; and
  - c. The NYS Department of Civil Service, Albany NY 12239, ATTN: Consultant Reporting.

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

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

CC. Lead Guidelines All products supplied pursuant to this agreement shall meet local, state and federal regulations, guidelines and action levels for lead as they exist at the time of the State's acceptance of this contract.

DD. On-Going Responsibility

1. General Responsibility Language: The CONTRACTOR shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Health or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
2. Suspension of Work (for Non-Responsibility) :The Commissioner of Health or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Health or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
3. Termination (for Non-Responsibility) : Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Department of Health officials or staff, the Contract may be terminated by Commissioner of Health or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of Health or his or her designee to be non-responsible. In such event, the Commissioner of Health or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

EE. Provisions Related to Iran Divestment Act As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list has been posted on the OGS website at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

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

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

**ATTACHMENT 13.E - APPENDIX G**  
**NOTICES**

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

- via certified or registered United States mail, return receipt requested;
- by facsimile transmission;
- by personal delivery;
- by expedited delivery service; or
- by e-mail.

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

**State of New York Department of Health**

Name: *Stacey Johnson*

Title: *Health Program Administrator*

Address:

*Bureau of Supplemental Food Programs*

*150 Broadway, Suite 650*

*Menands, NY 12204*

Telephone Number: *518-402-7099*

Facsimile Number: *518-402-7348*

E-Mail Address: [Stacey.johnson@health.ny.gov](mailto:Stacey.johnson@health.ny.gov)

**[Insert Contractor Name]**

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

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

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

## ATTACHMENT 13.F - APPENDIX M

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

#### **I. General Provisions**

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

#### **II. Contract Goals**

- A. For purposes of this procurement, the New York State Department of Health hereby establishes an overall goal of 0% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 0% for Minority-Owned Business Enterprises (“MBE”) participation and 0% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:

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

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

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

### **III. Equal Employment Opportunity (EEO)**

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

conscientious and active efforts to employ and utilize minority group members and women in its work force.

- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

#### C. Form #4 - Staffing Plan

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

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

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the New York State Department of Health of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce,

Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

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

#### **IV. MWBE Utilization Plan**

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

#### **V. Waivers**

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

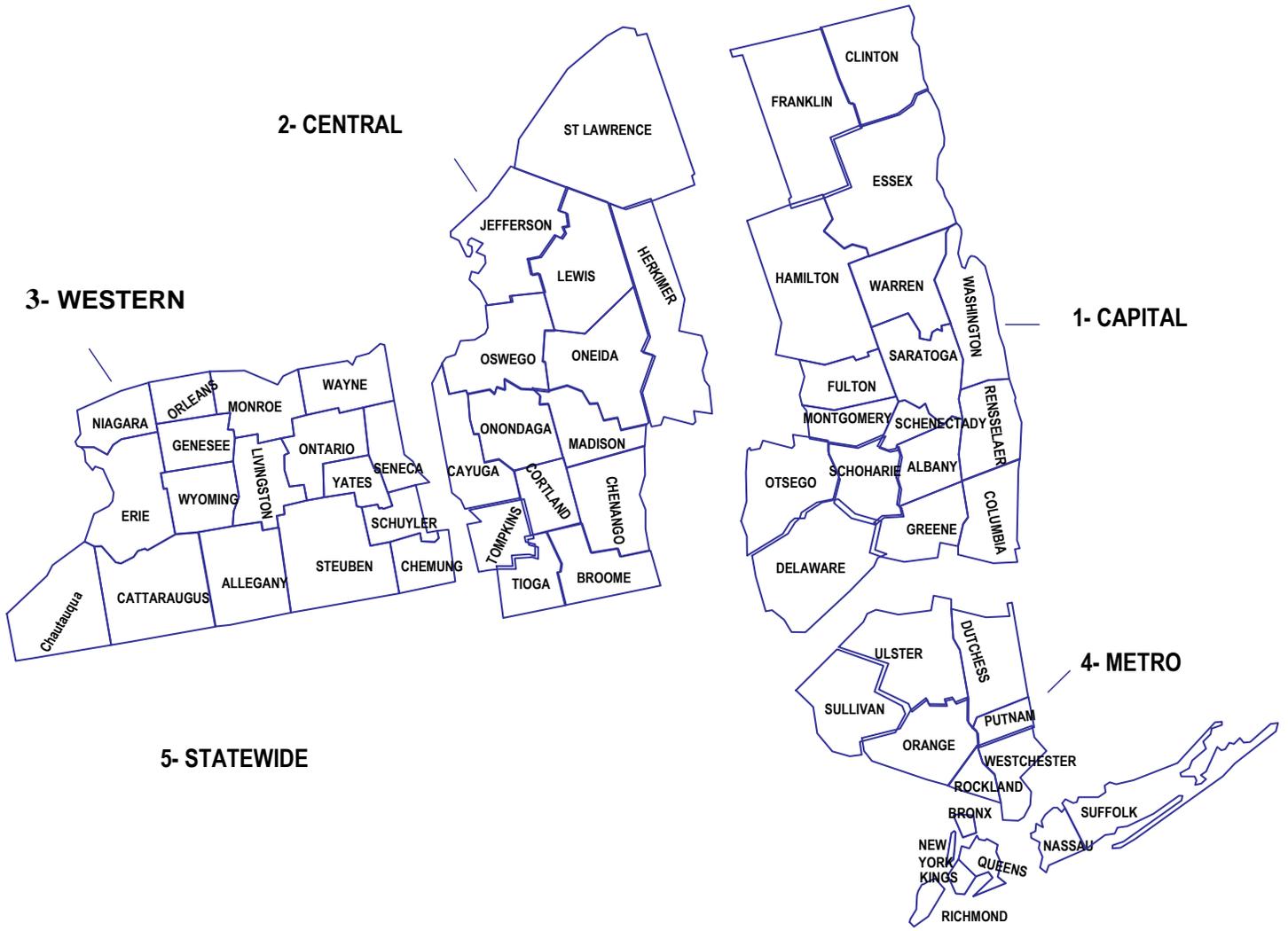
## **VI. Quarterly MWBE Contractor Compliance Report**

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

## **VII. Liquidated Damages - MWBE Participation**

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

**ATTACHMENT 14 - NYS WIC PROGRAM REGIONS  
NEW YORK STATE DEPARTMENT OF HEALTH**



**ATTACHMENT 15 – NYS WIC INFANT FORMULA REBATE INVOICES**

**See file named: “NYS WIC Infant Formula Rebate Invoices Sheet.pdf”**

**ATTACHMENT 16 – OSC LOBBYING TRANSMITTAL FORM**

**OFFICE OF THE STATE COMPTROLLER  
BUREAU OF CONTRACTS  
GOVERNMENTAL ENTITY REPRESENTATION CONCERNING COMPLIANCE  
WITH STATE FINANCE LAW §§139-j AND 139k**

**Agency Code:** 12000  
**Agency/Authority Name:** Department of Health  
**Contractor Name:**  
**Contract No. or PO No.**  
**Amendment No.**  
**Batch No.**

I am a duly authorized representative of the above governmental entity. To the best of my knowledge, information and belief, pursuant to the requirements of State Finance Law (SFL) §§139-j and 139k, governmental entity for this procurement has:

- Issued and complied with its policies and procedures with respect to permissible contacts and any determinations made for violations thereof and has included such policies and procedures as part of the solicitation/bid documents;
- Issued policies and procedures in connection with the recording of all “contacts” received during the “restricted period” as those terms are defined under SFL §§ 139-j and 139k, and is not aware of any “contacts” that were not recorded as required and included in the procurement record submitted to OSC;
- Received from all offerers the required (i) disclosure regarding prior findings of non-responsibility for violations of SFL §§139-j and 139k; (ii) written affirmation of understanding and agreement to comply with the governmental entity’s policies and procedures relating to permissible contacts;
- If any offerers have disclosed a prior finding of non-responsibility for violations of SFL §§ 139-j or 139k, I have noted them below:

---

---

- Received from the winning vendor a certification as to the completeness, truth and accuracy of all information provided to the governmental entity and included such documentation in the procurement record submitted to OSC;

- Including in the contract a provision authorizing termination if the certification reference above is found to be intentionally false or intentionally incomplete;
- Reviewed the New York State Office of General Services published list of non-responsible and debarred vendors for violations of SFL §§ 139-j and 139k and considered such information in its determination of responsibility of the proposed vendor;
- Except as otherwise indicated, found no knowing and willful violations of the requirement regarding permissible contacts or other provisions of SFL §§ 139-j or 139k;
- If applicable, documented in the procurement record submitted to OSC (i) the basis for finding the proposed vendor in this procurement non-responsible for violations of SFL §§ 139-j or 139k; (ii) the due process afforded such vendor; and (iii) that such finding was reported to OGS, as required;

Based upon the above information and representations, the governmental entity has determined, for purposes of SFL §§ 139-j and 139k only that the proposed vendor for the above identified governmental procurement is:

Responsible

Non-responsible

*(This responsibility determination by the governmental entity must also be reported on the Vendor Responsibility Profile, if one is required for this transaction.)*

- If applicable, documented in the procurement record submitted to OSC the basis for awarding a contract to the proposed vendor notwithstanding the governmental entity's determination that the proposed vendor is non-responsible for violations of SFL §§ 139-j or 139k.
- Documented in the procurement record submitted to OSC (i) the basis for finding any other offerer in this procurement non-responsible for violations of SFL §§ 139-j or 139k; (ii) due process afforded such offerer; and (iii) that such finding was reported to OGS as required.

Name(s) and Federal Identification number(s) of such offerer(s)

---

---

---

Date

\_\_\_\_\_  
Authorized Signatory

Name: Bradley Hutton  
Health  
(printed or typed)

Director, Center for Community  
Title

Direct Telephone Number (including area code): 518-473-4371

Email Address: Bradley.Hutton@health.ny.gov

Mailing Address: NYS Department of Health, Empire State Plaza, Corning Tower Building  
Room 695, Albany, NY 12237