

TITLE PAGE  
FLORIDA DEPARTMENT OF HEALTH  
DOH19-008



4.2019

INVITATION TO BID (ITB)  
FOR  
WIC SOY-BASED FORMULA REBATE

**Respondent Name:** \_\_\_\_\_

**Respondent Mailing Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Fax Number:** \_\_\_\_\_

**E-Mail Address:** \_\_\_\_\_

**Federal Employer Identification Number (FEID):** \_\_\_\_\_

BY AFFIXING MY SIGNATURE ON THIS BID TITLE PAGE, I HEREBY STATE THAT I HAVE READ THE ENTIRE ITB TERMS, CONDITIONS, PROVISIONS AND SPECIFICATIONS AND ALL ITS ATTACHMENTS, INCLUDING THE REFERENCED PUR 1000 AND PUR 1001.

I hereby certify that my company, its employees, and its principals agree to abide to all of the terms, conditions, provisions and specifications during the competitive solicitation and any resulting Contract.

**Signature of Authorized Representative:** \_\_\_\_\_

**Printed (Typed) Name and Title:** \_\_\_\_\_

\*An authorized representative is an officer of the respondent's organization who has legal authority to bind the organization to the provisions of this Bid. This usually is the President, Chairman of the Board, or owner of the entity. Documentation establishing delegated authority must be included with the Bid if signed by someone other than the authorized representative.

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## **SECTION 1.0 INTRODUCTORY MATERIALS**

### **1.1 Statement of Purpose**

The purpose of this Invitation to Bid (ITB) is to select a Provider to provide monetary rebates to the Florida Department of Health's (Department), Bureau of WIC Program Services (State WIC Agency), following a participant's purchase of infant formula from an authorized retail grocer.

#### **1.1.1 Legal Authority**

Chapter 287, and section 383.011, Florida Statutes, 7 Part 246 and 21 Part 107, Code of Federal Regulations (CFR) and Title 21, section 350a United States Code.

### **1.2 Background**

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is a federally funded program carried out pursuant to the provisions of the Child Nutrition Act in conjunction with federal and State of Florida laws, regulations, and policies. The program is funded through the Food and Nutrition Services of the United States Department of Agriculture (USDA) and the State WIC Agency.

Participants receive a monthly benefit from the Department that specifies the brand and physical form of infant formula being issued to them. The primary contract brand infant formula will be the soy-based infant formula of first choice, and other soy-based infant formulas may be issued as alternatives. Except for the issuance of the primary contract brand infant formula, the State provides no guarantee of the quantity, physical form, or physical sizes that will be used under the Contract.

Participants redeem their monthly benefit at their choice of approximately 2,000 participating retail grocers around the State. These stores accept EBT cards as payment for WIC foods. Retailers are paid their current shelf price for infant formula. After the participants have used their benefit, the Department's data system calculates the number of cans of soy-based infant formula purchased by brand and physical form. This total is submitted to the Provider with an invoice, who then issues a rebate to the Department. Rebate funds are used to offset the State's federal grant for food and are subsequently reused to provide benefits to additional participants.

WIC services are currently provided by local WIC agencies located in the Department's county health departments. Currently, these agencies issue benefits to approximately 450,000 participants.

In May of 2019, approximately 107,854 infants participated in the State's WIC program. Of these, 20,673 did not receive contract or non-contract infant brand formula but did receive exempt infant formula, WIC-eligible nutritionals or are breastfed exclusively. Subtotals of the 20,673 included 7,958 infants who received an exempt infant formula or WIC-eligible nutritional and 12,715 who were breastfed exclusively and did not receive formula from the program.

It is important to note that the "Estimated Average Number of Infants" (both fully formula fed and partially breastfed) used in calculating the lowest net infant formula cost to the WIC program are only estimates. The total monthly units and calculated net costs determined from those estimates will be used only for bid evaluation. They are not intended to be accurate projections for any other purpose. Rebates billed during the term of the contract resulting from this solicitation will be based on actual quantities of contract brand infant formula purchased at approved retail grocers by participants.

The State's WIC Program will issue infant formula in accordance with the Code of Federal Regulations 7 CFR 246.10(e)(1) through (e)(3) and (e)(9) of the WIC Program Federal Regulations. In addition, the State WIC Program will, if necessary, provide the full nutritional benefit (FNB), using the methodology outlined in 7 CFR 246.10(h) in the WIC Program Federal Regulations when issuing infant formula.

This contract does not apply to exempt infant formulas and WIC-eligible nutritionals. These products are only issued to infants with certain medical conditions and they require a medical provider's prescription. In addition, other infants with valid medical needs may receive soy-based infant formulas that are not contract brands if prescribed by a medical provider. This contract does not apply to milk-based infant formulas, which will be offered as alternatives at the option of physicians, nutritionists and clients.

The Department and the WIC Program are fully committed to breastfeeding as the recommended feeding choice for infants. The WIC Program actively promotes breastfeeding, conducts initiatives to encourage breastfeeding, and shall continue to do so throughout any infant formula contract period.

## **1.2 Scope of Services**

A detailed **scope of services** for this solicitation is provided as **Scope of Services (Attachment A)**, in this ITB.

## **1.3 Incorporation by Reference**

The PUR 1001, General Instructions to Respondents (PUR 1001), and PUR 1000, General Contract Requirements (PUR 1000), are hereby incorporated by reference to the terms of this solicitation. Refer to **Sections 3.1** and **4.1** of this ITB for further detail.

## **1.4 Definitions**

**Bid:** The complete written response of the Respondent to this ITB, including properly completed forms, supporting documents, and attachments.

**Business Days:** Monday through Friday, excluding state holidays.

**Business Hours:** 8:00 a.m. to 5:00 p.m., Eastern Time on all business days.

**Calendar Days:** All days, including weekends and holidays.

**Certified Minority Business Enterprise:** A business certified by any local governmental jurisdiction or organization as a certified minority business enterprise for purposes of doing business with State government and the Department of Management Services, Office of Supplier Diversity determines that the State's minority business enterprise certification criteria were applied in the local certification process as specified in section 287.0943, Florida Statutes.

**Contract:** The formal agreement or Order that will be awarded to the successful Provider under this ITB, unless indicated otherwise.

**Contract Brand Infant Formulas:** As defined in 7 Part 246.2, CFR, is all soy-based infant formulas (except exempt infant formulas) produced by the Provider under the terms of the Contract.

**Cost containment:** As defined in 7 Part 246.2, CFR, is a competitive bidding, rebate, direct distribution, or home delivery system implemented by a State WIC agency as described in its approved State Plan of operation and administration.

**Department:** The Department of Health; may be used interchangeably with DOH.

**Exempt infant formula:** As defined in 7 Part 246.2, CFR, is infant formula that meets the requirements for an exempt infant formula under Section 412(h) of the Federal Food, Drug, and Cosmetic Act as amended (21 U.S.C. 350a(h)) and the regulations at 21 CFR parts 106 and 107 and is designed for enteral digestion via an oral or tube feeding as specified in 7 CFR 246.10(e)(12).

**Fiscal Year:** The federal fiscal year which begins on October 1<sup>st</sup> of a given year and ends on September 30<sup>th</sup> of the subsequent year.

**Infant Formula:** As defined in 7 Part 246.2, CFR, is food that meets the definition of an infant formula in section 201(z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)) and that meets the requirements for an 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. It must be designed for enteral digestion via an oral or tube feeding and provide at least 10 mg of iron per liter (at least 1.5 mg iron/100 kilocalories) at standard dilution. It must provide at least 67 kilocalories per 100 milliliters (approximately 20 kilocalories per fluid ounce) at standard dilution as specified in 7 CFR 246.10(e)(12). It must not require the addition of any ingredients other than water prior to being served in a liquid state.

**Local WIC Agencies:** The agencies that provide direct services to clients of the WIC program in Florida.

**Minor Irregularity:** As used in the context of this solicitation, indicates a variation from the ITB terms and conditions which does not affect the price of the Bid, or give the Respondent an advantage or benefit not enjoyed by other Respondents, or does not adversely impact the interests of the Department.

**Non-Contract Brand Infant Formulas:** As defined in 7 Part 246.2, CFR, is all infant formulas, including exempt infant formulas, that are not covered by the contract.

**Participants:** Pregnant, postpartum, or breastfeeding women, or infants or children who have been certified as eligible to receive supplemental foods and/or other benefits from the WIC program.

**Physical Form:** Refers to either Liquid Concentrate, Powdered or Ready-to-Feed Infant Formula.

**Primary Contract Infant Formula:** As defined in 7 Part 246.2, CFR, is the specific soy-based infant formula for which the Respondent submits a Bid for in response to this solicitation and for which a Contract is awarded as a result of that bid. Primary contract brand infant formula includes all physical forms of a soy-based infant formula that meets the requirements under Section 246.10(e)(1)(iii) & (2)(iii) of the WIC Program Federal Regulations and is suitable for the routine issuance to the majority of generally healthy, full term infants. Per Section 246.16a(c)(8), the primary contract brand infant formula(s) will be the soy-based infant formula of first choice for issuance to infants with all other soy-based infant formulas issued as an alternative.

**Provider:** The successful Respondent awarded a contract by the Department in accordance with the terms of this ITB.

**Rebate:** As defined in 7 Part 246.2, CFR, is the amount of money refunded to the Department from the Provider as a result of the purchase of specified infant formulas by participants from an authorized retail grocer.

**Respondent:** The business entity that submits a Bid.

**State:** State of Florida.

**Vendor Bid System (VBS):** Refers to the State of Florida's internet-based vendor information system, which is available at:

[http://myflorida.com/apps/vbs/vbs\\_main\\_menu](http://myflorida.com/apps/vbs/vbs_main_menu).

**WIC-eligible nutritionals:** As defined in 7 Part 246.2, CFR, are certain enteral products that are specifically formulated to provide nutritional support for individuals with a qualifying condition, when the use of conventional foods is precluded, restricted or inadequate. Such WIC-eligible nutritionals must serve the purpose of a food, meal or diet (may be nutritionally complete or incomplete) and provide a source of calories and one or more nutrients; be designed for enteral digestion via an oral or tube feeding; and may not be conventional food, drug, flavoring or enzyme. This defined term includes many, but not all, products that meet the definition of medical food in Section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360ee(b)(3)).

## SECTION 2.0 PROCUREMENT PROCESS, SCHEDULE & CONSTRAINTS

### 2.1 Procurement Officer

The Procurement Officer assigned to this solicitation is:

Florida Department of Health  
Attention: **Sonja German-Jones**  
4052 Bald Cypress Way, Bin B07  
Tallahassee, FL 32399-1749

Email: [Sonja.german@flhealth.gov](mailto:Sonja.german@flhealth.gov)

\*\*\*\*\*ALL EMAILS TO THE PROCUREMENT OFFICER MUST CONTAIN THE SOLICITATION NUMBER IN THE SUBJECT LINE OF THE EMAIL\*\*\*\*\*

### 2.2 Restrictions on Communications

Pursuant to section 287.057(23), Florida Statutes, Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the Procurement Officer listed in Section 2.1., above. Violation of this provision may be grounds for rejecting a Bid.

### 2.3 Term

It is anticipated that the Contract resulting from this ITB will be for three years, from February 1, 2020 through January 31, 2023 or the Contract execution date whichever is later, subject to renewal as identified in **Section 2.4**. The Contract resulting from this ITB is contingent upon availability of funds. In accordance with WIC Policy Memo #94-6, the Provider's Contract terms will not be renegotiated with respect to the rebate amounts specified in the WIC Formula Rebate Bid Price Sheet submitted for this Contract and any extension or renewal period(s), or the method by which the rebates will be calculated.

### 2.4 Renewal

The Contract resulting from this solicitation may be renewed. Renewals may be made on a yearly basis for no more than three years beyond the initial contract, or for the term of the original contract, whichever is longer. Renewals must be in writing, subject to the same terms and conditions set forth in the initial Contract and any written amendments signed by the parties. Renewals are contingent upon satisfactory fiscal and programmatic performance evaluations as determined by the Department and are subject to the availability of funds. In the event of a renewal, Provider's WIC Infant Formula Rebate Bid Price Sheet is binding and non-negotiable.

2.5 Timeline

<u>EVENT</u>	<u>DUE DATE</u>	<u>LOCATION</u>
ITB Advertised / Released	August 2, 2019	<b>Posted to the Vendor Bid System at:</b> <a href="http://vbs.dms.state.fl.us/vbs/main_menu">http://vbs.dms.state.fl.us/vbs/main_menu</a>
Non-Mandatory Pre-Bid Conference	August 13, 2019  @ 1:00 pm, Eastern Time (ET)	Florida Department of Health Central Purchasing Office  <b>Attention: Sonja German-Jones</b> Suite 310L 4052 Bald Cypress Way Tallahassee, FL 32399-1749 <b>Or</b> <b>Conference Call Information:</b> Number - 1 (888) 585-9008 (Access Code) 383-707-439 "My Conference Room"
Questions Submitted in Writing	<b>Must be received</b>  <b>PRIOR TO:</b>  August 20, 2019 @ 4:00 pm (ET)	<b>Submit to:</b> Florida Department of Health Central Purchasing Office <b>Attention:</b> Sonja German-Jones Suite 310 4052 Bald Cypress Way, Bin B07 Tallahassee, FL 32399-1749 E-mail: <a href="mailto:Sonja.german@flhealth.gov">Sonja.german@flhealth.gov</a>
Answers to Questions (Anticipated Date)	August 22nd, 2019	<b>Posted to Vendor Bid System at:</b> <a href="http://vbs.dms.state.fl.us/vbs/main_menu">http://vbs.dms.state.fl.us/vbs/main_menu</a>
<b>Sealed Bids Due and Opened</b>	Must be received prior to: September 10, 2019 @ 12:30 pm (ET)	<b>PUBLIC OPENING</b> <b>Submit to:</b> Florida Department of Health Central Purchasing Office <b>Attention:</b> Sonja German-Jones Suite 310 4052 Bald Cypress Way, Bin B07 Tallahassee, FL 32399-1749 WIC Infant Formula Rebate Bid Price Sheet (Attachment B) will be read aloud.
Anticipated Posting of Intent to Award	September 16, 2019	<b>Posted to the Vendor Bid System at:</b> <a href="http://vbs.dms.state.fl.us/vbs/main_menu">http://vbs.dms.state.fl.us/vbs/main_menu</a>



## 2.6 **Addenda**

If the Department finds it necessary to supplement, modify, or interpret any portion of the solicitation during the procurement process, a written addendum will be posted on the VBS. If the addendum alters the scope or specifications of the solicitation, the Respondent will be required to sign the addendum acknowledging the changes and return it with the bid submittal. It is the responsibility of the Respondent to be aware of any addenda that might affect this ITB or their Bid.

## 2.7 **Pre-Bid Conference**

A non-mandatory pre-bid conference will be held at the time and location indicated in **Section 2.5**. Respondents may ask oral questions and seek clarification during the pre-bid conference.

The Department may orally answer any questions at the pre-bid conference; however, only the Department's written answers submitted in response to questions received from Respondents by the date listed in **Section 2.5** are binding.

## 2.8 **Questions**

***This provision takes precedence over General Instruction #5 in PUR1001.***

Questions related to this solicitation must be received, in writing (either via United States Postal Service, courier, e-mail, or hand-delivery), by the Procurement Officer identified in **Section 2.1**, within the time indicated in **Section 2.5**. Verbal questions or those submitted after the time specified in **Section 2.5** will not be addressed.

The Department's written answers to questions submitted in accordance with **Section 2.5** will be posted on the VBS.

## 2.9 **Basis of Award**

A single award will be made to the responsive, responsible Respondent offering the lowest total monthly net cost for infant formula (subject to paragraph 246.16a(c)(5)(ii) of the CFR) for a standardized number of units of infant formula requested in this ITB.

## 2.10 **Identical Scoring Outcomes**

In the event that the Department's evaluation results in identical scoring outcomes between two or more Respondents, the Department will require the affected Respondents to complete the **Identical Tie Certification, Attachment G**, form certifying their statutory qualifications for a preference in order to break the tie.

## 2.11 **Modifications and Withdrawal**

A Respondent may modify or withdraw its Bid at any time prior to the submittal deadline, as specified in **Section 2.5**, by submitting a request to the Procurement Officer. Requests for modification or withdrawal of a submitted Bid must be in writing and signed by an authorized signatory of the Respondent. Upon receipt and acceptance of such a request, the entire Bid will be returned to the Respondent and will not be considered unless resubmitted by the Bid due date and time.

## 2.12 **Clarification Process**

The Department may request clarification from the Respondent to resolve ambiguities or questioning information (i.e. minor irregularities) presented in its Bid. Clarifications may be requested throughout this procurement process. The Respondent's answers to requested clarifications must be in writing and must address only the information requested. The Respondent's answers to requested clarifications must be submitted to the Department within the time specified by the Department

### **2.13 Federal Excluded Parties List**

In order to comply with Federal grant requirements, and determining Provider responsibility in accordance with sections 287.057(1), (2) and (3), Florida Statutes, and Florida Administrative Code, Rule 60A-1.006(1), a Respondent or its subcontractor(s) that, at the time of submitting a Bid for a new Contract or renewal of an existing Contract is on the Federal Excluded Parties List, is ineligible for, may not submit a Bid for, enter into, or renew a Contract with an agency for goods or services, if any federal funds are being utilized.

### **2.14 Contract Formation**

The Department will enter into a Contract with the awarded Provider pursuant to **Section 2.9, Basis of Award**. The Contract will incorporate the terms of the **Scope of Services (Attachment A)**, and the awarded Provider's **WIC Infant Formula Rebate Bid Price Sheet (Attachment B)**.

## SECTION 3.0 INSTRUCTIONS FOR BID SUBMITTAL

### 3.1 General Instructions to Respondents (PUR 1001)

The General Instructions to Respondents (PUR 1001) is incorporated by reference in this solicitation. This document should not be returned with the Bid. The PUR 1001 is located at <http://dms.myflorida.com/content/download/2934/11780>.

**The terms of this solicitation control over any conflicting terms of the PUR1001.**

### 3.2 Instructions for Submittal

3.2.1. Respondents must complete, sign, and return the "Title Page" with their Bid submittal. **(Mandatory Requirement)**

3.2.2 Respondents must complete and return the WIC Infant Formula Rebate Bid Price Sheet **(Attachment B)** with their Bid submittal. **(Mandatory Requirement)**

3.2.3 Respondents must submit all technical and pricing data in the formats specified in the ITB.

3.2.4. Respondents must submit one original paper copy of their Bid and one original copy on a single USB storage device, or CD, viewable in Adobe Acrobat Reader (PDF). The electronic copy submitted must contain the entire Bid as the submitted original copy, including all supporting and signed documents. Refer to **Section 3.4** for information on redacting confidential information, if applicable.

3.2.5. Bids must be sent by United States Postal Service, courier, or hand delivered to the location indicated in **Section 2.5., Timeline. (Mandatory Requirement)**.

3.2.6 Bids submitted via electronic mail (email) or facsimile will **not** be considered.

3.2.7. Bids must be submitted in a sealed envelope or sealed package with the solicitation number and the date and time of the Bid opening clearly marked on the outside.

3.2.8. The Department is not responsible for improperly marked Bids.

3.2.9 It is the Respondent's responsibility to ensure its Bid is submitted at the proper place and time indicated in **Section 2.5., Timeline.**

3.2.10 Bids must be received by the time specified in **Section 2.5., Timeline.**

3.2.11. The Department's clocks will provide the official time for Bid receipt.

3.2.12. Materials submitted will become the property of the State and accordingly, the State reserves the right to use any concepts or ideas contained in the response.

### 3.3 Cost of Preparation

Neither the Department nor the State is liable for any costs incurred by a Respondent in responding to this solicitation.

### **3.4 Public Records and Trade Secrets**

Notwithstanding any provisions to the contrary, public records must be made available pursuant to the provisions of the Public Records Act. If Respondent considers any portion of their Bid to this solicitation to be confidential, exempt, trade secret, or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution, or any other authority, Respondent must segregate and clearly mark the document(s) as "CONFIDENTIAL".

Simultaneously, Respondent will provide the Department with a separate redacted paper and electronic copy of their Bid and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation for such exemption. This redacted copy must contain the solicitation name, number, and the name of Respondent on the cover, and must be clearly titled "REDACTED COPY".

The redacted copy must be provided to the Department at the same time Respondent submits its Bid and must only exclude or obliterate those exact portions which are claimed confidential, proprietary, or trade secret. Respondent will be responsible for defending its determination that the redacted portions of their Bid are confidential, trade secret, or otherwise not subject to disclosure. Further, Respondent must protect, defend, and indemnify the Department for all claims arising from or relating to the determination that the redacted portions of their Bid are confidential, proprietary, trade secret, or otherwise not subject to disclosure. If Respondent fails to submit a redacted copy with their Bid, the Department is authorized to produce the entire documents, data, or records submitted by Respondent in answer to a public records request for these records.

### **3.5 WIC Infant Formula Rebate Bid-Price Sheet (Mandatory Requirement)**

Respondents must fill out the Bid Price Sheet (**Attachment B**), as indicated, and return it with their Bid. Complete Attachment B as described in Exhibit A, Price Sheet Instructions. Page One and Two are to be used as follows:

- 3.5.1 Page One of the Bid Price Sheet: Complete, sign, and submit this page as specified. The net cost to the Florida WIC Program for each product physical form and the percent rebate for each product physical form will be calculated automatically.
- 3.5.2 Page Two of the Bid Price Sheet: Upon completion, it automatically calculates the total monthly units by multiplying the number of reconstituted ounces of each physical form issued by the estimated number of infants either partially breastfed or fully infant formula fed, in each age category (0 – 3 months, 4 – 5 months and 6 – 11 months) to determine the total estimated monthly units to be purchased. The number for partially breastfed indicates partially (mostly) breastfed infants. The number for fully infant formula fed includes fully formula fed infants and partially (minimally) breastfed infants. The net cost for each product unit will be multiplied by the total estimated monthly units to determine the total monthly net cost. The unit prices to be used in these calculations must be the lowest national wholesale full truckload price per unit for each physical form of infant formula at the time of the bid opening. The sum of the total net cost of each product bid will be totaled to determine the total net cost per month for each respondent. The contract will be awarded to the Responsive, Responsible Respondent offering the rebates that yield the lowest projected monthly costs for soy-based infant formula.

### **3.6 Prior Experience and Contract Dispute Reporting Form**

Respondent must provide documentation of prior experience related to the scope of this Bid and identify all contract disputes the Respondent (including its affiliates, subcontractors, agents, etc.) has had with such customer(s) within the last five years related to contracts under which the Respondent provided(s) commodities or services in the United States on an organizational or enterprise level that may impact or has impacted the Respondent's ability to provide the services described in this solicitation. **See Attachment C, Prior Experience and Contract Dispute Reporting Form**, for further details. The term "contract disputes" means any circumstances involving the performance or non-performance of a contractual obligation that resulted in any of the following actions:

- 3.6.1 Identification by the contract customer that the Respondent was in default or breach of a duty or performance under the contract.
- 3.6.2 An issuance of a notice of default or breach.
- 3.6.3 The assessment of any fines or direct, consequential, or liquidated damages under such contracts.
- 3.6.4 For each dispute, the Respondent must list the following information:
  - 3.6.4.1 Identify the contract to which the dispute related
  - 3.6.4.2 Explain what the dispute related to; and
  - 3.6.4.3 Explain whether and how the dispute was resolved.
  - 3.6.4.4 If there are no such contract disputes, the Respondent must submit a statement confirming this fact under this title in its Bid.

### **3.7 Special Accommodations**

Persons with disability requiring special accommodations should call the Department's Purchasing office at least five business days, prior to any pre-Bid conference, Bid opening, or meeting at (850) 245-4199. If hearing or speech impaired, please contact the Department's Purchasing office through the Florida Relay Service, at 1-800-955-8771 (TTY).

### **3.8 Responsive and Responsible (Mandatory Requirements)**

Respondents must complete and submit the following mandatory information or documentation as part of their Bid by the time specified in **Section 2.5**; any Bid which does not contain the information below will be deemed non-responsive to this ITB:

- 3.8.1 **Title Page** must be completed, signed, and returned with Bid submittal. (Mandatory Requirement)
- 3.8.2 **WIC Infant Formula Rebate-Bid Price Sheet** (Attachment B), must be completed as specified in Section 3.5.
- 3.8.3 **Prior Experience and Contract Dispute Reporting Form** (Attachment C) must be provided as specified in section 3.6.

- 3.8.4 **Statement of Non-Collusion** (Attachment D) must be completed as specified.
- 3.8.5 **Respondent Certification Regarding Scrutinized Companies Lists** (Attachment E) must be completed as specified.
- 3.8.6 **Identical Tie Bids** (Attachment G) must be completed as specified.
- 3.8.7 Provide the most current commercial wholesale price list as of the posting date of this ITB. This price list will be used by the Department as verification of the Respondent's lowest national wholesale cost per unit of infant formula for a full truckload, as used outlined on Attachment B.

**3.9 Late Bids**

The Procurement Officer must receive Bids pursuant to this ITB no later than the date and time specified in **Section 2.5**. Bids that are not received by the date and time specified will not be considered.

**3.10 Licenses/Certifications**

The Respondent must be registered with the U.S. Food and Drug Administration (FDA) as required by Public Law 100-237 and certify to the Department in writing that the infant formulas subject to this bid are manufactured in compliance with all applicable provision of the Federal Food, Drug, and Cosmetic Act, including the Infant Formula Act of 1980, as amended, and all regulations promulgated hereunder

## SECTION 4.0 SPECIAL CONDITIONS

### 4.1 **PUR 1000, General Contract Conditions**

The PUR 1000 is incorporated by reference in this ITB and contains general Contract terms and conditions that will apply to any Contract resulting from this ITB, to the extent they are not otherwise modified. This document should not be returned with the Bid. The PUR 1000 is located at <http://dms.myflorida.com/content/download/2933/11777>.

**The terms of this solicitation will control over any conflicting terms of the PUR1000. Paragraph 31 of PUR 1000 does NOT apply to this solicitation or any resulting contract.**

### 4.2 **Scrutinized Companies**

All Respondents seeking to do business with the Department must be in compliance with section 287.135, Florida Statutes. The Department may, at its option, terminate a contract if Respondent is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or have been engaged in business operations in Cuba or Syria.

Refer to Respondent Certification Regarding Scrutinized Companies Lists (**Attachment E**) Form.

### 4.3 **Conflict of Interest**

Section 287.057(17)(c), Florida Statutes, provides "A person who receives a contract that has not been procured pursuant to subsections (1)-(3) to perform a feasibility study of the potential implementation of a subsequent contract, who participates in the drafting of a solicitation or who develops a program for future implementation, is not eligible to contract with the agency for any other contracts dealing with that specific subject matter, and any firm in which such person has any interest is not eligible to receive such contract. However, this prohibition does not prevent a vendor who responds to a request for information from being eligible to contract with an agency."

The Department considers participation through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or any other advisory capacity to constitute participation in drafting of the solicitation.

### 4.4 **Certificate of Authority**

All limited liability companies, corporations, corporations not for profit, and partnerships seeking to do business with the State must be registered with the Florida Department of State in accordance with the provisions of Chapters 605, 607, 617, and 620, Florida Statutes, respectively, prior to Contract execution. The Department retains the right to ask for verification of compliance before Contract execution. Failure of the successful Provider to have appropriate registration may result in withdrawal of Contract award.

#### **4.5 Provider Registration**

Each Provider doing business with the State for the sale of commodities or contractual services as defined in section 287.012, Florida Statutes, must register in the MyFloridaMarketPlace system, unless exempted under Rule 60A-1.033, Florida Administrative Code. State agencies must not enter into an agreement for the sale of commodities or contractual services as defined in section 287.012, Florida Statutes, with any Respondent not registered in the MyFloridaMarketPlace system, unless exempted by rule. The successful Provider must be registered in the MyFloridaMarketPlace system within five days after posting of the Intent to Award.

Registration may be completed at:

<https://vendor.myfloridamarketplace.com/vms-web/spring/login?execution=e2s1>

A Provider lacking internet access may request assistance from MyFloridaMarketPlace Customer Service at 866-352-3776 or from State Purchasing, 4050 Esplanade Drive, Suite 300, Tallahassee, FL 32399.

#### **4.6 Certified Minority Business Enterprise Participation**

The Department encourages certified minority business enterprises participation in all its solicitations.

#### **4.7 Subcontractors**

Respondent may enter into written subcontracts for performance of services under the Contract resulting from this solicitation. Anticipated subcontract agreements known at the time of Bid submission and the amount of the subcontract must be identified in the Bid. If a subcontract has been identified at the time of Bid submission, a copy of the proposed subcontract must be submitted to the Department. No subcontract that Respondent enters into with respect to performance under the Contract will in any way relieve Respondent of any responsibility for performance of its Contract responsibilities with the Department. The Department reserves the right to request and review information in conjunction with its determination regarding a subcontract request and reject any subcontractor proposed by the Respondent in its Bid.

The Respondent must complete **Attachment F, Subcontractors List**, in its entirety and submit it with the Bid.

#### **4.8 Indemnification**

Respondent must save and hold harmless and indemnify the Department against any and all liability, claims, judgments, or costs of whatsoever kind or nature for injury to, or death of any person or persons and for loss or damage to any property resulting from the use, service operation, or performance of work under the terms of the Contract, resulting in whole or in part from the negligent acts or omissions by Respondent, their subcontractor, or any of the employees, agents, or representatives of Respondent or subcontractor.

#### **4.9 Compliance with Laws**

Respondent must comply with all applicable federal laws, State of Florida rules and regulations, action transmittals, program instructions, review guides, to include those referenced in this ITB and any updated versions of the same.



#### **4.10 Conflict of Law and Controlling Provisions**

Any Contract resulting from this ITB, and any conflict of law issue, will be governed by the laws of Florida. Venue must be in Leon County, Florida, to the exclusion of all other jurisdictions.

Respondents acknowledge that this solicitation (including but not limited to the resulting Contract, exhibits, attachments, or amendments) is not a rule nor subject to rulemaking under Chapter 120 (or its successor) of the Florida Statutes and is not subject to challenge as a rule or non-rule policy under any provision of Chapter 120, Florida Statutes.

#### **4.11 Agency Inspectors General**

It is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to section 20.055, Florida Statutes.

#### **4.12 Records and Documentation**

To the extent that information is used in the performance of the resulting Contract or generated as a result of it, and to the extent that information meets the definition of “public record” as defined in section 119.011(12), Florida Statutes, said information is hereby declared to be and is hereby recognized by the parties to be a public record and absent a provision of law or administrative rule or regulation requiring otherwise, Respondent must make the public records available for inspection or copying upon request of the Department’s custodian of public records in accordance with Chapter 119, Florida Statutes. Respondent’s refusal to comply with Chapter 119, Florida Statutes, will constitute an immediate breach of the Contract resulting from this ITB and entitles the Department to unilaterally terminate the Contract.

Unless a greater retention period is required by state or federal law, all documents pertaining to the program contemplated by this ITB must be retained by Respondent for a period of six years after the termination of the resulting Contract or longer as may be required by any renewal or extension of the Contract. During the records retention period, Respondent agrees to furnish, when requested to do so, all documents required to be retained. Submission of such documents must be in the Department’s standard word processing format. If this standard should change, it will be at no cost incurred to the Department. Data files will be provided in a format readable by the Department.

The Provider must maintain all records required to be maintained pursuant to the resulting Contract in such manner as to be accessible by the Department upon demand. Where permitted under applicable law, access by the public must be permitted without delay.

#### **4.13 Termination for Breach**

Provider may terminate its Contract upon no less than 12 month’s written notice provided to the Department.

#### **4.14 Purchase of Non-Contract Formula**

The Department will educate participants, retailers, and the medical community about the cost containment system and make every reasonable effort to encourage the use of

the contract brands. However, the Department will allow for the purchase of other brands of soy-based formula for individuals with prescriptions from medical providers who certify that there is a valid medical reason for an infant to not use a contract brand. Prescriptions covering more than one child will not be allowed. A non-contract brand infant formula may be provided without medical documentation in order to meet religious eating patterns.

#### **4.15 Department Reporting Requirements**

The Department will ensure that records created solely for this contract are subject, upon reasonable advance written notice, to inspection, review, or audit by the successful provider's personnel or other persons duly authorized by the successful provider.

The Provider will have the right to perform on-site audits and financial reviews directly related to the monthly rebate invoices, excluding confidential client records, described in this contract. Such records may include but are not limited to policy and procedure documents and interviews with key state personnel.

The Department and Provider agree to communicate as needed to review progress and performance of the contract. Due to federal confidentiality requirements, the Provider will not have access to actual or scanned records that identify WIC participants by name and/or address. The Department will make available to the Provider or a designated representative of the Provider all data requested by the successful Provider to verify the accuracy of the reports for rebate payment, although prior to submitting any data that identifies WIC participants by name, the names shall be deleted. The successful Provider shall not have access to any information about a vendor that individually identifies the vendor except for vendor's name, address, telephone number, website/e-mail address, store type and authorization status. (7 CFR 246.26(e))

#### **4.16 Attorney's Fees**

In the event of a dispute prior to or post award, each party responding to this solicitation is responsible for its own attorneys' fees, except as otherwise provided by law.

#### **4.17 Protests**

Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post a bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

Only documents delivered by the U.S. Postal Service, a private delivery service, in person, or by facsimile during business hours (Monday-Friday, 8:00 a.m. - 5:00 p.m., Eastern Standard Time) will be accepted. Documents received after hours will be filed the following business day.

**No filings may be made by email or any other electronic means.** All filings must be made with the Agency Clerk ONLY and are only considered "filed" when stamped by the official stamp of the Agency Clerk. It is the responsibility of the filing party to meet all filing deadlines.

**Do not send bids to the Agency Clerk's Office. Send all bids to the Procurement Officer and address listed in the timeline.**

**Agency Clerk mailing address:**  
Agency Clerk  
Florida Department of Health  
4052 Bald Cypress Way, BIN A-02  
Tallahassee, Florida 32399-1703  
Telephone No. (850) 245-4005

**Agency Clerk physical address  
for hand deliveries:**  
Agency Clerk  
Florida Department of Health  
2585 Merchants Row Blvd.  
Tallahassee, Florida 32399  
Fax No. (850) 413-8743

**ATTACHMENT A  
Scope of Services**

The Provider for soy-based formula must complete the following:

**A. Technical Requirements**

1. **Complete Infant Formula:** Ensure all infant formulas provided under this Contract are complete infant formulas not requiring the addition of any ingredients other than water prior to being served in a liquid state. All infant formulas must contain at least 10 milligrams of iron per liter of infant formula at standard dilution that supplies 67 kilocalories per 100 milliliters (i.e., approximately 20 kilocalories per fluid ounce of infant formula at standard dilution).
2. **Emergency Provisions of Formula:** Cooperate with the Department in the event of an emergency, to ensure that Florida WIC retailers continue to receive formula.
3. **Recalls:** Notify the Department immediately in the event that any of the Provider's infant formula products is under review for recall or if a recall is imminent, whether voluntary or mandatory.
4. **Product Information:**
  - a) Provider must immediately upon contract award submit documentation to the Department that indicates the Provider's full understanding of the rebate system requested by the Department. At a minimum, this documentation must include:
    - 1) Pertinent public, non-proprietary information regarding the organization, staffing, infant formula production facilities and experience with performing required services.
    - 2) Assurance of capability to provide sufficient quantities of infant formula.
    - 3) An implementation plan for the tasks required to satisfactorily meet the requirements of the contract within 10 days after being awarded the contract.
  - b) Provide the Department a minimum of four month's advance notice in the event that any changes are planned in labels, container sizes, or formulation of infant formulas to allow Department staff to make any necessary changes on EBT food packages and educational materials, and to inform participants of such changes prior to them taking place.
6. **Use of WIC Service Marks:** Acknowledge that the WIC acronym and the WIC logo are service marks owned by the Department of Agriculture (USDA), and that all rights therein and goodwill pertaining thereto belong exclusively to USDA.

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

Provider must 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 manufacturer with the WIC program, or as to the sponsorship or

## ATTACHMENT A Scope of Services

approval of manufacturer's goods, services, advertising, or commercial activities, including nutritional message(s), by the WIC program, USDA, or the state agency. Manufacturer shall include the following statement with any use of the WIC acronym in advertising: "WIC is a registered service mark of the U.S. Department of Agriculture for USDA's Special Supplemental Nutrition Program for Women, Infants and Children.

7. **Performance Monitoring:** Acknowledges the Department's right to monitor for compliance with contract terms and conditions and agrees that its performance must meet the standards and conditions that are set forth in the contract. If the Provider fails to meet these standards, the Department may allow up to six months for the successful bidder to achieve compliance with the standards. If the Department affords the Provider an opportunity to achieve compliance, and the Provider fails to achieve compliance within the specified time frame, the Department will terminate the contract in the absence of any extenuating or mitigating circumstances. The determination of extenuating or mitigating circumstances is the exclusive right of the Department.
8. **Termination for Failure to Supply:** If the Provider is unable to supply contract brand infant formula, the Provider agrees to pay the contracted rebate amount for non-contracted, FDA approved soy-based concentrate, powder, and ready-to-feed infant formulas (not to exceed the established usage rate of the contract infant formula) issued through the Department until the contract infant formula can be supplied. The WIC State Agency can re-bid the Contract for failure to supply formula as deemed necessary.
9. **Extensions:** Enter into an extension of its Contract with the Department if a new contract is not executed six months before the Contract end date. In the event of an extension, Provider's WIC Infant Formula Rebate Bid Price Sheet is binding and non-negotiable. The Department will notify the Provider in writing in the event an extension is needed for this contract. The Department's written notice will include at a minimum the length of the extension.
10. **Payment Requirements:**
  - a. **Reports.** The Department will provide the Provider with information at approximately the same time as the balance invoice for the month is produced. The information will provide the following data elements for EBT transaction included in the rebate billing: transaction identification number, the issue date and the date redeemed, the "not to exceed" amount, the actual redemption amount, the product purchased, and the quantity of formula. Each month the department will produce reports that will specify the total number of cans of concentrate, powdered, and ready-to-feed formula purchased during the preceding month. The EBT transaction transmitted to the EBT processor includes the UPC code(s) of the product(s) purchased, and ultimately the purchase information is accumulated into the monthly EBT-derived Infant Formula Rebate Report. This report will identify the exact number of cans purchased by formula type and formulation and will serve as the basis used to bill the Provider.
  - b. **Invoice.** The monthly invoice shall reflect the total value of the rebate computed for each formula type and physical form. Each rebate total

**ATTACHMENT A  
Scope of Services**

value shall be computed by multiplying the number of cans identified for each type and physical form of formula by the current rebate price per can for that type and physical form of formula.

- c. **Installment payments.** Remit to the Department the rebate amounts in the manner prescribed in the Contract. Presently, the Department receives approximately \$120 million annually in infant formula rebates for both milk and soy, approximately \$115 million for milk-based formula and \$5.7 million for soy-based formula. To comply with the requirements of U.S. Treasury Circular 1075 and the Cash Management Improvement Act (as amended), the Department desires to receive rebate payments in installments. Each month, the due date of the installment will be the fifth day of the month immediately following the month to which the rebate pertains. The installment payment will be \$350,000. The Department will bill the Provider for each month's remaining rebate balance on a final bill after receipt of actual redemption data of infant formula purchases during the month from the Department's data system. The due date of payment for this balance or reconciliation invoice will be 30 days after receipt of data system reports and submission of the invoice to the Provider by the department. If any due date occurs on a Saturday, Sunday, or legal holiday, the rebate payment will be due on the last Business Day preceding the regularly scheduled due date. See below table for example of due dates determination.

If the actual total monthly rebate amount is less than \$350,000, the resulting overpayment will be netted against a future payment. Before the netting of the overpayment amount, the Provider must notify the Department of the payment to be adjusted. Payments will be made to the Department by EFT or ACH wire transfer.

If the actual total monthly rebate drops below \$350,000 for three consecutive months, the Department and Provider mutually agree to decrease the installment payment to \$300,000. If the actual total monthly rebate is greater than \$800,000 for three consecutive months, the Department and the Provider mutually agree to increase the installment payment to \$400,000.

Provider must not withhold any rebate payments from the Department under any circumstances.

Example of Due Dates.

Rebate Month	Payment Number	Rebate Amount	Due Date
March	1	\$350,000.00	5 <sup>th</sup> day of the month immediately following the month to which the rebate pertains (April 5 <sup>th</sup> in this example.)
March	2	Balance	30 days after receipt of data system reports and submission of the invoice to the successful provider by the department (May 8 <sup>th</sup> in this example.)

**ATTACHMENT A**  
**Scope of Services**

- d. **Late Payments.** Pay a late payment interest penalty to the Department in the amount of one percent each month or any portion thereof. The penalty amount will be calculated based on the installment amount due or invoice total for any delivered invoice for which funds have not been transferred to the Department by the close of business on the due date for the payment. Late interest penalties will not be applicable to any amount of an invoice in dispute due to errors or negligence by the Department, EBT processor, or data system that have been identified and validated prior to the due date of the invoice payment.
- e. **Combined Invoices.** In the event that this Provider is awarded the rebate contract for both milk-based infant formula and soy-based infant formula, the Department and the Provider mutually agree that the monthly rebate billings and installment payments will apply to all products contained in the two separate bid documents, and that the total of the two regular installment payments will increase to \$7,500,000 each month; i.e., two installments of \$3,750,000. It is mutually agreed that should the total monthly rebate amounts increase or decrease by each contract's specified amount for three consecutive months, the \$3.75 million installment payment will be modified in accordance with each contract.
- f. **Price Increases.** After the Contract becomes effective, the Provider must notify the State WIC Agency of any increase in the commercial wholesale truckload price of infant formula no later than the time the notification is given to retail grocers. Such notification must include both the effective date and the amount of the increase. The rebate paid by the Provider for any item that has increased in price will then automatically increase on a cent-for-cent basis on the first day of the month following the effective date of the price increase. The increased rebate amount will apply to all cans purchased with EBT cards that clear the EBT processor following the month of the price increase, regardless of the first day to use date of the EBT card, or date of acceptance by the retail grocer. If there is a decrease in the wholesale price of any contract brand infant formula, the rebates paid for these brands will decrease on a cent-for-cent basis in the same fashion.
- g. **Post-Bid Price Increases.** Any increases before February 1, 2020 in the Provider's wholesale truckload prices (as listed in the Provider's bid) for any one or all of the formulas subject to a rebate under this Contract will result in an automatic rebate increase on a cent-for-cent basis effective on the Contract execution date. For price increases occurring after February 1, 2020, the cent-for-cent increase will become effective on the first day of the month following the effective date of the price increase for all formula purchased thereafter, regardless of issue date. The same adjustment will be made for decreases in the wholesale price.
- h. **Advance payments.** The WIC State Agency may request and receive from the Provider no more than one advance payment per year of the total projected rebates for a month. Such a request must be made by the Department at least 30 days prior to the beginning of the month to which the requested advance will apply. Upon receipt of the Department's invoice for the advance, the Provider must make an advance payment of the estimated rebate amount for the month to which the rebate pertains, although the estimate shall not exceed the total amount of the rebate billed for the most recent month for which actual redemption data exists, and may

## ATTACHMENT A Scope of Services

be less at the discretion of the department. The Provider will be entitled to a nonrefundable discount of one percent per month for the period of time that the rebate is requested in advance of the normal payment dates. This discount will be applied against the actual advance payment made. If the amount of the advance exceeds the subsequently calculated actual rebate for that period, the WIC State Agency will deduct the amount of the excess from the next regular rebate invoice submitted to the Provider.

- i. **Payments after the Contract Period.** The Provider will be required to pay rebates to the Department for all soy-based contract brands of infant formula purchased with EBT cards issued to participants throughout the period of the contract and paid by the Department no later than 120 days after the end of the Contract. The Provider will be expected to pay rebates on all contract brand formula purchased during the contract term, including items presented for payment after the Contract expiration date. A WIC EBT card may be used by the participant within 30 days of the issue date, with settlement to the WIC authorized retail grocer normally occurring on the next banking day. The Provider will not be permitted to withhold rebate payments under any circumstances.
- j. **Disputes.** The WIC State Agency will ensure that any disputed amounts upon which payment is made by the Provider and subsequently settled in their favor will be resolved in accordance with the Contract. Upon resolution of a dispute, the Department will credit the Provider on the next invoice.
- k. **Notification.** The Provider must notify the WIC State Agency of any dispute or error in a rebate invoice within 90 days of receipt of supporting data for the specified billing month. If the Provider misses this deadline, any requirement for the WIC State Agency to return funds will be waived, unless extenuating circumstances are present and acknowledged and agreed upon by both parties. All rebate disputes must be settled by the closeout of the federal fiscal year in which the dispute occurred.
- l. **Errors.**
  - 1) If an error or billing system defect is of a nature that may have occurred in previous months, the Provider and WIC State Agency agree to review billings for all months in the federal fiscal year in which the error may have occurred. This provision will apply regardless of whether the error is in either the successful provider's or the WIC State Agency's favor. The WIC State Agency agrees to rectify any billing system errors in a timely manner.
  - 2) If either an overbilling or underbilling error occurs, the WIC State Agency will make every effort to validate the error within sixty (60) calendar days of the date of notice of the error. If additional time above and beyond the sixty days is necessary to complete the validation, it may be taken upon mutual consent. Both parties may agree to use an independent party that is acceptable to both parties to facilitate the validation effort through a review of records.
  - 3) Any disputes unresolved by closeout of the federal fiscal year to which they pertain will require the approval of the USDA for settlement.



**ATTACHMENT B**  
**WIC Infant Formula Rebate Bid Price Sheet**

**WIC Infant Formula Rebate Bid Price Sheet is located at:**

[http://www.floridahealth.gov/\\_media/procurements/index.html](http://www.floridahealth.gov/_media/procurements/index.html)

**EXHIBIT**  
**Price Sheet Instructions**

1. The bid award will be based on the rebates bid for soy-based infant formula in liquid concentrate, powder and ready-to-feed containers as well as the provider's compliance with all technical requirements in this ITB. A single award will be made to the responsive, responsible Respondent offering the lowest total monthly net cost for infant formula (subject to paragraph 246.16a(c)(5)(ii) of the CFR) for a standardized number of units of infant formula requested in this ITB.
2. In order to determine the estimated lowest monthly net infant formula cost, the equations contained in Attachment B in the Excel spreadsheet included as Page Two of the bid sheet in this attachment will be used. The lowest net infant formula cost resulting from the application of these equations to each of the bids offered will be used to determine which provider is awarded the contract, provided that all other requirements are met by the provider.
3. The figure used for infants using soy-based contract infant formula will be 77,014 (rounded figure) served per month, based on the average number of participants served during a recent six-month period (September 2018 – February 2019). Page Two of the Bid Sheet provides data on the number of infants (rounded figure) who received various physical forms of infant formula during this period. The number for partially breastfed indicates partially (mostly) breastfed infants. The number for fully infant formula fed includes fully formula fed infants and partially (minimally) breastfed infants. Data provided as part of this ITB does not necessarily reflect the actual number of infants to be served or the amount of infant formula to be purchased under the new contract.

Solely for the purpose of this bid, all infants would be using the primary contract brand and that no infants would receive non-contract brands by exception.

4. The Department will only accept bids for the primary contract brand of soy-based infant formula, as defined in the ITB. Should the Department approve and provide one or more of the Provider's other soy-based infant formulas, it will do so in accordance with 7 CFR 246.16a, and the rebate to be paid will yield a discount from the wholesale truckload price that is the same percentage discount as the successful provider's bid on the soy-based formula by type and physical form in response to the ITB. The rebate per can will be displayed as necessary to the fourth decimal place.

Additionally, the Provider agrees to pay the Department a rebate as above for other formulas in the Provider's product line that are allowed by the Department as alternatives to the primary contract brand.

5. Throughout the contract period, the Provider will provide for purchase through authorized retail grocers soy-based infant formula in various sizes of liquid concentrate; various size cans of powder; and various sizes of ready-to-feed. The infant formulas must be available in sufficient supply to meet the needs of 100% of the WIC program's infant clients who are fed soy-based infant formula during the contract period. The Provider guarantees that sufficient quantities of soy-based infant formulas will be available at competitive prices to wholesalers and authorized WIC retailers throughout the state.
6. The Respondent must provide a rebate bid per unit for each physical form of soy-based infant formula specified in Attachment B, WIC Infant Formula Bid Price Sheet and a rebate on any other soy-based infant formula in the Provider's infant formula product line that the department chooses to issue. Rebate calculations for

**EXHIBIT**  
**Price Sheet Instructions**

all other contract infant formula (including new and existing infant formula) shall yield the same percentage discount as the corresponding physical form of the primary contract infant formula for which bids were solicited. That is, the discount established at the beginning of the contract (by physical form), will be used to calculate the rebate for infant formula added to the contract subsequent to the initiation of the contract. The rebate will be calculated using the full-truckload wholesale price of the infant formula at the time the infant formula is approved for issuance by the department. If the primary contract infant formula is discontinued, the successful provider agrees to provide a rebate that yields the same net cost per ounce for the replacement formula.

7. The Child Nutrition Act of 1966, as amended through Public Law 108-498, allows the department to round up the amount of formula provided to participants to the next whole can to allow participants to receive the full nutritional benefit specified by regulation. The Department reserves the right to round up as specified in 7 CFR 246.10(h).

**ATTACHMENT D  
STATEMENT OF NON-COLLUSION**

The document is to be used by the Respondent to certify information related to their prior experience performing services related to the scope of this Proposal and any contract disputes the Respondent (including its affiliates, subcontractors, agents, etc.) has had with any customer(s) within the last five years that are listed below. Make additional copies of this form as needed to include the below requested information in the Proposal.

**A. Prior Experience**

Customer Name	
Commodity/Service Provided	
Contract/Agreement #	
Term of Contract/Agreement	
Contact Person Name	
Contact Person E-mail address	
Contact Person Phone number	

Customer Name	
Commodity/Service Provide	
Contract/Agreement #	
Term of Contract/Agreement	
Contact Person Name	
Contact Person e-mail address	
Contact Person Phone number	

**ATTACHMENT D  
STATEMENT OF NON-COLLUSION**

Customer Name	
Commodity/Service Provide	
Contract/Agreement #	
Term of Contract/Agreement	
Contact Person Name	
Contact Person e-mail address	
Contact Person Phone number	

**B. Contract Disputes**

**Has the Respondent had any contract disputes within the last five years?**

Yes  No

**If yes, complete the following information:**

<b>Customer Name:</b> _____
<b>Contract Number(s):</b> _____
<b>Date of Contract Dispute:</b> _____

**Explanation of Dispute:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Resolution of Dispute:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Amount of Fine (if any):**

\_\_\_\_\_

**ATTACHMENT D  
STATEMENT OF NON-COLLUSION**

<b>Customer Name:</b>	_____
<b>Contract Number(s):</b>	_____
<b>Date of Contract Dispute:</b>	_____

**Explanation of Dispute:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Resolution of Dispute:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Amount of Fine (if any):**

\_\_\_\_\_

**By signing this document, I certify to the best of my knowledge that the information presented herein is true, accurate, and complete for contract disputes experienced during the last five years from the date of signature.**

\_\_\_\_\_

Authorized Representative Signature

\_\_\_\_\_

Date

**ATTACHMENT D  
STATEMENT OF NON-COLLUSION**

I hereby certify that my company, its employees, and its principals, had no involvement in performing a feasibility study of the implementation of the subject Contract, in the drafting of this solicitation document, or in developing the subject program. Further, my company, its employees, and principals, engaged in no collusion in the development of the instant Bid, proposal or reply. This Bid, proposal or reply is made in good faith and there has been no violation of the provisions of Chapter 287, Florida Statutes, the Florida Administrative Code Rules promulgated pursuant thereto, or any procurement policy of the Department.

---

Signature of Authorized Representative\*

---

Date

\*An authorized representative is an officer of the Provider's organization who has legal authority to bind the organization to the provisions of the Bids. This usually is the President, Chairman of the Board, or owner of the entity. A document establishing delegated authority must be included with the Bid if signed by other than the President, Chairman or owner.

**ATTACHMENT E  
RESPONDENT CERTIFICATION REGARDING SCRUTINIZED COMPANIES LIST**

**Respondent Name:** \_\_\_\_\_

**Respondent Mailing Address:** \_\_\_\_\_

**City-State-Zip:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**Federal Employer Identification Number (FEID):** \_\_\_\_\_

Section 287.135, Florida Statutes prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135, Florida Statutes, also prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of \$1,000,000 or more, that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector Lists which were created pursuant to section 215.473, Florida Statutes.

As the person authorized to sign on behalf of the Respondent, I hereby certify that the company identified above in the section entitled "Respondent Name" is not listed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List. I further certify that the company is not engaged in a boycott of Israel. I understand that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject company to civil penalties, attorney's fees, and/or costs.

**Signature of Authorized Representative\*:** \_\_\_\_\_

**Printed (Typed) Name and Title:** \_\_\_\_\_

\*An authorized representative is an officer of the Respondent's organization who has legal authority to bind the organization to the provisions of the Bids. This usually is the President, Chairman of the Board, or owner of the entity. A document establishing delegated authority must be included with the Bid if signed by someone other than the President, Chairman or owner.



**ATTACHMENT F  
SUBCONTRACTORS LIST**

Each Respondent must submit with its Bid a list of the subcontractors who will perform work under the Contract that is expected to result from this solicitation. The Respondent must determine that a listed subcontractor has been successfully engaged in performing the services required under this solicitation and is qualified to provide the services under the resulting Contract.

**In the event that no subcontractor will be used, this form must be returned with the Respondent's response indicating "No Subcontractors will be used."**

**NO SUBCONTRACTORS WILL BE USED:**     

Subcontractor Name:	
Product or Services Provided	
Address:	
City and Zip	
Phone #	

Subcontractor Name:	
Product or Services Provided	
Address:	
City and Zip	
Phone #	

Subcontractor Name:	
Product or Services Provided	
Address:	
City and Zip	
Phone:	

\_\_\_\_\_  
\*Authorized Representative's Signature

\_\_\_\_\_  
\*Typed Name and Title of Authorized Representative

**\*This individual must have the authority to bind the Respondent.**

**ATTACHMENT G  
IDENTICAL TIE CERTIFICATON FORM**

**Respondent Name:** \_\_\_\_\_

**Respondent Mailing Address:** \_\_\_\_\_

**City-State-Zip:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**Federal Employer Identification Number (FEID):** \_\_\_\_\_

Chapters 287 and 295, Florida Statutes, provide Respondents the advantage of “tie breakers” whenever two or more bids, proposal, or replies received by an agency are equal with respect to price, quality, and service. For a Respondent to take advantage of the below “tie breakers,” it must meet the statutory qualifications for one or more of these provisions and certify that it qualifies for the cited preference.

If the Department discovers that any information on this form is false after the award to the Respondent is made, the Department reserves the right to terminate the Contract and hold the awarded Respondent liable for costs associated with re-procuring the services. The Respondent certifies that the below preferences apply:

Yes	No	Applicable Certification
		<b><u>Certified Minority Business Enterprise:</u></b> This Proposal is from a certified minority-owned firm or company in accordance with sections 287.057(11) and 287.0943, Florida Statutes.
		<b><u>Certified Veteran Business Enterprise:</u></b> This Proposal is from a certified veteran business enterprise in accordance with section 295.187, Florida Statutes.
		<b><u>Drug Free Workplace:</u></b> This Proposal is from a Respondent that currently maintains a drug-free workplace environment in accordance with section 287.087, Florida Statutes.
		<b><u>Foreign Manufacturer (This preference only applies to State procurements of commodities):</u></b>  This Proposal is from a foreign manufacturer with a factory in Florida employing over 200 employees in the State in accordance with section 287.092, Florida Statutes.
		<b><u>Preference to Florida Business (This preference only applies to State procurements of personal property):</u></b>  This Proposal is from a vendor who meets the requirements of section 287.084, Florida Statutes.
		<b>This Proposal is from a Respondent that is not eligible for any of the above preferences.</b>

Additional Tie Breaker Criteria: If more than one Respondent is entitled to the certified veteran business enterprise preference specified in section 295.187, Florida Statutes or another preference identified above that is applicable to this

**ATTACHMENT F**  
**Identical Tie Certification Form**

solicitation, the Department will award the Contract to the business having the smallest net worth as specified in section 295.187(4), Florida Statutes. The Respondent certifies its net worth is:

As the person authorized to sign this statement on behalf of the Respondent, I certify that this Proposal complies fully with the above requirements.

**Signature of Authorized Representative\*:** \_\_\_\_\_

**Printed (Typed) Name and Title:** \_\_\_\_\_

\*An authorized representative is an officer of the Respondent's organization who has legal authority to bind the organization to the provisions of the Proposals. This usually is the President, Chairman of the Board, or owner of the entity. A document establishing delegated authority must be included with the Proposal if signed by other than the President, Chairman or owner.

**ATTACHMENT H**  
**Examples Of Rebate Invoices**

Examples of actual rebate invoices for the month of January 2019, February 2019, and March 2019.



Rebate Invoices.pdf

**ATTACHMENT I**  
**WIC Authorized Retail Grocers and Wholesale/Distributors**

List of WIC Authorized Grocers as of 05-09-2019



WIC\_AUTHORIZED\_  
GROCERS-AND-DIST

**ATTACHMENT J**  
**List of Six Month Average of Infant Formula Redeemed**  
**For the period of December 1, 2018 – May 31, 2019**

Type	Contract	Physical Form	Quantity (# of Cans)
Milk	No	Powdered	2,017
Milk	Yes	Powdered	625,507
Milk	No	Concentrate	133
Milk	Yes	Concentrate	12,937
Milk	No	Ready-to-Feed	108
Milk	Yes	Ready-to-Feed	2,296
Soy	No	Powdered	862
Soy	Yes	Powdered	25,156
Soy	No	Concentrate	0
Soy	Yes	Concentrate	1,496
Soy	No	Ready-to-Feed	113
Soy	Yes	Ready-to-Feed	189