



Request for Proposal 13-X-22490

For: WIC Infant Formula Rebate DHSS, WIC Services

Event	Date	Time
Bidder's Electronic Question Due Date (Refer to RFP Section 1.3.1 for more information.)	May 30, 2012	5:00 PM
Proposal Submission Date (Refer to RFP Section 1.3.2 for more information.)	June 14, 2012	2:00 PM

Dates are subject to change. All changes will be reflected in Addenda to the RFP posted on the Division of Purchase and Property website.

Small Business Set-Aside	Status	Category
	☐ Not Applicable	☐ I
	☐ Entire Contract	☐ II
	☐ Partial Contract	☐ III
	☐ Subcontracting Only	

RFP Issued By

State of New Jersey
Department of the Treasury
Division of Purchase and Property
Trenton, New Jersey 08625-0230

Using Agency/Agencies

State of New Jersey
Department of Health & Senior Services
WIC Services
Trenton, NJ 08625

Date: May 10, 2012

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1.0 INFORMATION FOR BIDDERS

1.1 PURPOSE AND INTENT

This Request for Proposal (RFP) is issued by the Purchase Bureau, Division of Purchase and Property, Department of the Treasury on behalf of the Department of Health and Senior Services (DHSS), WIC Services Program (WIC Services). The purpose of this RFP is to solicit bid proposals from qualified bidders to supply and provide a rebate for Infant Formula in accordance with federal requirements.

The intent of this RFP is to award a contract to that responsible bidder whose proposals, conforming to this RFP is most advantageous to the State, based upon **rebate** price.

The State of NJ Standard Terms and Conditions will apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in this RFP and should be read in conjunction with them unless the RFP specifically indicates otherwise.

1.2 BACKGROUND

This is a re-procurement of the Infant Formula WIC Rebate Program term contract, presently due to expire on September 30, 2012. Bidders who are interested in the current contract specifications and pricing information may review the current contract (Enter T #1057) at <http://www.state.nj.us/treasury/purchase/contracts.htm>.

WIC Services is a program administered by DHSS and 100 percent (%) funded by the United States Department of Agriculture (USDA).

WIC Services actively supports and promotes breastfeeding as the preferred choice for mothers and infants. WIC Services offers breastfeeding promotion, continuing education and a variety of programs and activities to encourage breastfeeding.

The program issues checks to certified eligible pregnant, breast-feeding and postpartum women and the parents/guardians of certified eligible infants and children up to the age of five (5) years (Participants). WIC Services currently serves approximately 172,000 Participants per month, just over 80 percent (%) of the estimated 211,140 eligible. This includes approximately 38,400 infants, 33,770 receive contract brand infant formula, 4,200 are exclusively breastfed and 430 receive exempt infant formula. There are approximately 10,000 breast fed infants who receive Infant Formula supplementations; approximately 80 percent (%) of these infants receive one-half or more of the maximum amount of Infant Formula allowable each month. The State presently has an average monthly requirement of 330,000 Units for the various sizes and forms (ready-to-feed, liquid concentrate and powdered) of the milk-based and soy-based iron-fortified Contract Brand Infant Formulas. Specifically the average monthly distribution of units of Contract Brand Infant Formula is as follows:

Type Of Infant Formula	Units of Concentrate	Units of Powdered	Units of Ready-To-Feed
Milk Based	113,619	156,642	586
Soy Based	28,892	29,990	271

Bidders should note that the present average monthly requirement volume has been provided for bidding purposes only and is not a guarantee of actual volume. The State does not guarantee a minimum or maximum volume of usage.

The maximum amount of Infant Formula allowed by USDA for issuance under WIC Services per Fully Formula-Fed infant per month is as follows:

a) 0 through 3 months of age:

1. 806 fluid ounces reconstituted liquid concentrate infant formula; or
2. 832 fluid ounces ready-to-feed infant formula; or
3. 870 fluid ounces reconstituted powdered infant formula.

b) 4 through 5 months of age:

1. 884 fluid ounces reconstituted liquid concentrate infant formula; or
2. 896 fluid ounces ready-to-feed infant formula; or
3. 960 fluid ounces reconstituted powdered infant formula.

6) 6 through 11 months of age:

1. 624 fluid ounces reconstituted liquid concentrate infant formula; or
2. 640 fluid ounces ready-to-feed infant formula; or
3. 696 fluid ounces reconstituted powdered infant formula.

The maximum amount of Infant Formula allowed by USDA for issuance under WIC Services per Partially Breast-fed infant per month is as follows:

a) 0 through 3 months of age:

4. 364 fluid ounces reconstituted liquid concentrate infant formula; or
5. 384 fluid ounces ready-to-feed infant formula; or
6. 435 fluid ounces reconstituted powdered infant formula.

b) 4 through 5 months of age:

4. 442 fluid ounces reconstituted liquid concentrate infant formula; or
5. 448 fluid ounces ready-to-feed infant formula; or
6. 522 fluid ounces reconstituted powdered infant formula.

6) 6 through 11 months of age:

4. 312 fluid ounces reconstituted liquid concentrate infant formula; or
5. 320 fluid ounces ready-to-feed infant formula; or
6. 384 fluid ounces reconstituted powdered infant formula.

WIC Services uses a Single Supplier system. The winning bidder must supply and provide a rebate on all infant formulas it produces that WIC Services chooses to issue, except exempt Infant Formulas. If the winning bidder does not produce a soy-based infant formula it must subcontract with another manufacturer to supply a soy-based infant formula under the contract.

WIC Services has developed WIC ACCESS, an automated system that creates and manages WIC Participant files, generates checks for use by Participants to obtain Infant Formula and is used by WIC Services to produce monthly Infant Formula reports that track the redemption of the checks. WIC Local Agencies may issue, prospectively, up to three (3) months worth of checks. Infant Formula product name, size, and product form of the contractor's Infant Formula are printed on the face of the check. WIC Services uses the maximum monthly allowance of reconstituted fluid ounces of liquid concentrate infant formula.

Generally, an individual Participant is issued four (4) checks per month. A summary check attached to the final check in the series being issued is signed by the Participant as verification of check issuance. The summary check, bearing the Participant's signature, check numbers issued and date of receipt, is retained in accordance with the State's record retention requirements.

The summary stub represents up to three months worth of checks issued to all Participants of one family who are picking up checks. Participants will redeem their valid checks at approved

WIC retailers purchasing allowable items of the Participant's choice including all approved Infant Formula.

Checks are not WIC Retailer specific therefore each WIC Retailer is required to stamp its unique code onto each check. Check issuance data are received by WIC Services' data contractor, CMA, on a daily basis and transmitted each night to the State's contract bank, Financial Services Management Corporation, where payment information is captured and returned to the data contractor via next day transmission.

The system provides for floating maximum dollar amounts that are specific to the check type and to the WIC Retailer Peer Group. The maximum value does not appear on the face of the check. The maximum dollar amount, along with the average dollar amount, for each check will be calculated by the central processor and transmitted to the bank for editing against the checks when presented for payment. The banking system edits all checks presented for payment against the amount entered by the WIC Retailer. If the amount entered exceeds the maximum dollar amount, the bank pays only the checks own average dollar amount for the WIC Retailer Peer Group. This system eliminates the State's obligation to recoup any overcharge by the WIC Retailer after the fact. Reports generated by the bank provide the WIC Services with the record of WIC Retailer activity as it pertains to checks which exceeded the maximum.

DHSS supports a program policy of issuing checks only for Contract Brand Infant Formula for milk and soy based infant formula (except for religious reasons) and Exempt Infant Formulas for medical needs. Except for the issuance of the Primary Contract Infant Formula as formula of first choice, the State provides no guarantee of the quantity, type, or physical forms that will be used.

Each month DHSS, through its data contractor, produces infant formula reports. The Infant Formula Rebate Report (**Attachment 2–Sample Infant Formula Rebate Report**) specifies the total number of Units of concentrated liquid, ready to feed, and powdered iron-fortified milk-based and soy-based contract brand Infant Formula, approved and issued by WIC Services, purchased by Participants during the preceding month. This information is reported for each WIC vendor and as a separate State total. The Infant Formula Rebate Report documents the actual number of Units redeemed based on a determination of total check redemption. WIC Services provides the data contractor with a chart (Rebate Redemption Table) that provides a minimum and maximum price for the number of Units of Infant Formula that may be purchased on a WIC check. The data contractor uses the table to calculate the number of Units redeemed per check. This method is used in lieu of "partial redemption" estimation when less than the full amount of Units is purchased.

Additional contract formula rebate reports generated by the data contractor are the Formula Rebate Redemption Summary and the Formula Rebate Exceptions Report. The Formula Rebate Redemption Summary is a summary of the number of checks for each contract brand Infant Formula issued and redeemed for the current invoice month. This report breaks down the data by contract brand infant formula by the three separate months (current/issue, 30 day and closeout months) reflected in the invoice totals. The Formula Rebate Exceptions Report lists the WIC checks for contract brand infant formulas when the number of rebate formula cans redeemed could not be derived from the Rebate Redemption Table. The WIC checks for contract brand infant formula included on this report are not included in the Formula Rebate Invoice

1.3 KEY EVENTS

1.3.1 ELECTRONIC QUESTION AND ANSWER PERIOD

The Division will electronically accept questions and inquiries from all potential bidders via the web at <http://ebid.nj.gov/QA.aspx>.

Questions should be directly tied to the RFP and asked in consecutive order, from beginning to end, following the organization of the RFP. Each question should begin by referencing the RFP page number and section number to which it relates.

Bidders must not contact the Using Agency directly, in person, by telephone or by e-mail, concerning this RFP.

The cut-off date for electronic questions and inquiries relating to this RFP is indicated on the cover sheet. Addenda to this RFP, if any, will be posted on the Division's website after the cut-off date. (See RFP Section 1.4.1 for further information.)

1.3.2 SUBMISSION OF PROPOSAL

In order to be considered for award, the proposal must be received by the Procurement Bureau of the Division of Purchase and Property at the appropriate location by the required time. **ANY PROPOSAL NOT RECEIVED ON TIME AT THE LOCATION INDICATED BELOW WILL BE REJECTED. THE DATE AND TIME ARE INDICATED ON THE COVER SHEET. THE LOCATION IS AS FOLLOWS:**

PROPOSAL RECEIVING ROOM – 9TH FLOOR
PROCUREMENT BUREAU
DIVISION OF PURCHASE AND PROPERTY
DEPARTMENT OF THE TREASURY
33 WEST STATE STREET, P.O. BOX 230
TRENTON, NJ 08625-0230

Directions to the Division are available on the web at <http://www.state.nj.us/treasury/purchase/directions.shtml>.

Note: Bidders using U.S. Postal Service regular or express mail services should allow additional time since the U.S. Postal Service does not deliver directly to the Procurement Bureau.

Procedural inquiries concerning this RFP may be directed to RFP.procedures@treas.state.nj.us. This e-mail address also may be used to submit requests to review proposal documents. The State will not respond to substantive questions related to the RFP or any other contract via this e-mail address.

To submit an RFP or contract related question, go to the Current Bidding Opportunities webpage or to <http://eBid.nj.gov/QA.aspx>.

1.3.3 ELECTRONIC BIDDING (EBID)

The Division is pleased to announce its electronic procurement modernization process. This RFP provides to the bidder the opportunity to electronically submit its proposal. A new electronic bidding – “eBid” – application is being made available to vendors to promote an easier, more efficient method to submit proposals.

On-line Electronic Bid Training Sessions:

Online electronic bid training for the eBid process is available on the web at <https://wwwnet1.state.nj.us/treasury/dpp/ebid/>. The bidder is strongly encouraged to utilize the on-line training session before attempting to submit an eBid. It will be the bidder's responsibility to ensure that the eBid has been properly submitted.

1.4 ADDITIONAL INFORMATION

1.4.1 ADDENDA: REVISIONS TO THIS RFP

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be by addendum. Any addendum to this RFP will become part of this RFP and part of any contract awarded as a result of this RFP.

ALL RFP ADDENDA WILL BE ISSUED ON THE DIVISION OF PURCHASE AND PROPERTY WEB SITE. TO ACCESS ADDENDA, THE BIDDER MUST SELECT THE PROPOSAL NUMBER ON THE WEB PAGE AT <http://www.state.nj.us/treasury/purchase/bid/summary/bid.shtml>.

There are no designated dates for release of addenda. Therefore interested bidders should check the Division's "Bidding Opportunities" website on a daily basis from time of RFP issuance through the proposal submission opening.

It is the sole responsibility of the bidder to be knowledgeable of all addenda related to this procurement.

1.4.2 BIDDER RESPONSIBILITY

The bidder assumes sole responsibility for the complete effort required in submitting a proposal in response to this RFP. No special consideration will be given after proposals are opened because of a bidder's failure to be knowledgeable as to all of the requirements of this RFP.

1.4.3 COST LIABILITY

The State assumes no responsibility and bears no liability for costs incurred by a bidder in the preparation and submittal of a proposal in response to this RFP.

1.4.4 CONTENTS OF PROPOSAL

Your proposal can be released to the public during the protest period established pursuant to N.J.A.C. 17:12-3.3, or under the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., (OPRA) or the common law right to know. As provided in N.J.A.C. 17:12-1.2(b):

Subsequent to the proposal submission opening, all information submitted by bidders in response to a bid solicitation is considered public information, notwithstanding any disclaimers to the contrary submitted by a bidder, except as may be exempted from public disclosure by OPRA and the common law.

Any proprietary and/or confidential information in your proposal will be redacted by the State. A bidder may designate specific information as not subject to disclosure pursuant to the exceptions to OPRA found at N.J.S.A. 47:1A-1.1, when the bidder has a good faith legal and or factual basis for such assertion. The State reserves the right to make the determination as to what is proprietary or confidential, and will advise the bidder accordingly. The location in the proposal of any such designation should be clearly stated in a cover letter. **The State will not honor any attempt by a bidder to designate its entire proposal as proprietary, confidential and/or to claim copyright protection for its entire proposal.** In the event of any challenge to the bidder's assertion of confidentiality with which the State does not concur, the bidder shall be solely responsible for defending its designation.

By signing the cover sheet of this RFP, the bidder waives any claims of copyright protection set forth within the manufacturer's price list and/or catalogs. The price lists and/or catalogs must be accessible to State using agencies and cooperative purchasing partners and thus have to be made public to allow all eligible purchasing entities access to the pricing information.

1.4.5 PROPOSAL SUBMISSION

On the date and time proposals are due under the RFP, all information concerning the proposals submitted may be publicly announced and those proposals, except for information appropriately designated as proprietary and/or confidential, shall be available for inspection and copying. In those cases where negotiation is contemplated, only the names and addresses of the bidders submitting proposals will be announced and the contents of the proposals shall remain proprietary and/or confidential until the Notice of Intent to Award is issued by the Director.

1.4.6 PRICE ALTERATION IN HARD COPY PROPOSALS

Proposal prices must be typed or written in ink. Any price change (including "white-outs") must be initialed. Failure to initial price changes shall preclude a contract award from being made to the bidder.

1.4.7 BID/PROPOSAL ERRORS

In accordance with N.J.A.C. 17:12-2.11, "Bid Errors," a bidder may withdraw its proposal as described below.

A bidder may request that its proposal be withdrawn prior to the proposal submission opening. Such request must be made, in writing, to the Supervisor of the Bid Review Unit. If the request is granted, the bidder may submit a revised proposal as long as the proposal is received prior to the announced date and time for proposal submission and at the place specified.

If, after the proposal submission opening but before contract award, a bidder discovers an error in its proposal, the bidder may make a written request to the Supervisor of the Bid Review Unit for authorization to withdraw its proposal from consideration for award. Evidence of the bidder's good faith in making this request shall be used in making the determination. The factors that will be considered are that the mistake is so significant that to enforce the contract resulting from the proposal would be unconscionable; that the mistake relates to a material feature of the contract; that the mistake occurred notwithstanding the bidder's exercise of reasonable care; and that the State will not be significantly prejudiced by granting the withdrawal of the proposal. After the proposal submission opening, while pursuant to the provisions of this section, you may request to withdraw your proposal and the Director may, in her discretion allow you to withdraw it, the Division also may take notice of repeated or unusual requests to withdraw by a bidder and take those prior requests to withdraw into consideration when evaluating the bidder's future bids or proposals.

All proposal withdrawal requests must include the proposal identification number and the final proposal submission date and be sent to the following address:

Department of the Treasury
Procurement Bureau
PO Box 230
33 West State Street – 9th Floor
Trenton, New Jersey 08625-0230
Attention: Supervisor, Bid Review Unit

If during a proposal evaluation process, an obvious pricing error made by a potential contract awardee is found, the Director shall issue written notice to the bidder. The bidder will have five (5) days after receipt of the notice to confirm its pricing. If the vendor fails to respond, its proposal shall be considered withdrawn, and no further consideration shall be given it.

If it is discovered that there is an arithmetic disparity between the unit price and the total extended price, the unit price shall prevail. If there is any other ambiguity in the pricing other than a disparity between the unit price and extended price and the bidder's intention is not readily discernible from other parts of the proposal, the Director may seek clarification from the bidder to ascertain the true intent of the proposal.

1.4.8 JOINT VENTURE

If a joint venture is submitting a proposal, the agreement between the parties relating to such joint venture should be submitted with the joint venture's proposal. Authorized signatories from each party comprising the joint venture must sign the proposal. A separate Ownership Disclosure Form, Disclosure of Investigations and Actions Involving Bidder form, and Affirmative Action Employee Information Report must be supplied for each party to a joint venture. NOTE: Each party comprising the joint venture must also possess a valid Business Registration Certificate ("BRC") issued by the Department of Treasury, Division of Revenue prior to the award of a contract. Refer to Section 4.4.2.1 of this RFP.

1.4.9 RECIPROCITY FOR JURISDICTIONAL BIDDER PREFERENCE

In accordance with N.J.S.A. 52:32-1.4 and N.J.A.C. 17:12-2.13, the State of New Jersey will invoke reciprocal action against an out-of-State bidder whose state or locality maintains a preference practice for its bidders. For states having preference laws, regulations, or practices, New Jersey will use the annual surveys compiled by the Council of State Governments, National Association of State Purchasing Officials, or the National Institute of Governmental Purchasing to invoke reciprocal actions. The State may obtain additional information as it deems appropriate to supplement the stated survey information.

The bidder may submit information related to preference practices enacted for a local entity outside the State of New Jersey. This information may be submitted in writing as part of the proposal response, including name of the locality having the preference practice, as well as identification of the county and state, and should include a copy of the appropriate documentation, i.e., resolution, regulation, law, notice to bidder, etc. It is the responsibility of the bidder to provide documentation with the proposal or submit it to the Director, Division of Purchase and Property within five (5) working days of the public proposal submission date. Written evidence for a specific procurement that is not provided to the Director within five (5) working days of the public proposal submission date will not be considered in the evaluation of that procurement, but will be retained and considered in the evaluation of subsequent procurements.

1.4.10 PROPOSAL ACCEPTANCES AND REJECTIONS

The Director's right to waive minor elements of non-compliance with bid specifications and N.J.A.C. 17:12-2.2 which defines causes for automatic bid rejection, apply to all proposals. In addition, pursuant to N.J.S.A. 52:34-12(a) and N.J.S.A. 52:18A-19 the Director retains the right to reject all bids if it is in the public interest.

2.0 DEFINITIONS

2.1 GENERAL DEFINITIONS

The following definitions will be part of any contract awarded or order placed as result of this RFP.

Addendum – Written clarification or revision to this RFP issued by the Division of Purchase and Property.

Amendment – A change in the scope of work to be performed by the contractor. An amendment is not effective until it is signed by the Director, Division of Purchase and Property.

Bidder – An individual or business entity submitting a proposal in response to this RFP.

Contract – This RFP, any addendum to this RFP, and the bidder's proposal submitted in response to this RFP, as accepted by the State.

Contractor – The bidder awarded a contract resulting from this RFP.

Director – Director, Division of Purchase and Property, Department of the Treasury. By statutory authority, the Director is the chief contracting officer for the State of New Jersey.

Division – The Division of Purchase and Property

Evaluation Committee – A committee established by the Director to review and evaluate proposals submitted in response to this RFP and to recommend a contract award to the Director.

Joint Venture – A business undertaking by two or more entities to share risk and responsibility for a specific project.

May – Denotes that which is permissible, not mandatory.

Project – The undertaking or services that are the subject of this RFP.

Request for Proposal (RFP) – This document which establishes the bidding and contract requirements and solicits proposals to meet the purchase needs of the using Agencies as identified herein.

Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory requirement will result in the rejection of a proposal as materially non-responsive.

Should – Denotes that which is recommended, not mandatory.

Small business – Pursuant to N.J.A.C. 17:13-1.2, "small business" means a business that meets the requirements and definitions of "small business" and has applied for and been approved by the New Jersey Division of Revenue, Small Business Enterprise Unit as (i) independently owned and operated, (ii) incorporated or registered in and has its principal place of business in the State of New Jersey; (iii) has 100 or fewer full-time employees; and has gross revenues falling in one of the three following categories: (A) 0 to \$500,000 (Category I); (B) \$500,001 to \$5,000,000 (Category II); and (C) \$5,000,001 to \$12,000,000, or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher (Category III).

State – State of New Jersey.

State Contract Manager – The individual responsible for the approval of all deliverables, i.e., tasks, sub-tasks or other work elements in the Scope of Work, as set forth in Sections 8.1, 8.1.1 and 8.1.2.

Subcontractor – An entity having an arrangement with a State contractor, where by the State contractor uses the products and/or services of that entity to fulfill some of its obligations under its State contract, while retaining full responsibility for the performance of all of its [the contractor's] obligations under the contract, including payment to the subcontractor. The subcontractor has no legal relationship with the State, only with the contractor.

Transaction - The payment or remuneration to the contractor for services rendered or products provided to the State pursuant to the terms of the contract, including but not limited to the

following: purchase orders, invoices, hourly rates, firm fixed price, commission payments, progress payments and contingency payments.

Using Agency[ies] – The entity[ies] for which the Division has issued this RFP and will enter into a contract.

2.2 CONTRACT SPECIFIC DEFINITIONS

Automated Clearing House (ACH) – Highly reliable and efficient nationwide batch-oriented electronic funds transfer system governed by the NACHA OPERATING RULES which provide for the interbank clearing of electronic payments for participating depository financial institutions. The Federal Reserve and Electronic Payments Network act as ACH Operators, central clearing facilities through which financial institutions transmit or receive ACH entries.

Code of Federal Regulations (CFR) –Compilation of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government of the United States of America. It is sometimes referred to as the "United States Code", "U.S. Code" or "USC".

Contract Brand Infant Formula –All Infant Formula (except Exempt Infant Formulas) that is approved by the State and produced by the manufacturer who is awarded the Infant Formula cost containment contract including all State approved Infant Formula introduced after the contract is awarded (i.e., non-exempt Infant Formulas).

DHSS – New Jersey Department of Health and Senior Services.

Exempt Infant Formula –An Infant Formula that meets the requirements for an Exempt Infant Formula under section 412(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a(h)) and the regulations at 21 CFR parts 106 and 107.

Federal Fiscal Year – Accounting period for the federal budget that begins on October 1 of each calendar year and ends on September 30 of the following calendar year. Federal fiscal years are identified by the year in which they end (e.g., fiscal year 2012 begins in 2011 and ends in 2012).

Food Instrument – A voucher, check or electronic benefits transfer card, coupon or other document used by a Participant to obtain supplemental foods in accordance with WIC regulations.

Infant Formula – A food that meets the definition of an Infant Formula in section (201(z)) of the Federal Food, Drug, and Cosmetic Act (21U.S.C. 321(z)) and that meets the requirements for Infant Formula under section 412 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a) and the regulations at 21 CFR parts 106 and 107 and 7 CFR 246.10(c)(1)(i).

Infant Formula Act 1980 –<http://www.fda.gov/opacom/laws/>

Local Agency WIC Clinic – A private or public non-profit health or human service agency which receives a grant from DHSS to provide WIC services to Participants. Such services include the certification of Participants and issuance of food instruments to Participants.

Net Price per Unit – Defined in 7 CFR Section 246.2 as the difference in between an Infant Formula manufacturer's lowest National Wholesale Price per Unit for a full truckload of Infant Formula and the rebate level or discount offered or provided by the manufacturer under an Infant Formula cost containment contract.

Non-contract Brand Infant Formula – All Infant Formula, including Exempt Infant Formula, that is not covered by an Infant Formula cost containment contract awarded by that State agency.

Participant – Pregnant women, breastfeeding women, postpartum women, infants and children, and breastfed infants who receive supplemental foods or Food Instruments under WIC Services.

Primary Contract Brand Infant Formula –The specific Infant Formula for which a bidder has submitted a bid to the State in response to this RFP and for which a contract is awarded as a result of that bid. This will be designated by WIC Services as the Infant Formula of first choice for issuance.

Single Supplier System – Supply chain where the contractor manufactures iron-fortified milk-based infant Formula in the following forms: liquid ready-to-feed, liquid concentrate and powdered and either manufactures or provides iron-fortified soy-based Infant Formula in the same forms.

Unit – Container, generally a can, which holds liquid concentrate, powdered concentrate and/or ready-to-feed Infant Formula.

WIC Retailer – A retail grocery store authorized by WIC Services to provide authorized supplemental foods including infant formula to Participants through a retail food delivery system.

WIC Retailer Peer Group – Classification of authorized WIC Retailers into groups based on common characteristics or criteria that affect food prices, for the purpose of applying appropriate competitive price criteria to vendors at authorization and limiting payments for food to competitive levels.

WIC Services –A Service Unit within DHSS, Division of Family Health Services that receives grant funding from the USDA's Food and Nutrition Services (FNS) to administer FNS's Special Supplemental Nutrition Program for the Women, Infants and Children (WIC) of the State.

3.0 COMMODITY DESCRIPTION/SCOPE OF WORK

3.1 DUTIES AND OBLIGATIONS - WIC SERVICES

3.1.1 WIC ISSUANCE OF INFANT FORMULA

WIC Services will issue Infant Formula in accordance with §246.10(e)(1) through (e)(3) and (e)(9), of the WIC Program regulations. In addition, WIC Services will, 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.

WIC Services is not obligated to issue all Infant Formulas that meet USDA standards. WIC Services shall require medical documentation from Participants prior to issuing any non-contract brands of Infant Formula including Exempt Infant Formula and WIC medical foods in accordance with 7 CFR Section 246.10(d)(1)(iii). WIC Services may authorize local agencies to issue non-contract brand infant formula that meets federal requirements without medical documentation in order to meet religious eating patterns

3.1.2 DATABASE OF WIC RETAILERS

The State Contract Manager shall provide the contractor with a database of State-authorized WIC Retailers. The database shall be in a format agreed upon between the State Contract Manager and the contractor.

3.1.3 REBATE INVOICE

WIC Services shall provide the contractor with a monthly invoice for rebates of Infant Formula in accordance with Section 5.11 of this RFP (**Attachment 2 –Sample Infant Formula Rebate Report**). In addition to the invoice, the contractor receives the Infant Formula Rebate Report (State Summary section), Report Formula Redemption Summary, and the Formula Rebate Exceptions Report for the invoice month.

3.1.4 NOTIFICATION OF REBATE INFANT FORMULA

WIC Services shall provide an official notification to health care providers, Local WIC Agencies, Participants and WIC Retailers of the Infant Formulas to be provided under the contract resulting from this RFP, along with official notification of any changes to the Infant Formulas being provided.

3.2 DUTIES AND OBLIGATIONS - CONTRACTOR

3.2.1 CONTRACT IMPLEMENTATION AND MONITORING MEETINGS

The contractor shall meet with the State Contract Manager within one (1) week of contract award to develop its implementation plan to provide all contracted Infant Formulas for purchase by Participants through WIC Retailers. The contractor shall also meet via telephone conference call with the State Contract Manager upon request by the State Contract Manager (generally quarterly) to review the contractor's performance.

3.2.2 INFANT FORMULA SPECIFICATIONS

The contractor shall provide Infant Formula to Participants through WIC Retailers. The contractor shall ensure that all Infant Formulas provided for issuance by WIC Services meet the following requirements:

- those specified in PL 96:359 Infant Formula Act 1980; and
- all requirements of an “Infant Formula” as determined by the United States Food and Drug Administration (FDA) <http://www.fda.gov>.

The contractor shall produce the iron-fortified, milk-based Primary Contract Brand Infant Formula, one of the Infant Formula products that it shall provide for issuance by the WIC Services.

WIC Services uses a Single Supplier system, where if the contractor does not manufacture iron-fortified, soy-based infant formula, it shall subcontract with another manufacturer to procure the iron-fortified, soy-based infant formula in ready-to-feed, liquid concentrate and powdered forms for purchase by Participants. In this case the winning bidder must pay WIC Services a rebate on the soy based infant formula supplied by the subcontractor that is issued by WIC Services.

3.2.2.1 PRODUCT SUBSTITUTION/CHANGES IN LABELLING

Should the contractor need to substitute a Contract Brand Infant Formula due to a shortage or mandatory/voluntary recall the contractor's substitute of first order shall be a different physical form of its Contract Brand Infant Formula, e.g. powder versus liquid concentrate.

The contractor shall provide the State Contract Manager with 90 day advance written notification for all product substitutions, changes in formulation of the Infant Formulas, changes in size and changes in labeling.

If the contractor is unable to provide Infant Formula in quantities sufficient to meet the demand of Participants, it must provide the State Contract Manager with an immediate written notification. The contractor shall send all notification letters to the State Contract Manager via United States Postal Service certified mail (return receipt) and e-mail.

In cases where WIC Services must substitute iron-fortified Infant Formula due to a shortage or mandatory/voluntary recall of another manufacturer in place of the contractor's brands, the contractor shall pay rebates equal to the greater between what would have been paid on the corresponding covered Infant Formula or the difference between the lowest national wholesale price per unit for a full truckload of the substitute Infant Formula and the net price per unit specified for the corresponding Infant Formula under the contract resulting from this RFP.

3.2.3 INFANT FORMULA REBATE

The contractor shall provide a rebate for its Primary Contract Brand Infant Formula redeemed by Participants. If the contractor discontinues providing its Primary Contract Brand Infant Formula, the contractor shall provide a rebate for its new Primary Contract Brand Infant Formula that yields the same net cost per ounce as the Primary Contract Brand Infant Formula specified in the contractor's bid proposal.

The contractor shall also provide a rebate on all milk based and soy based Infant Formulas that WIC Services chooses to issue through WIC retailers. This includes new Infant Formulas, with the exception of Exempt Infant Formulas. The rebate percentage (%) discount respective of physical form of the contractor's lowest national wholesale price per Unit, at the time the Infant Formula is approved for issuance by WIC Services, for a full truckload for each respective physical form of the contractor's milk-based iron-fortified Primary Contract Brand Infant Formula, shall apply to corresponding physical forms of all other Infant Formulas that WIC Services issues.

3.2.3.1 DISPERAL OF REBATE

The contractor shall develop, in conjunction with the State Contract Manager, a process for submitting rebate payments to the State through an Automated Clearing House (ACH) funds transfer system.

3.2.4 PRICE ADJUSTMENTS

The contractor shall provide a rebate increase, on a cent-for-cent basis, should it increase its national wholesale price per Unit for a full truckload of Infant Formula. The rebate amount per Unit shall increase effective on the first (1st) day of the month following the date of price increase. Conversely, a decrease in the lowest national wholesale price per Unit for a full truckload of Infant Formula shall result in a cent-for-cent decrease in the rebate per Unit. The rebate decrease will become effective on the first day of the month following the date of the price decrease.

Should the national wholesale price per can (Unit) for a full truckload of Infant Formula rise after the bid proposals are submitted, but before the contract is in effect, the contractor shall provide for the cent-for-cent rebate increase.

3.2.7 CONFIDENTIALITY

In accordance with federal requirements on confidentiality, the contractor shall not have access to actual or imaged copies of Food Instruments, records that may identify individual Participants, or information about a WIC Retailer that identifies, individually, the WIC Retailer, except for the WIC Retailer's name, address, website, email address, store type and WIC Authorization Status.

Should the contractor encounter a situation in which it has access to such information, the contractor shall provide written notification to the State Contract Manager within seven (7) business days of the encounter. The contractor shall send the notification letter to the State Contract Manager via United States Postal Service certified mail.

3.2.8 AUDIT COMPLIANCE

In accordance with 45 CFR, part 74.24 (a) (b) and (d), the contractor shall provide access to all authorized representatives of the State and the USDA to all of its financial records that pertain to service performed and determination of rebates payable under the contract resulting from this RFP. This includes access to appropriate contractor personnel with knowledge of financial records and full access to all additional records which pertain to services performed and determination of rebates payable under the contract permitting such authorized representatives to examine, audit and copy such records at the site at which they are located.

Access and audit capabilities shall include both announced and unannounced inspections. Audits conducted under this provision shall be in accordance with generally accepted auditing standards and within established procedures and guidelines of the reviewing or audit agency(s). This right of access/audit clause applies to financial and other records pertaining to all contracts, all contract change orders, and all contract amendments resulting from this RFP.

The contractor shall provide such access and audit capability for the term of the contract resulting from this RFP plus an additional three (3) years. Should an audit, litigation, or other action involving records be started before the end of contract term plus three (3) years, the records must be retained until all issues arising out of the action are resolved or until the end of the three year period, whichever is the later.

Microfilm or imaged copies of any contract related documents may be substituted by the contractor for originals with the prior written approval of the auditing authority provided that the microfilming or imaging procedures are accepted by the auditing authority as reliable and are supported by an adequate retrieval system.

4.0 PROPOSAL PREPARATION AND SUBMISSION

4.1 GENERAL

The bidder is advised to thoroughly read and follow all instructions contained in this RFP, including the instructions on the RFP's signatory page, in preparing and submitting its proposal.

Use of URLs in a proposal should be kept to a minimum and may not be used to satisfy any material term of an RFP. If a preprinted or other document included as part of the proposal contains a URL, a printed (or if a bid is submitted electronically, electronic) copy of the URL page shall be provided and will be considered as part of the proposal. Additional URLs on the copy of the URL page shall not be considered as part of the proposal unless a copy of those URL pages are also provided.

The forms discussed herein and required for submission of a proposal in response to this RFP are available on the web at <http://www.state.nj.us/treasury/purchase/bid/summary/13x22490.shtml> unless noted otherwise.

4.2 PROPOSAL DELIVERY AND IDENTIFICATION

In order to be considered, a proposal must arrive at the Division in accordance with the instructions on the RFP signatory page accompanying this RFP. Bidders are cautioned to allow adequate delivery time to ensure timely delivery of proposals. **State regulation mandates that late proposals are ineligible for consideration. THE EXTERIOR OF ALL PROPOSAL PACKAGES ARE TO BE LABELED WITH THE PROPOSAL IDENTIFICATION NUMBER AND THE FINAL PROPOSAL SUBMISSION DATE OR RISK NOT BEING RECEIVED IN TIME.**

4.3 EBID VS. NON-EBID SUBMISSION INSTRUCTION

4.3.1 EBID SUBMISSION OF PROPOSAL

If the bidder is submitting an eBid proposal, hard copy submission is "still required" please see Section 4.3.2 for number of complete and exact copies. Instructions detailing how to enroll in and submit an eBid are available on the web at <https://wwwnet1.state.nj.us/treasury/dpp/ebid/>. If the bidder submits both an eBid and a hard copy of the bidder's proposal, the eBid proposal will prevail in the event of a discrepancy between the electronic and paper versions.

When submitting an eBid, do not use any symbols (i.e., #, @, \$, &, *) in the filename.

4.3.2 NON-EBID SUBMISSION

The bidder must submit the following proposal copies:

One (1) complete ORIGINAL proposal, clearly marked as the "ORIGINAL" bid proposal.

Six (6) complete and exact copies clearly marked "COPY".

One (1) unbound, complete and exact copy of the original, clearly marked "COPY".

Three (3) complete and exact ELECTRONIC copies of the original proposal in PDF file format on disc (CD or DVD) to be viewable and "read only" by State evaluators using Adobe Acrobat Reader software.

One (1) complete and exact ELECTRONIC copy of the original proposal in an editable and "writable" PDF file format on disc (CD or DVD) for redaction.

Copies are necessary in the evaluation of the proposal and for record retention purposes. A bidder failing to provide the requested number of copies will be charged the cost incurred by the State in producing the requested number of copies. The bidder should make and retain a copy of its proposal.

4.4 PROPOSAL CONTENT

4.4.1 FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED WITH PROPOSAL

4.4.1.1 SIGNATORY PAGE

The bidder shall complete, including signature of an authorized representative of the bidder, and submit the Signatory Page accompanying this RFP. If the bidder is a limited partnership, the Signatory Page must be signed by a general partner. If the bidder is a joint venture, the Signatory Page must be signed by a principal of each party to the joint venture. Failure to comply will result in rejection of the proposal.

4.4.1.1.1 MACBRIDE PRINCIPLES CERTIFICATION

The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it is in compliance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles. Please refer to Section 2.5 of the State of NJ Standard Terms and Conditions and N.J.S.A. 52:34-12.2 for additional information about the McBride principles.

By signing the RFP Signatory Page, or by entering its PIN if submitting an eBid proposal, the bidder/offeror is automatically certifying that either:

- a. The bidder has no operations in Northern Ireland; or
- b. The bidder has business operations in Northern Ireland and is committed to compliance with the MacBride principles.

A bidder/offeror electing not to certify to the MacBride Principles must nonetheless sign the RFP Signatory Page AND must include, as part of its proposal, a statement indicating its refusal to comply with the provisions of this Act.

4.4.1.1.2 NO SUBCONTRACTOR CERTIFICATION

For a proposal that does NOT include the use of any subcontractors, by signing the RFP Signatory Page, or by entering a PIN if submitting an eBid proposal, the bidder is *automatically* certifying that:

1. In the event the award is granted to bidder's firm and the bidder later determines at any time during the term of the contract to engage subcontractors to provide certain goods and/or services, pursuant to Section 5.8 of the State of NJ Standard Terms and Conditions, the bidder will submit a Subcontractor Utilization Plan form for approval to the Division of Purchase and Property in advance of any such engagement of subcontractors.

2. If the contract is a small business subcontracting set-aside, the bidder certifies that in engaging subcontractors, it will make a good faith effort to achieve the subcontracting set-aside goals, and will attach to the Subcontractor Utilization Plan documentation of such efforts in accordance with N.J.A.C. 17:13-4 et seq.

4.4.1.1.3 NON-COLLUSION

By submitting a proposal, the bidder certifies as follows:

- a. The price(s) and amount of its proposal have been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder.
- b. Neither the price(s) nor the amount of its proposal, and neither the approximate price(s) nor approximate amount of this proposal, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before proposal submission.
- c. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- d. The proposal of the firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- e. The bidder, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four (4) years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

4.4.1.1.4 NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION

The Treasurer has established a business ethics guide to be followed by State contractors in their dealings with the State. The guide provides further information about compliance with Section 2.8 of the State of New Jersey Standard Terms and Conditions. The guide can be found at:

http://www.state.nj.us/treasury/purchase/ethics_guide.shtml

By signing the RFP signatory page, or by entering a pin if submitting an e-bid proposal, the bidder is automatically certifying that it has read the guide, understands its provisions and is in compliance with its provisions.

4.4.1.2 OWNERSHIP DISCLOSURE FORM

Pursuant to N.J.S.A. 52:24.2, in the event the bidder is a corporation, partnership or sole proprietorship, the bidder must complete the attached Ownership Disclosure Form. A current completed Ownership Disclosure Form must be received prior to or accompany the proposal. Failure to submit the form will preclude the award of a contract.

4.4.1.3 DISCLOSURE OF INVESTIGATIONS AND ACTIONS INVOLVING BIDDER

The bidder shall provide a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. The bidder shall use the Disclosure of Investigations and Actions Involving Bidder form for this purpose.

4.4.1.4 SUBCONTRACTOR UTILIZATION PLAN

All bidders intending to use a subcontractor must submit a completed Subcontractor Utilization Plan. Please see the State of New Jersey, Division of Purchase and Property's Subcontractor Forms which includes the Subcontractor Utilization Plan form.

4.4.1.5 SMALL BUSINESS REGISTRATION FOR SET-ASIDE CONTRACTS

Not applicable to this RFP.

4.4.1.6 BID SECURITY

Not applicable to this RFP.

4.4.1.7 PRICING

The bidder must submit its pricing on the State supplied Price Sheet/Schedule and supply any additional pricing information as directed in RFP Section 4.4.5.

4.4.2 FORMS REQUIRED BEFORE CONTRACT AWARD AND THAT SHOULD BE SUBMITTED WITH THE PROPOSAL

4.4.2.1 BUSINESS REGISTRATION

In accordance with N.J.S.A. 52:32-44(b), a bidder and its named subcontractors must have a valid Business Registration Certificate ("BRC") issued by the Department of Treasury, Division of Revenue prior to the award of a contract. To facilitate the proposal evaluation and contract award process, the bidder should submit a copy of its valid BRC and those of any named subcontractors with its proposal. Refer to Section 2.1 of the State of NJ Standard Terms and Conditions.

Any bidder, inclusive of any named subcontractors, who does not have a valid business registration at the time of the proposal submission opening or whose BRC was revoked prior to the submission of the proposal should proceed immediately to register its business or seek re-instatement of a revoked BRC. Bidders are cautioned that it may require a significant amount of time to secure the re-instatement of a revoked BRC. The process can require actions by both the Division of Revenue and the Division of Taxation. For this reason, a bidder's early attention to this requirement is highly recommended. The bidder and its named subcontractors may register with the Division of Revenue, obtain a copy of an existing BRC or obtain information necessary to seek re-instatement of a revoked BRC online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

A bidder otherwise identified by the Division as a responsive and responsible bidder, inclusive of any named subcontractors, but that was not business registered at the time of submission of its proposal must be so registered and in possession of a valid BRC by a deadline to be specified in writing by the Division. A bidder who fails to comply with this requirement by the deadline specified by the Division will be deemed ineligible for contract award. Under any circumstance, the Division will rely upon information available from computerized systems maintained by the State as a basis to verify independently compliance with the requirement for business registration.

A bidder receiving a contract award as a result of this procurement and any subcontractors named by that bidder will be required to maintain a valid business registration with the Division of Revenue for the duration of the executed contract, inclusive of any contract extensions.

4.4.2.2 SERVICES SOURCE DISCLOSURE CERTIFICATION FORM

Pursuant to N.J.S.A. 52:34-13.2, prior to an award of contract, the bidder is required to submit a completed source disclosure form. The bidder's inclusion of the completed Services Source Disclosure Form with the proposal is requested and advised. Refer to RFP Section 7.1.2 for additional information concerning this requirement.

4.4.3 SUBMITTALS

The bidder shall be registered with the Secretary of the United States Health and Human Services in accordance with the Federal Food, Drug, and Cosmetic Act (U.S.C. 321 et seq.) prior to submitting a bid in response to this RFP. Bidders shall also provide evidence that the Infant Formulas it shall provide, if awarded a contract resulting from this RFP, are in compliance with the aforementioned Act and all regulations issued pursuant to the Act.

4.4.3.1 BIDDER EXPERIENCE

The bidder should complete ALL the information requested on the Bidder Data Sheet Form attached to this RFP so that the State is able to make a sound business judgment regarding the bidder's experience and capability to perform the contract to the State's satisfaction.

The State may require a bidder to provide additional information or documentation within five (5) days of request by the State.

4.4.4 FINANCIAL CAPABILITY OF THE BIDDER

Upon request in order to provide the State with the ability to judge the bidder's financial capacity and capabilities to undertake and successfully complete the contract, the bidder should submit certified financial statements which include a balance sheet, income statement and statement of cash flow, and all applicable notes for the most recent calendar year or the bidder's most recent fiscal year. If certified financial statements are not available, the bidder should provide either a reviewed or compiled statement from an independent accountant setting forth the same information required for the certified financial statements, together with a certification from the Chief Executive Officer and the Chief Financial Officer, that the financial statements and other information included in the statements fairly present in all material respects the financial condition, results of operations and cash flows of the bidder as of, and for, the periods presented in the statements. In addition, the bidder should submit a bank reference.

If the information is not supplied with the proposal, the State may still require the bidder to submit it. If the bidder fails to comply with the request within seven (7) business days, the State may deem the proposal non-responsive.

A bidder may designate specific financial information as not subject to disclosure when the bidder has a good faith legal/factual basis for such assertion. A bidder may submit specific financial documents in a separate, sealed package clearly marked "Confidential-Financial Information" along with the proposal.

The State reserves the right to make the determination to accept the assertion and shall so advise the bidder.

4.4.5 PRICE SCHEDULE/SHEET

In order for the State to make sound business judgments regarding products and prices offered in response to this RFP, the bidder must supply, with its bid proposal, the information requested on

the RFP's pricing lines in sufficient detail as to allow the State to determine the firm, fixed bid pricing and the precise product or service being offered, i.e., with no possible misinterpretation of the price or product/service being offered by the bidder. A bidder's failure to provide, within its bid proposal, the information deemed by the State to be essential for product identification or price determination will result in rejection of that bidder's proposal. Notwithstanding the aforementioned material obligation, in order to support the State's decision-making process, the State may require a bidder to provide additional information or documentation that has been deemed not to be material to product identification or price determination, in which case, the bidder shall, within the time limit set forth in the written request, comply with said request. Each bidder is required to hold its prices firm through issuance of contract.

4.4.5.1 DELIVERY COSTS

Unless otherwise noted elsewhere in the RFP, all prices for items in proposals shall be submitted F.O.B. Destination. Proposals submitted other than F.O.B. Destination may not be considered. Regardless of the method of quoting shipments, the contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State's using agency or designated purchaser.

F.O.B. Destination does not cover "spotting" but does include delivery on the receiving platform of the ordering agency at any destination in the State of New Jersey unless otherwise specified. No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at contractor's convenience when a single shipment is ordered. The weights and measures of the State's using agency receiving the shipment shall govern.

4.4.5.2 C.O.D. TERMS

C.O.D. terms are not acceptable as part of a proposal and will be cause for rejection of a proposal.

4.4.5.3 CASH DISCOUNTS

Bidders are encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the lowest proposal.

- a. Discount periods shall be calculated starting from the next business day after the using agency has accepted the goods or services, received a properly signed and executed invoice and, when required, a properly executed performance security, whichever is latest.
- b. The date on the check issued by the State in payment of that invoice shall be deemed the date of the State's response to that invoice.

4.4.6 PRICE SHEETS/SCHEDULE

The bidder must complete the Bid Sheet (**Attachment 1**) at the end of this document. On the Bid Sheet, the bidder shall identify the name of the Infant Formula product bid along with the unit size, physical form, and reconstituted ounces per unit and provide the lowest national wholesale price per unit for a full truckload of iron-fortified, milk-based Infant Formula product bid carried to at least **four (4)** decimal places. The bidder shall also submit bids only on the sizes and forms of Infant Formulas that it provides that are suitable for the routine issuance to the majority of generally healthy, full-term infants.

A bidder shall include with its bid proposal, its national wholesale price list or price catalog that clearly indicates the full truckload tier effective on the date of issuance of this RFP.

If a bidder proposes to subcontract for the provision of iron-fortified, soy-based Infant Formula, the bidder must also include the lowest national wholesale price per unit for a full truckload of all forms of iron-fortified, soy-based Infant Formulas in all forms in effect on the date of issuance of this RFP.

Failure to submit all information required may result in the bid being considered non-responsive. Each bidder is required to hold its prices firm through issuance of contract

5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS

5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS

The contract awarded as a result of this RFP shall consist of this RFP, addenda to this RFP, the contractor's proposal, any best and final offer and the Division's Notice of Award.

Unless specifically stated within this RFP, the Special Contractual Terms and Conditions of the RFP take precedence over the State of NJ Standard Terms and Conditions accompanying this RFP.

In the event of a conflict between the provisions of this RFP, including the Special Contractual Terms and Conditions and the State of NJ Standard Terms and Conditions, and any addendum to this RFP, the addendum shall govern.

In the event of a conflict between the provisions of this RFP, including any addendum to this RFP, and the bidder's proposal, the RFP and/or the addendum shall govern.

5.2 CONTRACT TERM AND EXTENSION OPTION

The term of the contract shall be for a period of **three (3) years**. The anticipated "Contract Effective Date" is provided on the signatory page accompanying this RFP. If delays in the procurement process result in a change to the anticipated Contract Effective Date, the bidder agrees to accept a contract for the full term of the contract.

The contract may be extended for all or part of **two (2)** one-year periods, by the mutual written consent of the contractor and the Director at the same terms, conditions, and pricing at the rates in effect in the last year of the contract or rates more favorable to the State.

5.3 CONTRACT TRANSITION

In the event that a new contract has not been awarded prior to the contract expiration date, as may be extended herein, it shall be incumbent upon the contractor to continue the contract under the same terms and conditions until a new contract can be completely operational. At no time shall this transition period extend more than **120** days beyond the expiration date of the contract.

5.4 CONTRACT AMENDMENT

Any changes or modifications to the terms of the contract shall be valid only when they have been reduced to writing and signed by the contractor and the Director.

5.5 CONTRACTOR RESPONSIBILITIES

The contractor shall have sole responsibility for the complete effort specified in the contract. Payment will be made only to the contractor. The contractor shall have sole responsibility for all payments due any subcontractor.

The contractor is responsible for the professional quality, technical accuracy and timely completion and submission of all deliverables, services or commodities required to be provided under the contract. The contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its deliverables and other services. The approval of deliverables furnished under this contract shall not in any way relieve the contractor of responsibility for the technical adequacy of its work. The review, approval, acceptance or payment for any of the services shall not be construed as a waiver of any rights that the State may have arising out of the contractor's performance of this contract.

5.6 CLAIMS AND REMEDIES

5.6.1 CLAIMS

All claims asserted against the State by the contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

5.6.2 REMEDIES

Nothing in the contract shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.

5.6.3 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL CONTRACT REQUIREMENTS

In the event that the contractor fails to comply with any material contract requirements, the Director may take steps to terminate the contract in accordance with the State of NJ Standard Terms and Conditions, authorize the delivery of contract items by any available means, with the difference between the price paid and the defaulting contractor's price either being deducted from any monies due the defaulting contractor or being an obligation owed the State by the defaulting contractor as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

5.7 ITEMS ORDERED AND DELIVERED

The contract involves items which are necessary for the continuation of ongoing critical State services. Any delay in delivery of these items would disrupt State services and would force the State to immediately seek alternative sources of supply on an emergency basis. Timely delivery is critical to meeting the State's ongoing needs. Refer to Section 6.3.a of the State of NJ Standard Terms and Conditions for additional information.

5.8 MANUFACTURING/PACKAGING REQUIREMENTS

All products must conform in every respect to the standards and regulations established by Federal and New Jersey State laws.

The contractor shall ensure that all Infant Formulas provided for issuance by WIC Services meet the following requirements:

- those specified in PL 96:359 Infant Formula Act 1980; and

- all requirements of an “Infant Formula” as determined by the FDA.

All products shall be manufactured and packaged under modern sanitary conditions in accordance with federal and State law and standard industry practice.

All products are to be packaged in sizes as specified in this RFP and shall be packaged in such a manner to ensure delivery in first class condition and properly marked for identification. All shipments must be comprised of original cartons associated with the commercial industry represented by the actual product contained within each carton. Deliveries containing re-used, re-labeled, re-worked or alternate cartons are subject to rejection by the Using Agency at the contractor's expense.

Use of WIC Service Marks

Winning bidder acknowledges that the WIC Acronym and WIC 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.

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

Winning bidder shall not use the WIC Acronym in advertising in any manner that is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Bidder with the WIC Program, or as to the sponsorship or approval of bidder's goods, services, advertising or commercial activities, including nutritional message(s), by the WIC Program, USDA or New Jersey WIC Services.

Winning bidder 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.”

5.9 ELECTRONIC PAYMENTS

With the award of this contract, the successful vendor(s) will be required to receive their payment(s) electronically. In order to receive your payments via automatic deposit from the State of New Jersey, complete and return the “Credit Authorization Agreement for Automatic Deposits (ACH Credits)” Form with an **original voided check or bank letter**. The form must include ABA number (routing or transit number), bank account number and if the bank account is a checking or savings account. The form and instructions are located on the Office of Management & Budget's website at: <http://www.state.nj.us/treasury/omb/forms/index.shtml>. The completed form along with the required voided check or bank letter should be mailed or faxed to: Department of the Treasury, Office of Management and Budget, PO Box 221, 6TH Floor – Room 674, Trenton, N.J. 08625-0221; fax: (609)-984-5210. To assist in identifying payments, the State offers vendors access to the Vendor Payment Inquiry web application (VPI) which offers check stub information online. Contact the State of New Jersey at AAIUNIT@treas.state.nj.us to request access to this application.

5.10 CONTRACT ACTIVITY REPORT

Contractor(s) must provide, on a calendar quarter basis, to the assigned Division representative, a record of all purchases made under the contract resulting from this RFP. This reporting requirement includes sales to State using agencies, political sub-divisions thereof and, if permitted under the terms of the contract, sales to counties, municipalities, school districts, volunteer fire departments, first aid squads and rescue squads, independent institutions of higher education, state and county colleges and quasi-state agencies. Quasi-state agencies include any agency,

commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member.

This information must be provided in a tabular format such that an analysis can be made to determine the following:

- Contractor's total sales volume to each purchaser under the contract, subtotaled by product, including, if applicable, catalog number and description, price list with appropriate page reference and/or contract discount applied.
- Total dollars paid to subcontractors.

Submission of purchase orders, confirmations, and/or invoices do not fulfill this contract requirement for information. Failure to report this mandated information may be a factor in future award decisions.

Contractors must submit the required information in Microsoft Excel format.

5.11 PROGRAM EFFICIENCY ASSESSMENT

The State Using Agencies shall be charged an assessment equal to one-quarter of one percent (0.25%) of the value of all transactions under this contract. This assessment is authorized by N.J.S.A 52:27B-56 and N.J.A.C 17:12-1.5, to maintain the State's procurement system at a level to meet industry standards of efficiency.

5.11 SCHEDULING AND PAYMENT OF REBATE TO WIC SERVICES

The contractor shall electronically transmit the rebate due the State via an ACH into the designated account for WIC Services on a monthly basis. The payment due date shall be the fifteenth (15th) business day of the second month following the month in which the Infant Formula was purchased, e.g., Units of Infant Formula purchased during October shall be invoiced to the contractor by November fifteenth (15th) and the rebate shall be credited to the State on December fifteenth (15th).

Any exceptions to the payment scheduling shall be at the discretion of the State Contract Manager and the amended payment due date shall be printed on the original monthly invoice. Rebate payment by the contractor shall be due on the amended due date as noted on the original monthly invoice.

WIC Services shall provide the contractor with monthly invoices (**Attachment 3 - NJ WIC Services Invoice**) that specifies the following:

- a) Food Instrument issue month;
- b) Infant Formula type;
- c) Infant Formula manufacturer;
- d) rebate amount;
- e) actual number of Units (cans/bottles, by type and size) purchased during the preceding month by Participants;
- f) invoice amount; and
- g) rebate invoice date.

WIC Services shall provide the monthly invoice to the contractor via facsimile, email and United States Postal Service registered mail return receipt requested, no later than the fifteenth (15th) day of the month following the month in which the Infant Formula was purchased by Participants.

If the monthly invoice is disputed by the contractor, the contractor shall notify the State Contract Manager via United States Postal Service registered mail, return receipt requested, within sixty

(60) calendar days from its receipt of the monthly invoice. Contract disputes shall not be considered by WIC Services if the contractor does not comply with the sixty (60) calendar day dispute period. All disputes should be settled by the close-out date of the Federal Fiscal Year in which the invoice dispute occurs. The contractor shall not withhold rebate payments to the State under any circumstances. Upon resolution of the dispute, WIC Services shall promptly disburse all amounts due to the contractor. Should the dispute be the result of an over-billing, WIC Services shall perform due diligence in validating the error. WIC Services may also request an independent audit of records.

The contractor shall provide advance payment to WIC Services upon written request by the State Contract Manager. The State Contract Manager may make up to two (2) such advance payment requests per contract year. The contractor shall provide the advance payment with thirty (30) calendar days of receipt of the written request. The advance payment amount shall be calculated as the number of Infant Formula units purchased by Participants in the preceding month report multiplied by the rebate amount. When the actual number of Units purchased during the month for which advance payment is requested, is known, WIC Services shall adjust subsequent billings accordingly.

5.12 MODIFICATIONS TO STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS

In accordance with policies of USDA and at the request of USDA, the following sections of the State of New Jersey Standard Terms and Conditions shall not apply to the contract resulting from this RFP:

- a) Section 3.7 Extension of Contract Quasi-State Agencies;
- b) Section 3.8 Extension of Contracts to Political Subdivisions, Volunteer Fire Departments and First Aid Squads, and Independent Institutions of Higher Education –N.J.S.A. 52:25-16.1;
- c) Section 3.9 Extensions of Contracts to County Colleges –N.J.S.A. 18A:64A-60; and
- d) Section 3.10 Extensions of Contracts to State Colleges –N.J.S.A. 18A:64-60.

6.0 PROPOSAL EVALUATION

6.1 RIGHT TO WAIVE

The Director reserves the right to waive minor irregularities. The Director also reserves the right to waive a mandatory requirement provided that:

- (1) the requirement is not mandated by law;
- (2) all of the otherwise responsive proposals failed to meet the mandatory requirement; and
- (3) in the sole discretion of the Director, the failure to comply with the mandatory requirement does not materially affect the procurement or the State's interests associated with the procurement.

6.2 DIRECTOR'S RIGHT OF FINAL PROPOSAL ACCEPTANCE

The Director reserves the right to reject any or all proposals, or to award in whole or in part if deemed to be in the best interest of the State to do so. The Director shall have authority to award orders or contracts to the vendor or vendors best meeting all specifications and conditions in accordance with N.J.S.A. 52:34-12. Tie proposals will be awarded by the Director in accordance with N.J.A.C.17:12-2.10.

6.3 STATE'S RIGHT TO INSPECT BIDDER'S FACILITIES

The State reserves the right to inspect the bidder's establishment before making an award, for the purposes of ascertaining whether the bidder has the necessary facilities for performing the contract.

The State may also consult with clients of the bidder during the evaluation of bids. Such consultation is intended to assist the State in making a contract award which is most advantageous to the State.

6.4 STATE'S RIGHT TO REQUEST FURTHER INFORMATION

The Director reserves the right to request all information which may assist him or her in making a contract award, including factors necessary to evaluate the bidder's financial capabilities to perform the contract. Further, the Director reserves the right to request a bidder to explain, in detail, how the proposal price was determined.

6.5 ORAL PRESENTATION AND/OR CLARIFICATION OF PROPOSAL

After the submission of proposals, unless requested by the State as noted below, vendor contact with the State is still not permitted.

After the proposals are reviewed, one, some or all of the bidders may be asked to clarify certain aspects of their proposals. A request for clarification may be made in order to resolve minor ambiguities, irregularities, informalities or clerical errors. Clarifications cannot correct any deficiencies or material omissions or revise or modify a proposal, except to the extent that correction of apparent clerical mistakes results in a modification.

The bidder may be required to give an oral presentation to the State concerning its proposal.

Bidders may not attend the oral presentations of their competitors.

It is within the State's discretion whether to require the bidder to give an oral presentation or require the bidder to submit written responses to questions regarding its proposal. Action by the State in this regard should not be construed to imply acceptance or rejection of a proposal. The Division will be the sole point of contact regarding any request for an oral presentation or clarification.

6.6 EVALUATION CRITERIA

The following criteria will be used to evaluate all bid proposals that meet the requirements of this RFP:

- Contract will be awarded to the responsive and responsible bidder offering the lowest total monthly net price for a standardized number of units of infant formula or the highest monthly rebate. Bidders should refer to the definition of Net Price per Unit provided in Section 2.2 of the RFP and the **Infant Formula Rebate –Bid Sheet** provided as **Attachment 1**.
- Technical specifications will be evaluated on pass/fail criteria.

6.6.1 PROPOSAL DISCREPANCIES

In evaluating proposals, discrepancies between words and figures will be resolved in favor of words. Discrepancies between unit prices and totals of unit prices will be resolved in favor of

unit prices. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated total of multiplied unit prices and units of work and the actual total will be resolved in favor of the actual total. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum of the column of figures.

6.6.2 EVALUATION OF THE PROPOSALS

After the Evaluation Committee completes its evaluation, it recommends to the Director for award the responsible bidder(s) whose proposal, conforming to this RFP, is most advantageous to the State, price and other factors considered. The Evaluation Committee considers and assesses price, technical criteria, and other factors during the evaluation process and makes a recommendation to the Director. The Director may accept, reject or modify the recommendation of the Evaluation Committee. Whether or not there has been a negotiation process as outlined in Section 6.7 below, the Director reserves the right to negotiate price reductions with the selected bidder.

6.7 NEGOTIATION AND BEST AND FINAL OFFER (BAFO)

After evaluating proposals, the Division may enter into negotiations with one bidder or multiple bidders. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost. Multiple rounds of negotiations may be conducted with one bidder or multiple bidders. Negotiations will be structured by the Division to safeguard information and ensure that all bidders are treated fairly.

Similarly, the Division may invite one bidder or multiple bidders to submit a best and final offer (BAFO). Said invitation will establish the time and place for submission of the BAFO. Any BAFO that is not equal to or lower in price than the pricing offered in the bidder's original proposal will be rejected as non-responsive and the State will revert to consideration and evaluation of the bidder's original pricing.

If required, after review of the BAFO(s), clarification may be sought from the bidder(s). The Division may conduct more than one round of negotiation and/or BAFO in order to attain the best value for the State.

After evaluation of proposals and as applicable, negotiation(s) and/or BAFO(s), the Division will recommend, to the Director, the responsible bidder(s) whose proposal(s), conforming to the RFP, is/are most advantageous to the State, price and other factors considered. The Director may accept, reject or modify the recommendation of the Division. The Director may initiate additional negotiation or BAFO procedures with the selected bidder(s).

Negotiations will be conducted only in those circumstances where they are deemed by the Division or Director to be in the State's best interests and to maximize the State's ability to get the best value. Therefore, the bidder is advised to submit its best technical and price proposal in response to this RFP since the State may, after evaluation, make a contract award based on the content of the initial submission, without further negotiation and/or BAFO with any bidder.

All contacts, records of initial evaluations, any correspondence with bidders related to any request for clarification, negotiation or BAFO, any revised technical and/or price proposals, the Evaluation Committee Report and the Award Recommendation, will remain confidential until a Notice of Intent to Award a contract is issued.

NOTE: If the Division contemplates negotiation, proposal prices will not be publicly read at the proposal submission opening. Only the name and address of each bidder will be publicly announced at the proposal submission opening.

6.8 COMPLAINTS

A bidder with a history of performance problems as demonstrated by formal complaints and/or contract cancellations for cause pursuant to Section 5.7.b of the State of NJ Standard Terms and Conditions accompanying this RFP may be bypassed for an award issued as a result of this RFP.

7.0 CONTRACT AWARD

7.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD

7.1.1 REQUIREMENTS OF PUBLIC LAW 2005, CHAPTER 51, N.J.S.A. 19:44A-20.13 - N.J.S.A. 19:44A-20.25 (FORMERLY EXECUTIVE ORDER 134) AND EXECUTIVE ORDER NO. 117 (2008)

a) The State shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, to any State, county, municipal political party committee, or to any legislative leadership committee during certain specified time periods

b) Prior to awarding any contract or agreement to any Business Entity, the Business Entity proposed as the intended awardee of the contract shall submit the Certification and Disclosure form, certifying that no contributions prohibited by either Chapter 51 or Executive Order No. 117 have been made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C.527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the means of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The required form and instructions, available for review on the Division's website at <http://www.state.nj.us/treasury/purchase/forms.shtml#eo134>, shall be provided to the intended awardee for completion and submission to the Division with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended awardee shall submit to the Division, in care of the Division Procurement Specialist, the Certification and Disclosure(s) within five (5) business days of the State's request. Failure to submit the required forms will preclude award of a contract under this RFP, as well as future contract opportunities.

c) Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Division's website at <http://www.state.nj.us/treasury/purchase/forms.shtml#eo134>, shall be provided to the intended awardee with the Notice of Intent to Award.

7.1.2 SOURCE DISCLOSURE REQUIREMENTS

Not applicable to this RFP.

7.1.3 AFFIRMATIVE ACTION

The intended awardee must submit a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Intended awardee(s) not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval must complete the Affirmative Action Employee Information Report (AA-302) located on the web at http://www.nj.gov/treasury/purchase/forms/AA_%20Supplement.pdf.

7.1.4 BUSINESS REGISTRATION

Not applicable to this RFP.

7.2 FINAL CONTRACT AWARD

Contract award[s] shall be made with reasonable promptness by written notice to that responsible bidder(s), whose proposal(s), conforming to this RFP, is(are) most advantageous to the State, price, and other factors considered. Any or all proposals may be rejected when the State Treasurer or the Director determines that it is in the public interest to do so.

7.3 INSURANCE CERTIFICATES

The contractor shall provide the State with current certificates of insurance for all coverages required by the terms of this contract, naming the State as an Additional Insured. Refer to Section 4.2 of the State of NJ Standard Terms and Conditions accompanying this RFP.

7.4 PERFORMANCE SECURITY

Not applicable to this RFP.

8.0 CONTRACT ADMINISTRATION

8.1 CONTRACT MANAGER

The State Contract Manager is the State employee responsible for the overall management and administration of the contract.

The State Contract Manager for this project will be identified at the time of execution of contract. At that time, the contractor will be provided with the State Contract Manager's name, department, division, agency, address, telephone number, fax phone number, and e-mail address.

8.1.1 STATE CONTRACT MANAGER RESPONSIBILITIES

For an agency contract where only one State office uses the contract, the State Contract Manager will be responsible for engaging the contractor, assuring that Purchase Orders are issued to the contractor, directing the contractor to perform the work of the contract, approving the deliverables and approving payment vouchers. The State Contract Manager is the person that the contractor will contact **after the contract is executed** for answers to any questions and concerns about any aspect of the contract. The State Contract Manager is responsible for coordinating the use of the Contract and resolving minor disputes between the contractor and any component part of the State Contract Manager's Department.

If the contract has multiple users, then the State Contract Manager shall be the central coordinator of the use of the contract for all Using Agencies, while other State employees engage and pay the contractor. All persons and agencies that use the contract must notify and coordinate the use of the contract with the State Contract Manager.

8.1.2 COORDINATION WITH THE STATE CONTRACT MANAGER

Any contract user that is unable to resolve disputes with a contractor shall refer those disputes to the State Contract Manager for resolution. Any questions related to performance of the work of the contract by contract users shall be directed to the State Contract Manager. The contractor

may contact the State Contract Manager if the contractor cannot resolve a dispute with contract users.