

WIC Infant Formula Rebate System

Invitation for Bids # 16429

QUESTIONS AND ANSWERS

1. Page 5 – “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 issues for specified authorized foods.”

a) How many of 3,800 are pharmacies and what percentage of the average monthly infant formula volume goes through these pharmacies?

Answer (1a): Currently, there are 697 pharmacies authorized to participate in the NYS WIC Program. Of that amount, 192 are standalone pharmacies and 505 are pharmacies embedded within grocery stores. The percentage of infant formula volume for pharmacies is not included in any regular NYS WIC reports or queries, thus is not accessible at this time.

b) Please confirm that the State of NY does not use any WIC only stores.

Answer (1b): There is no regulatory definition of “WIC only stores,” however federal regulations do define the category of “above-50-percent” vendors as vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments. NYS WIC has authorized a small number of “above-50-percent” vendors.

c) If the state does use WIC only stores please specify how many and if they are already included in the 3,800? Also, approximately what percentage of the average monthly infant formula volume goes through these WIC only stores?

Answer (1c): There is no regulatory designation of “WIC only stores.”

2. Page 5, Section B. – How many WIC-only (above 50% vendors) are authorized in New York? Is the State able to break these vendors out by the regions outlined in Attachment 14? What percentage of WIC Food Instruments is redeemed at WIC-only stores?

Answer (2): At present, there are 65 “above-50-percent” vendors in New York State. A table by region has not been developed, however the vast majority of “above-50-percent” vendors are located in the Metro region shown in Attachment 14. The percentage of all WIC food instruments redeemed at “above-50-percent” stores is not included in any regular NYS WIC reports or queries, thus is not available at this time.

3. Page 5, Section B. – What are the top five (5) WIC retailers measured by the percentage of WIC food volume (i.e., redeemed food instruments)?

Answer (3): Per Federal regulations (7 CFR 246.9), any information that individually identifies a WIC vendor (except for the vendor's name, address, telephone number, Web site/e-mail address, store type, and authorization status) is confidential.

4. Page 6 – “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.”

a) In the most recent 6 months, how many children with qualifying medical conditions were issued infant formula?

Answer (4a): During the six-month period from July – December 2014, a monthly average of approximately 1,050 children (0.4% of WIC children participants) were issued non-exempt infant formula.

b) Please confirm that there are no children other than children with qualifying medical conditions who are receiving infant formula. If this is not the case, please describe the circumstances where children without qualifying medical conditions are receiving infant formula.

Answer (4b): This is confirmed.

c) Please confirm that the manufacturer is not obligated to pay a rebate on infant formula issued to children.

Answer (4c): This is not confirmed. The New York State Department of Health (Department) will submit invoices for rebates on all contract-brand infant formula issued under the terms of the contract and redeemed according to program rules, regardless of whether the recipient is an infant or a child.

5. Page 6, Section B. – What percentage of infants receive checks for a three-month period? Please also provide this percentage for participants who receive checks for a two-month period and one-month period.

Answer (5): Reports on the percentages of infants (or other participants) receiving one, two or three months of checks are not available.

6. Page 7 – “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.”

a) How does the state define non-contract non-exempt infant formulas?

Answer (6a): Non-contract brand non-exempt infant formula is all non-exempt infant formula that is produced by a manufacturer other than the state's infant formula rebate contractor.

b) Please confirm it is the state's intention to not allow non-contract non-exempt formulas during the course of the contract resulting from this IFB. Does the state have a zero tolerance policy with respect to issuance of non-contract non-exempt formulas?

Answer (6b): At this time, there is zero issuance of non-contract non-exempt formula; the NYS WIC information system does not allow it. The Department does not intend to change this policy at this time.

c) Please describe the circumstances that would cause the state to change its current policy of not using non-contract non-exempt formulas?

Answer (6c): The Department is not able to speculate on the circumstances that would dictate a change in policy in the future.

d) Has the state issued a non-contract non-exempt infant formula to a participant in the last 6 month? If yes, how many infants were issued such formulas?

Answer (6d): No.

e) Does the state make exceptions to this policy for participants seeking Kosher and Halal products? If yes, how many infants were issued Kosher and Halal infant formulas in the last six months?

Answer (6e): The Department has not made any exceptions to this policy for participants seeking Kosher and Halal products.

f) If the new contractor does not provide Kosher and Halal infant formulas, would the state make an exception to its non-contract non-exempt policy for these types of products?

Answer (6f): The Department does not intend to make exceptions to this policy at this time.

7. Page 7, Section B. – Under what circumstances would the State consider changing its current policy with respect to the issuance of non-contract, non-exempt formula?

Answer (7): The Department is not able to speculate on the circumstances that would dictate a change in policy in the future.

8. Page 7, Section B. – We have the following questions regarding issuance of non-contract formulas:

a) How many infants are currently receiving exempt infant formula products? Please provide monthly totals for the most recent three-month period.

Answer (8a):

Month	Number of Infants
July 2015	7,074
August 2015	7,016
September 2015	6,974

b) Please provide the number of units of exempt infant formula products issued in each of three recent months, broken out by brand name and form.

Answer (8b): These data have not been included in any NYS WIC reports or queries, thus are not available at this time.

c) Please provide copies of the State's current policies with respect to the issuance of exempt infant formulas, and non-contract standard infant formulas

Answer (8c): Please see WIC Program Manual Sections 1253 (WIC Formulas) and 1255 (Food Package III Participants with Qualifying Medical Conditions) provided with this document.

9. IFB, Section B, page 7 – Since it is identified that this IFB will cover checks with “not good before” dates beginning July 1, 2016, please confirm that a client picking up three months of vouchers would receive the following:

- May – Current manufacturer
- June – Current manufacturer
- July – New manufacturer

a) If the above is not correct, please provide how vouchers would be issued.

Answer (9a): The above voucher illustration is correct when the month listed represents the month in the ‘Not Good Before’ (NGB) date on each check.

10. Page 7 – “The contract(s) expected to be awarded as a result of this IFB will cover WIC checks for non-exempt infant formula with ‘not good before’ dates beginning July 1, 2016.” (Please provide additional information regarding the transition from the current manufacturer to a potential new manufacturer. Please explain the procedure to be utilized in making the transition.

Answer (10): Transition from one contract to another contract requires, at a minimum, information system changes to associate formula checks to the appropriate contract and rebate amounts. If there is a changeover from one manufacturer to another, additional activities will include information and support for WIC local agencies, WIC participants and WIC vendors regarding the changes that they will have to make, such as transitioning infants from one formula to another, and changing business ordering and stocking practices to comply with WIC requirements.

a) If a participant visits a local WIC agency on June 28, 2016, what will be the “first day to use” date for the food instrument issued to this participant? Will this participant receive a food instrument for the existing contractor’s formula or the new contractor’s formula?

Answer (10a): The clinic visit date does not determine the Not Good Before (NGB) or “first day to use” date. The NGB in this case could be up to 30 days before or after the clinic visit. NGBs are generated by participants’ WIC certification dates.

The manufacturer/contract represented on the food instrument will depend entirely on the NGB date printed on the food instrument, as shown below.

If the “not good before” date is:	The applicable contract is:
On or before June 30, 2016	Current Contract
On or after July 1, 2016	New Contract (s)

b) Will a participant visiting a local agency in June receive one food instrument for the current contractor’s infant formula and two food instruments for the new contractor’s formula?

Answer (10b): The clinic visit date does not determine which contractor’s formula will be issued. The NGB date is the critical factor. Therefore, a participant visiting the clinic in June could receive food instruments with an NGB date of up to 30 days before or after the visit. Any food instruments with NGB dates on or before June 30, 2016 would include formula from the current contract, and any food instruments generated with NGB dates of July 1, 2016 or after will contain formula from the new contract.

c) How often are participants required to visit the local clinics or WIC offices?

Answer (10c): Please see attached WIC Program Manual Sections 1101 - Physical Presence Requirements.

d) How many months' worth of food instruments do participants typically receive per visit?

Answer (10d): This varies: one, two or three depending on the participant's circumstances.

e) How many cans of infant formula can be purchased with a single food instrument? Please provide this information for each of the different forms used by participants.

Answer (10e): This varies according to the participant's amount of formula and number of shopping visits per month. Regardless of form, the default is three shopping visits per month, with each monthly check containing approximately one-third of the total number of containers allowed.

f) Do participants receive their food instruments on the day they visit the clinic?

Answer (10f): Yes.

g) Are food instruments distributed evenly throughout the month or are they issued on specified days during the month?

Answer (10g): "Not Good Before" dates on food instruments are based on participant certification dates (rather than a specified first day of a month). All food instruments for a participant for a given month have the same "not good before" date.

11. The transition period for a new contract is an important, material provision of this solicitation and the resulting contract. We therefore request the State outline the transition process it will utilize if there is a new contractor. We request a response to the following questions:

a) Will participants entering the WIC clinic on May 1, 2016 receive Food Instruments for May, June, and July that include the existing Contractor's products, or will the May and June Food Instruments cover the existing contractor's products and the July Food Instrument cover the new contractor's products?

Answer (11a): Food instruments received prior to the new contract start date will provide the existing contractor's products and any food instruments for the time period of the new contract period will provide the new contractor's products.

- b) If a participant visits the clinic on the 10th day of a month, is the “not good before” date the 10th day of that month and the first day of the next two months (i.e., are Food Instruments issued on a rolling basis throughout the issuance period, or only for the first month)?

Answer (11b): The clinic visit date does not determine the NGB date; the NGB is generated by each participant’s WIC certification date. Once determined, the NGB date for future months will be the same day of the month.

12. Page 7 - “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.”

- a) Please provide the timeline that has been established for implementing and transitions to a new system and electronic benefits.

Answer (12a): The projected timeline for transitioning toward the electronic issuance of food and formula benefits includes:

- **Design and Development: October 2016 – February 2018**
- **Testing and Training: May 2017 – May 2018**
- **Pilot testing: July 2018 - September 2018**
- **Statewide Implementation: October 2018 – June 2019**

- b) Does the state anticipate any changes to the current list of authorized WIC vendors as a result of the transition to electronic benefits? If yes, what types of changes are anticipated?

Answer (12b): That has not been determined as yet.

13. Page 7, Section B. – We have the following questions related to the transition to e-WIC:

- a) When does the State anticipate beginning to pilot e-WIC?

Answer (13a): The projected timeline for transitioning toward the electronic issuance of food and formula benefits includes:

- **Design and Development: October 2016 – February 2018**
- **Testing and Training: May 2017 – May 2018**
- **Pilot testing: July 2018 - September 2018**
- **Statewide Implementation: October 2018 – June 2019**

- b) Please provide a timeline by geographic region (or county) for e-WIC implementation.

Answer (13b): The timeline by geography is not available at this time.

c) When does the State expect to be fully transitioned to e-WIC?

Answer (13c): The State expects to be fully transitioned to e-WIC by June 2019.

d) Does the State expect the transition to e-WIC will result in some of the currently authorized vendors not qualifying to be WIC vendors once the transition is complete?

Answer (13d): The NYS WIC Program is continuing to research all components of the WIC Electronic Benefits Transfer implementation, including benefit issuance, impact on vendors, hardware and software maintenance requirements, and costs and training needs. More details will be provided to WIC authorized vendors as they become available to the NYS WIC Program.

e) Does the State expect the transition to e-WIC will change the mix of vendors currently authorized (i.e., more large vendors, few small vendors, etc.)?

Answer (13e): The NYS WIC Program is continuing to research all components of the WIC Electronic Benefits Transfer implementation, including benefit issuance, impact on vendors, hardware and software maintenance requirements, and costs and training needs. More details will be provided to WIC authorized vendors as they become available to the NYS WIC Program.

14. IFB, Section C.1, page 8 – The notification of award date listed here does not agree with the Estimated Award Date shown in the Schedule of Events. Please confirm February 2, 2016 is the correct date.

Answer (14): The notification of award date has been changed. Refer to IFB Amendment 3 at <http://www.health.ny.gov/funding/ifb/16429/index.htm> for the revised timeline.

15. Page 8, Section C.1. – Please confirm the expected notification of award is February 2, 2016, not April 1, 2016.

Answer (15): The notification of award date has been changed. Refer to IFB Amendment 3 at <http://www.health.ny.gov/funding/ifb/16429/index.htm> for the revised timeline.

16. Page 8, Section C.2. – Please provide the statutory or regulatory citation that prohibits infant formula manufacturers from using the WIC acronym as specified in this section.

Answer (16): Please see WIC Policy Memorandum #2009-1 released by USDA on December 31, 2008: <http://www.fns.usda.gov/clarification-use-wic-acronym-and-logo>

17. Page 9, Section C.3. – We have the following questions related to the requirements for the formulas provided to NY WIC participations:

- a) Please confirm infant formulas offering only 19 kilocalories per fluid ounce of formula at standard dilution do not meet the minimum requirements of the WIC Program and therefore are not eligible to be the primary contract infant formula for the States' WIC Programs.

Answer (17a): This is confirmed. Per Table 4, CFR 246.10 (d)(12), formulas with 19 kilocalories per fluid ounce do not meet the requirements of the WIC program and are not eligible to be the primary contract infant formula for NY State WIC program.

- b) Please further confirm bidders offering only 19 kilocalorie formulas may not submit bids for this WIC Rebate solicitation.

Answer (17b): This is confirmed. Bidders must produce a primary contract infant formula that meets the requirements outlined in the Invitation for Bids.

- c) Is it permissible under the terms of the contract resulting from this IFB for a Contractor to replace the primary contract formula with a product that does not meet the WIC minimum infant formula requirements per Table 4 of USDA's regulations (see 246.10(d)(12))? If yes, please explain how that conforms to USDA regulations. (If no, what actions would the States take in response to such a change in the primary contract brand formula?)

Answer (17c): This would not be permissible. The NYS WIC program would consult with USDA if a contractor replaced the primary contract infant formula with a product that does not meet WIC minimum requirements.

- d) Does the State intend to authorize any contract infant formulas that do not meet the minimum WIC requirements as specified in Table 4 at 246.10(e)(12)?

Answer (17d): This is not the Department's intent.

- e) Please confirm that any non-exempt formulas that do not meet the minimum requirements per Table 4 of USDA regulations may only be issued with an authorized prescription, and only if such formulas are contract formulas.

Answer (17e): It is confirmed that any non-exempt formulas that do not meet the minimum requirements per Table 4 of USDA regulations may only be issued with an authorized prescription.

- f) If the State agrees to authorize contract infant formula products providing only 19 kcal per serving, what medical indication will be required to support the medical documentation requirements for issuance of such products?

Answer (17f): Medical indication for 19 kilocalorie infant formula would need to be established by the medical profession.

18. IFB, Section C.2, page 9

- a) Please indicate what percent of infants that are enrolled in the WIC program were enrolled with incomes higher than 185% of the Federal poverty level.

Answer (18a): These data have been estimated for children, which, in this particular instance, includes infants. During the period January – March 2015, an estimated 1.5% of child participants had household incomes higher than 185% of the Federal poverty level.

- b) Please indicate what percent of infants that are enrolled in the WIC program were enrolled via adjunctive eligibility (i.e., they demonstrated active participation in SNAP, TANF, Medicaid or CHIP).

Answer (18b): These data have been estimated for children, which, in this particular instance, includes infants. During the period January – March 2015, the percentages of child WIC participants who also participated in Medicaid, SNAP and TANF were, respectively, 84.7%, 37.4% and 7.6%.

19. Page 9, Section C.3. – This section states that the estimate of infants potentially eligible for WIC program services have been adjusted for adjunctive eligibility. What percentage of participants have incomes that exceed 185% of the federal poverty level?

Answer (19): During the period January – March 2015, an estimated 1.6% of participants had household incomes higher than 185% of the Federal poverty level.

20. Page 9, Section C.3. – What percentage of infants are certified for participation in the program through their participation in other federal programs (i.e., SNAP, TANF or Medicaid)?

Answer (20): These data have been estimated for children, which, in this particular instance, includes infants. During the period January – March 2015, the percentages of child WIC participants who also participated in Medicaid, SNAP and TANF were, respectively, 84.7%, 37.4% and 7.6%.²¹

Page 10, Section C.4.a. – Please confirm 33.8 ounce ready-to-feed formulas are acceptable (8.45 oz. 4-packs), and please further confirm this package size may be entered into the Bid Sheet.

Answer (21): This is confirmed.

22. Section 4b - Page 11 – “The contractor is responsible for ensuring that the purchasing system with prices at or near the contractor’s national wholesale prices is available to vendors who must buy small amounts of formula.” Please explain in detail how the state sets its peer groups and reimburses based on the peer groups.

Answer (22): NYS WIC at present does not have vendor peer groups. Reimbursement is capped, however the cap amount is based on the region where the food instrument was issued by the local agency, not on the vendor who deposits the food instrument. NYS WIC is currently in the process of developing vendor peer groups.

23. Page 11, Section C.4.b. – Please confirm that manufacturers who do not have systems in place for direct purchase of infant formula from small retail vendors will not be excluded from bidding on this contract.

Answer (23): It is confirmed that manufacturers who do not yet have systems in place for direct orders from small vendors can bid in response to this IFB. As indicated on the Bidder Certifications Form (Attachment 8 of the IFB), however, the manufacturer must ensure that such systems are in place by the beginning of the contract period.

24. Page 11, Section C.4.c. – Please confirm the State will only bill the Contractor for rebates on containers of infant formula lawfully purchased at authorized retail vendors by WIC participants.

Answer (24): The State follows all guidelines established by the USDA with regards to billing the Contractor for rebates.

25. IFB, Section C.4.c, page 11 – Column C noted in the first bullet point is not the correct column for the discount percentage on the bid sheet.

Answer (25): This revises section C.4.c. “Column C” should be “Column K” in the first bullet point.

26. Page 11, Section C.4.c. – In the first bullet paragraph please change “Column C” to “Column K.”

Answer (26): This revises section C.4.c. “Column C” should be “Column K” in the first bullet point.

27. IFB, Section C.4.e, page 12

a) Please revise the effective date of a price increase or decrease to be the 1st day of the month after the price increase or decrease takes effect to be consistent with when the price change would be reflected at retail shelves.

Answer (27a): This section is revised to say that rebate increases or decreases will apply to all redeemed food instruments with “not good before” dates on or after the date of the wholesale price increase or decrease. Please refer to IFB Amendment 6 at: <http://www.health.ny.gov/funding/ifb/16429/index.htm>.

b) If not revised, we request that the “not good before” date field be provided in the supporting data files since price increases and contract transitions are based on the “not good before” dates on the checks.

Answer (27b): The section is revised as noted in answer (27a) and the “not good before” date is included in the data files that will be supplied to the contractor(s).

c) If this field is not added please describe the process by which the Contractor can validate the checks included in the invoice have the correct pricing applied.

Answer (27c): Not applicable.

28. Section 4.h. – Page 12 – Please confirm that the State agrees to first substitute alternate forms of the primary contract brand formula to WIC participants or in the alternative, the State will first provide an alternate brand of the manufacturer’s non-exempt formula to address any situation involving the adequate supply of infant formula to participants, before resorting to the use of a non-contract brand. If not confirmed, please give the rationale for not allowing an alternate brand in the manufacturer’s portfolio.

Answer (28): It is confirmed that, in the circumstances described in Section C.4.h., NYS WIC will first seek to issue the “other” form (concentrate or powder) of the formula used by the participant if that other form is available. Beyond that, the Department of Health reserves the right to issue the alternative formula product that best meets the needs of WIC participants. NYS WIC will need the ability to respond to unusual circumstances in a manner that best serves WIC participants and will not commit to a rigid substitution scheme in advance

29. Page 12, Section C.4.h. – As currently written we believe this section is unreasonably vague. We request the State amend this provision by specifying that formula is “unavailable” when “the primary contract infant formula is unavailable to WIC vendors for more than seven consecutive business days.”

Answer (29): This section is not amended. In the circumstances described in Section C.4.h., NYS WIC will need the ability to respond in a manner that best serves WIC participants. Delays in providing infant formula may be detrimental to WIC participants, thus NYS WIC will not commit to a specific number of days in advance.

30. IFB, Section C.4.h, page 13

a) Please confirm the State would substitute an alternate brand of the Contractor’s product line prior to issuing a non-contract brand.

Answer (30a): It is confirmed that, in the circumstances described in Section C.4.h., NYS WIC will first seek to issue the “other” form (concentrate or powder) of the formula used by the participant if that other form is available. Beyond that,

the Department of Health reserves the right to issue the alternative formula product that best meets the needs of WIC participants.

- b) Please revise the language from “the state will issue the available form (concentrate or powder) to “the state will issue the available form (concentrate, powder *or RTU*)”.

Answer (30b): This language is not revised. Ready-to-use formula is not included here because Federal regulations limit its issuance to very limited circumstances

31. Page 13, Section C.4.h. – We request the State add “*after providing the contractor with a reasonable opportunity to cure.*” after the last paragraph of this section.

Answer (31): This language is not added. In the circumstances described in Section C.4.h., NYS WIC will need the ability to respond to unusual circumstances in a manner that best serves WIC participants. “Reasonable opportunity to cure” may cause delays in providing infant formula that would be detrimental to WIC participants.

32. Section 4i. – Page 13 – “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.”

- a) Please amend this section such that payments will be submitted to the state 30 days after the contractor has **received** the invoice.

Answer (32a): This section is not amended.

- b) If not confirmed, please confirm that the state will send all rebate invoices electronically.

Answer (32b): Invoices will be emailed to the contractor in addition to the hard copy provided.

33. Page 13, Section C.4.i. – We request the State amend this section by requiring payment within the normal and customary payment terms of the contractor, but not exceeding 60 days.

Answer (33): This section is not amended.

34. Page 13, Section C.4.i. (See also Page 26, Section E.6.) – Please confirm the phrase “or portion thereof” in this section means the State intends to prorate the interest amount due by the number of days the payment is late? For example, if payment is received 10 days late, will the interest be calculated as one-third of the 1% additional payment? We request the State amend the solicitation to clarify the interest will be prorated. Doing so will encourage prompt payment by the contractor once it has discovered the payment is overdue.

Answer (34): It is confirmed that the State intends to prorate the interest due by the number of days that the payment is late.

35. IFB, Section C.4.j, page 13

- a) Please confirm that there is no time limit on disputes arising from fraud or other illegal activity that prevents the Contractor from being able to identify the incorrect billing earlier.

Answer (35a): This cannot be confirmed at this time. Disputes arising from allegations of fraud or illegal activity are subject to the New York State Civil Practice Laws and Rules (NYSCPLR) statute of limitations applicable to the type of claim commenced in a court of competent jurisdiction.

- b) If not confirmed, please explain why the Contractor cannot have additional time to raise disputes when fraud or other illegal activity prevented the Contractor from being able to identify the error within 30 days from receipt of the invoice.

Answer (35b): The amount of time allowed for the contractor to initiate a dispute arising from allegations of fraud or illegal activity is governed by the NYSCPLR statute of limitations.

36. Section 4.j. – Page 13 – “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 thus 30-day period, any requirement to return funds to the contractor as a result of a dispute or over billing error is waived.”

- a) Please amend this section to allow the contractor 90 calendar days after the invoice date to notify the state of any intent to dispute any errors or discrepancies.

Answer (36a): This section is not amended.

- b) Please also amend this section to include the state has the same timeframe of notification to the contractor (suggested 90 calendar days) after the date of the invoice for any errors, discrepancies or omissions which would benefit the state. If the state fails to notify the contractor within this timeframe then the state waives the right to bill any supplemental invoices to the contractor.

Answer (36b): This section is not amended.

37. Page 13, Section C.4.j. – We have the following questions related to this paragraph:

- a) Please confirm these provisions apply only to disputes involving mathematical or other obvious errors on the invoice.

Answer (37a): This is not confirmed.

b) We request the State consider amending this provision to allow at least a 60-day period for such notice.

Answer (37b): This section is not amended.

c) Please confirm these provisions apply to the State as well – i.e., if the State does not notify the contractor of any dispute or error in the rebate invoice within the specified time period, the State waives its right to receive additional funds resulting from a dispute or under billing error.

Answer (37c): This is not confirmed.

d) Please confirm the State agrees the contractor may recover funds in instances in which fraud has been discovered, and it has been further determined the contractor was overbilled for infant formula.

Answer (37d): This is not confirmed. There is no provision for or guidance on infant formula rebate contract language regarding potential fraud/audit-related recoveries in 7 CFR246.16a or in the USDA Infant Formula Rebate Solicitation Checklist. NYS WIC will follow USDA guidance in this area.

e) We request the State agree to discuss with the contractor awarded this contract appropriate contract language for addressing payment issues identified through contractor audits and/or fraud-related issues directly affecting the contractor. Please confirm the State will work with the contractor to address this issue.

Answer (37e): This request is not approved. There is no provision for or guidance on infant formula rebate contract language regarding potential fraud/audit-related recoveries in 7 CFR246.16a or in the USDA Infant Formula Rebate Solicitation Checklist. NYS WIC will follow USDA guidance in this area.

38. Page 13, Section C.4.k. – Please confirm the State will fully cooperate with the contractor when the contractor is conducting an audit and please further confirm the State will comply with all reasonable requests for information necessary to conduct a proper audit.

Answer (38):

As indicated in Section C.5.f. on page 16 of this document, the contractor(s) may audit materials that relate to the generation of rebate invoices. NYS WIC will consider any additional questions asked by the contractor(s) but will only commit to providing the information required by the contract.

39. Section 4.o. – Page 14 – “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.”

a) Please strike this language.

Answer (39a): This language is not stricken.

b) If not struck, please describe in detail how the state intends to distribute this product.

Answer (39b): The Department has not determined the distribution method.

40. Section 5.c. – Page 15 – “The state shall mail the invoice to the contractor via Certified Mail, return receipt requested, or transmit via FAX.” Please include email as an option in this section. Please confirm that the state will be willing to email the invoice to the contractor upon request.

**Answer (40):
Invoices will be emailed to the contractor in addition to the hard copy provided.**

41. IFB, Section C.5.d, page 15 – What percentage of vouchers are issued with a combination of concentrate and powder?

Answer (41): These data have not been included in any NYS WIC reports or queries, thus are not available at this time.

42. Page 15, Section C.5.d. – Does NY WIC issue checks that contain more than one form of infant formula on a single check? If yes, how many participants receive such checks in an average month?

Answer (42): Yes. Data on the number of participants receiving such checks are unavailable.

43. IFB, Section C.5.f, page 16

a) Monthly data files are necessary in order for the Contractor to validate invoices with accuracy and integrity. Please confirm that the details of all food instrument redemptions for which rebates are being invoiced through the monthly invoice process are provided each month through an electronic data file including food instrument number, pseudo participant ID (nothing that would disclose confidential participant information), product description, number of cans redeemed, redemption dollar amount, not good before date, redemption date, infant age range at first date to use or infant date of birth, and feeding method (e.g. Fully Formula Fed, Partially Breastfed).

Answer (43a): The data elements that will be provided monthly are listed in Section C.5.f. on page 16 of this document. Only those data elements used in developing monthly invoices will be provided.

- b) If no unique identifier per participant (e.g. pseudo Participant ID) is provided and multiple checks are allowed for one month's worth of benefits, please detail how the Contractor would be able to sum up the total number of infant formula cans redeemed by a single participant for the month to ensure that total cans issued did not exceed the federally regulated monthly maximums.

Answer (43b): Contractors may use NYS WIC caseload reports, which are broken down into 16 categories for infants, and proportions such as those provided on page 19 of the IFB, to determine that the total amount of formula invoiced represents appropriate issuance amounts. The NYS WIC information system calculates the maximum allowed amount for each formula/form and each participant's age/feeding method category. It will not allow system users to issue more than the maximum determined by the system. As a result no over issuance will be included in rebate invoices.

44. Please confirm the following

- a) The State will not issue quantities of infant formula in excess of the monthly maximums prescribed by federal law for each WIC participant.

Answer (44a): This is confirmed.

- b) The Contractor will not be required to pay rebates on quantities of infant formula in excess of the federal monthly maximums.

Answer (44b): This is confirmed.

- c) If rebates for quantities in excess of the federal monthly maximums are billed and rebated in error, the amounts associated with the over issuance and redemption will be reimbursed to the Contractor upon discovery.

Answer (44c): This is confirmed.

- d) If any portion of above is not confirmed, please provide a detailed explanation of why such portion was not confirmed.

Answer (44d): Not applicable.

45. Page 16, Section C.5.f. – We request this provision be amended to clarify the State agrees to the release of vendor information when such release is part of discussions involving fraudulent transactions involving rebated infant formula products. Please confirm that if fraud is identified and the contractor requests relevant vendor information to further identify the scope of the fraudulent activity, the State agrees to provide such information to the contractor.

Answer (45): Per Federal regulations (7 CFR 246.9), any information that individually identifies a WIC vendor (except for the vendor's name, address, telephone number, Web site/e-mail address, store type, and authorization status)

is confidential and can only be released to the specific categories of people listed in the regulations. Infant formula contractors are not included in any of those categories.

46. Page 16, Section C.5.f. – We further request the State agree to notify the contractor when it disqualifies authorized vendors due to fraud-related issues.

Answer (46): Per Federal regulations (7 CFR 246.9), any information that individually identifies a WIC vendor (except for the vendor’s name, address, telephone number, Web site/e-mail address, store type, and authorization status) is confidential and can only be released to the specific categories of people listed in the regulations. Infant formula contractors are not included in any of those categories.

47. Please provide a brief overview of the procedures currently in place to prevent fraud, waste, and abuse in the WIC Program.

Answer (47): Procedures include but are not limited to:

- **Mandatory training for local agencies and vendor management agencies (VMAs) that, in turn, train participants and vendors**
- **Minimum stock requirements for vendors**
- **The exact formula name, form and container size is printed on food instruments**
- **VMAs conduct overt monitoring of vendors, and respond to complaints about vendors**
- **A specialized investigative unit performs overt and covert investigations and audits**

48. Page 16 – “Please include four (4) handwritten signed originals and four (4) handwritten signed copies.”

a) Please confirm that the copies do not need to have a wet ink signature and can be direct photocopies of an original document that does have a wet signature.

Answer (48a): This is confirmed.

b) If not confirmed, please clarify the meaning of four (4) handwritten signed **copies**.

Answer (48b): Not applicable.

48. Section 3. – Page 17 – Please confirm that the National Wholesale Price List that must be included is only for those products being bid.

Answer (49): This is confirmed.

50. Section 5.a. – Vendor Selection – Page 20 – “At the discretion of the Department of Health, all bids may be rejected.”

a) Please strike this language.

Answer (50a): This language will not be stricken.

b) If not stricken, please describe in detail why a bid would be rejected. Please also detail why all bids would be rejected.

Answer (50b): A bid would be rejected if it failed to meet mandatory requirements. In the event that the best interests of the State will not be met as determined by the evaluation of all responsive bids received, the State may reject all bids received in response to the procurement opportunity.

51. Section 5.a. – Vendor Selection – Page 20 – “In the event of a tie, the determining factor(s) for award, in descending order of importance, will be: Lowest Cost, Past experience, References...”

a) Please amend this section to include a more objective tie-breaker. For example: If two bidders bid the same price, the bid is awarded by drawing lots or tossing a coin in a publically held meeting.

Answer (51a): This section is not amended.

52. Page 21, Section E.2. – Inquiries/Updates –We request the State’s responses to bidders’ questions be incorporated into the contract resulting from this bid. We further request that such responses take precedence over other contract documents when there is a conflict, ambiguity or dispute. We request the State amend this section accordingly.

Answer (52): These questions and answers will be incorporated into the contract resulting from this IFB. They are provided for clarification. Actual amendments to the IFB will be labeled as such. The order of precedence in any conflict, ambiguity or dispute will follow NYS contracting laws and regulations.

53. IFB, Section E.3. Page 22

a) Suite 650 is identified as the location for the bid opening. Please confirm that is the location or in addition to the Suite 650 is there a conference room that bidder’s should look for?

Answer (53a): The location of the bid opening has been revised. Please refer to IFB Amendment 5 at: <http://www.health.ny.gov/funding/ifb/16429/index.htm>.

b) Can the State also set up a conference number for bidders to call in for the bid opening?

Answer (53b): Yes. Please refer to IFB Amendment 5 at: <http://www.health.ny.gov/funding/ifb/16429/index.htm>.

54. Please confirm the address and exact room number where the public bid opening will be held.

Answer (54): Please refer to IFB Amendment 5 at: <http://www.health.ny.gov/funding/ifb/16429/index.htm>.

55. Section 2 – Submission of Bids - Page 22 – “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 as amended.”

a) Please provide the contact information (name, email address and phone number) of the individual to whom bidder may reach out to confirm the bid submission has arrived and is intact and unopened.

Answer (55a): To confirm delivery, bidders should ensure that their delivery service obtains the signature of the person accepting the bid submission, and relays that information back to the bidder. The central phone number for the Bureau of Supplemental Food Programs is (518) 402-7093.

56. Page 22, Section E.3. – Please provide a name and email address for bidders to confirm receipt of bids that have been submitted.

Answer (56): To confirm delivery, bidders should ensure that their delivery service obtains the signature of the person accepting the bid submission, and relays that information back to the bidder. The central phone number for the Bureau of Supplemental Food Programs is (518) 402-7093.

57. Page 22, Section E.3. – Bid Opening – Please confirm the State will read aloud the following information contained on page 1 of the Bid Sheet: Product Name Being Bid, UPC Code, Unit Size, Reconstituted Ounce Per Unit, Lowest Wholesale Full Truckload Price Per Unit, Rebate Bid Per Unit, Net Price, and Percent Rebate, and on page 2 the corresponding data populated in columns (B), (C), (I), (J), (K), (L), (M), and (N).

Answer (57): At the bid opening, bidder company names as noted on the cost proposal envelopes will be announced, the cost proposal envelopes will be opened, and the following items will be read aloud: physical form, product name, UPC Code, Unit Size, Reconstituted Ounces per Unit, Lowest Wholesale Full Truckload Price per Unit, Rebate Bid per Unit, Net Cost, Percent Rebate, Total Monthly Units and Total Net Cost. In addition, the Total Net Cost per Month for all

physical forms on the bid sheet will be read aloud. No other information will be opened or shared.

58. Page 22, Section E.3. – Bid Opening –Would the State be willing to provide a call-in number for those bidders unable to attend the bid opening in person?

**Answer (58): Please refer to IFB Amendment 5 at:
<http://www.health.ny.gov/funding/ifb/16429/index.htm>.**

59. IFB, Section E.3, page 23

a) Since it is identified the award will be issued on February 2nd and the contract is set to begin on July 1st, 2016, why does the bid need to remain open for 365 days?

Answer (59a): This is a New York State requirement.

b) Please confirm that the bid will only need to remain open for 180 days.

Answer (59b): This is not confirmed.

60. Page 23, Section E.3. (See also p. 25, section E.5.o.) – The second to last paragraph in this section states “every offer shall be firm and not revocable for a period of 365 days or until released by the state, whichever occurs first.” We strongly object to this provision and urge the State to amend this section by requiring bids to be firm for no longer than 120 days. This is a burdensome provision that limits the ability of bidders to submit their best bid to the State.

Answer (60): This section is not amended.

61. Section 4 – Bid Preparation – Page 23 – “The bid package must contain two separately sealed envelopes for the technical proposal and the cost proposal. Please confirm that:

a) All 4 original technical proposals with wet signatures and all 4 copies of the technical proposal may be placed one envelope.

Answer (61a): This is confirmed.

b) All 4 original cost proposals with wet signatures and all 4 copies of the cost proposal may be placed in one envelope.

Answer (61b): This is confirmed.

c) The above noted 1 technical proposal envelope and 1 cost proposal envelope should be combined into an additional envelope and labeled as instructed on page 23.

Answer (61c): This is confirmed.

62. IFB, Section E.4, page 24 – This section lists that the “NYS WIC Infant Formula Invoices (Attachment 15)” should be included in the bid proposal.

a) This requirement is not included on Attachment 9, ITB Checklist. Are bidder’s required to simply return all the copies of the invoices in the proposal to meet this requirement?

Answer (62a): The “NYS WIC Infant Formula Invoices” (Attachment 15) do not need to be returned as part of the proposal. These invoices were provided as an example.

b) If so, please identify if the copies should be in the technical or cost proposal.

Answer (62b): Not applicable.

c) If not, please identify what should be included to satisfy this requirement

Answer (62c): Nothing related to IFB Attachment 15 is required to be returned as part of the bid proposal.

63. Page 24, Section E.5.f. – This provision is unreasonably vague and is susceptible to subjective interpretations that may disadvantage some bidders over others. We further believe this provision is excessive and unnecessary given the only respondents to this solicitation are bidders with extensive experience with WIC infant formula contracts. We urge the State to delete this provision or in the alternative to amend it by including more objective criteria to accomplish the State’s objectives.

Answer (63): This provision is not deleted or amended. Section E.5. a-p contains required language included in all Department of Health procurements.

64. Page 25, Section E.5.g. – Please confirm the State will provide adequate notice to all bidders prior to amending the IFB specifications. Please further confirm that should the date for responses to bidders’ questions change, the State will provide a minimum of 10 business days from when the responses to questions are posted until bids are due to allow manufacturers adequate time to evaluate the State’s responses.

Answer (64): This is confirmed.

65. Page 25, Section E.5.i. – Please specify the allowable scope of negotiations with the successful bidder.

Answer (65): The allowable scope of negotiations is not specified. Section E.5. a-p contains standard language included in all Department of Health procurements.

66. Page 25, Section E.5.o. – Please delete this provision. It duplicates another provision and appears to not have been intended for inclusion in this section of the IFB.

Answer (66): This provision is not deleted. Section E.5. a-p contains required language included in all Department of Health procurements.

67. Section 6 –Payment - Page 25 – “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.”

a) Please amend this section so after the state issues the initial invoice which will be calculated per section 4.i. (page 13) and 5.d. (page 15), any supplemental invoices will have to be issued within the same timeframe that the contractor has to notify the state of errors, discrepancies or omissions. If the state fails to notify the contractor within this timeframe then the state waives the right to bill any supplemental invoices to the contractor.

Answer (67a): This section is not amended as requested.

68. Section 6 – Payment - Page 26 – Please confirm that the state will send all invoice by electronic mail. If not confirmed, please change this section so the contractor has 30 to remit payment after the contractor **receives** the rebate invoice.

Answer (68): It is confirmed that invoices will be emailed to the contractor in addition to the hard copy provided.

69. Page 25, Section E.6. – Please confirm the State will only bill the contractor for rebates on containers of infant formula lawfully purchased at authorized retail vendors by WIC participants.

Answer (69): This is confirmed.

70. IFB, Section E.7, page 26 – Please add language to allow the Contractor to cancel the contract upon a 365-day written notice. A 365-day notice would allow the State sufficient timing to complete the process of procuring a new rebate contractor.

Answer (70): This language is not added.

71. Page 26, Section E.7. – We request the State amend this section by providing both parties with the right to terminate the contract with or without cause, upon a 12-month notice. In the alternative, we urge the State to require a minimum of 180-day notice to the contractor by the State if this provision is exercised. We note the State will need this amount of time to rebid a new contract. (See also p. 74 Section III.E.)

Answer (71): This section is not amended.

72. Page 26, Section E.7. – If the start date of this contract begins later than July 1, 2016 will the State amend the end date to allow for a full 5-year contract?

Answer (72): It is the intention of the NYS WIC Program to enter into a full 5-year contract.

73. Section 10 – Vendor Responsibility Questionnaire – Page 26 – Please confirm that this questionnaire is not required to be submitted with the bid package. Please confirm that this questionnaire is only required to be completed by the winning contractor.

Answer (73): Both statements are confirmed.

74. Section 11 – State Consultant Services Reporting – Page 27 – Please confirm that the State Consultant Services Forms are not required to be submitted with the bid. Please confirm that these forms are only required to be submitted by the winning contractor upon award.

Answer (74): Both statements are confirmed.

75. Page 26, Section E.11 – Please confirm this section is not applicable to this WIC Infant Formula Rebate contract.

Answer (75): This is not confirmed. This is required language included in all Department of Health procurements.

76. Section 13 – Page 29 – Please strike this section as this does not apply to this contract.

Answer (76): This section is not stricken. This is required language included in all Department of Health procurements.

77. Section 14 – Page 29 – Please strike this section as this does not apply to this contract.

Answer (77): This section is not stricken. This is required language included in all Department of Health procurements.

78. IFB, Section E.15, page 29 - Publication 223 issued by the New York State Department of Taxation and Finance provides that revenue contracts are excluded from this requirement (See Publication 223, Question and Answer 10). Please confirm that because this contract is for the payment of rebates by the Contractor that forms ST-220-TD and ST-220-CA are not required to be provided.

Answer (78): This is not confirmed. The section is applicable and the forms must be completed by the awarded contractor to confirm that the vendor is registered for NYS sales tax.

79. Page 29, Section E.15. – Please confirm this section is not applicable to this WIC Infant Formula Rebate contract.

Answer (79): This is not confirmed. The section is applicable to this procurement.

80. IFB, Section E.17, page 31

a) Since this is a rebate contract and an overall goal of 0% is referenced, please confirm the forms in Attachment 5 (Form #1, #2, #4 and #5) are not required in the bidder's proposal.

Answer (80a): This is not confirmed. Awarded contractors must provide Form #4 and Form #5 (attachment 5), which are a staffing roster and an EEO policy statement. These forms are required for all contracts with or without MWBE goals.

b) If required, please confirm that bidders can complete these forms with "Not Applicable" on the top of all the forms in Attachment 5 (Form #1,#2, #4 and #5).

Answer (80b): This is not confirmed. Awarded contractors must provide Form #4 and Form #5 (attachment 5), which are a staffing roster and an EEO policy statement. These forms are required for all contracts with or without MWBE goals.

81. Pages 30-33 – Please confirm all provisions related to the MWBEs provisions in this IFB are not applicable to this WIC Infant Formula Rebate Contract. Is Attachment 5 required to be submitted with a bid? If yes, please also provide additional guidance on appropriate responses by bidders when submitting this Attachment and the accompanying forms.

Answer (81): This is not confirmed. Awarded contractors must provide Form #4 and Form #5 (attachment 5); these are required for all contracts with or without MWBE goals. Please refer to page 43 of the IFB.

82. Attachment 7, page 54 – Since this is a contract for rebates and no orders will be placed, please confirm "Not applicable" is sufficient for the second section on this form.

Answer (82): This is not confirmed. There is frequent communication between the NYS WIC program and the infant formula rebate contractor on issues of product availability, and there is a potential for direct orders under special circumstances.

83. Attachment 8, Section 1, page 55 – The citation referenced in this section appears to be incorrect. Please provide a corrected form for signature with the correct citation.

Answer (83): It is confirmed that the reference is incorrect. The IFB has been amended on page 9 and on page 55. Please refer to IFB Amendments 4 and 6 at: <http://www.health.ny.gov/funding/ifb/16429/index.htm>.

84. Page 57, Attachment 9 – Please confirm if the Transmittal Letter (Attachment 1) is required to be submitted with a bid? If not, when must it be submitted to DOH?

Answer (84): The Transmittal Letter should be completed by the awarded contractor but does not need to be submitted with the bid proposal. Submitting optional forms with the bid proposal would help expedite contract execution.

85. Attachments 11 & 12, Bid Sheets – Please confirm that no notary signature is required for the bid sheets.

Answer (85): This is confirmed.

86. Appendix A – Section 6 – Wage and Hours Provisions – Page 66 – Please strike this section as this is not a public work contract and therefore does not apply.

Answer (86): This section is not stricken. Appendix A is required to be included in its entirety in all Department of Health contracts.

87. Appendix A – Section 18 – Prohibition on Purchase of Tropical Hardwoods – Page 68 – Please strike this section as this section does not apply to this contract.

Answer (87): This section is not stricken. Appendix A is required to be included in its entirety in all Department of Health contracts.

88. Appendix A – Section 23 – Compliance with Consultant Disclosure Law – Page 69 – Please strike this section as this section does not apply to this contract.

Answer (88): This section is not stricken. Appendix A is required to be included in its entirety in all Department of Health contracts.

89. Attachment 13, pages 61-90

a) Please confirm that the sample documents and all Attachments/Appendices included within these pages are not required in a bid proposal.

Answer (89a): This is confirmed. Please refer to page 24 (as clarified in the response to question 61) and Attachment 9 of the IFB for direction on bid proposal requirements.

b) If not confirmed, please identify specifically what would need to be completed and where it would need to be included in a bid proposal.

Answer (89b): This is confirmed.

c) Please confirm that, since the contract would not be for a construction project, the provision for protective liability insurance in Section W.1.b.ii on page 80 will not apply.

Answer (89c): This cannot be confirmed. Appendix A is required to be included in its entirety in all Department of Health contracts.

d) If this is not confirmed, please provide an explanation of why protective liability insurance would be required for this contract, including the statutes and regulations that state such requirement.

Answer (89d): Appendix A is required to be included in its entirety in all Department of Health contracts.

e) Since this is a contract for rebates, please remove the automobile liability requirements.

Answer (89e): This cannot be removed. Appendix A is required to be included in all Department of Health contracts.

90. Amendment 1 – For any Amendments issued, please confirm that bidders are not required to include copies of all Amendments in its bid submission.

Answer (90): Amendments to the IFB are provided for your information and do not need to be returned, unless it is an amended form. Amended forms should be used to replace forms with errors in the IFB (i.e. Attachment 8- Certification Form). Please refer to IFB Amendment 4 at: <http://www.health.ny.gov/funding/ifb/16429/index.htm>.

Attachments – these WPM sections will be attached to the response document.

WIC Program Manual Sections 1101 - Physical Presence Requirements

WIC Program Manual Sections 1253 - WIC Formulas

WIC Program Manual Section 1255 - Food Package III - Participants with Qualifying Conditions