

**NEW MEXICO DEPARTMENT OF HEALTH,
ARKANSAS DEPARTMENT OF HEALTH AND
NORTH CAROLINA DEPARTMENT OF HEALTH
AND HUMAN SERVICES**

**SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN,
INFANTS, AND CHILDREN**

REQUEST FOR PROPOSALS

WIC INFANT FORMULA REBATE INITIATIVE

I. INTRODUCTION

A. Background

The New Mexico Department of Health, the Arkansas Department of Health and the North Carolina Department of Health and Human Services, hereinafter referred to as the "States", utilize single, uniform food delivery systems in their Women, Infants, and Children (WIC) Programs. These statewide systems are retail purchase arrangements involving exchange of issued WIC food instruments, including Electronic Benefit Transfer (EBT) cards, for specific authorized nutritious foods. Vendors (authorized retail grocers and pharmacies) accepting WIC food instruments are under contractual agreements with the States to accept WIC food instruments in accordance with the federal requirements set forth in 7 CFR Section 246.12 and each State's rules. The States' contracts with their authorized vendors specify the responsibilities of both the Program and the vendor and outline sanctions for violations. The vendors' performance is reviewed by the States for compliance on an ongoing basis.

WIC food instruments are issued at clinic sites throughout the States to certified eligible pregnant, postpartum, and breastfeeding women and to parents or caretakers of certified eligible infants and children who require specified nutritious foods to meet their health needs. These food instruments specify the quantity and type of nutritious foods that must be purchased at an authorized retail store. Once an authorized vendor accepts a WIC food instrument, it is submitted for payment to each State's authorized contract bank, or in the case of an EBT transaction, a daily transaction file is sent to the State(s) for settlement.¹ A series of edits is performed on each food instrument or EBT transaction prior to payment to ensure that specific requirements are met.

UPDATE ¹ New Mexico currently offers EBT statewide. North Carolina plans to have statewide EBT in May 2018. Arkansas intends to implement EBT by the end of 2018.

The average monthly participation for the New Mexico WIC Program was 46,696, of which 11,427 were infants; the Arkansas WIC Program was 76,658, of which 17,813 were infants; and the North Carolina WIC Program was 230,634, of which 57,680 were infants for a combined total from October 1, 2016 through September 30, 2017 of 353,988 participants, of which 86,920 were infants. Total infant participation includes fully and partially breastfed infants as well as infants receiving exempt formula. The States' Programs are funded primarily by the U.S. Department of Agriculture and are administered in New Mexico by the New Mexico Department of Health WIC Program, in Arkansas by the Arkansas Department of Health WIC Program, and in North Carolina by the North Carolina Department of Health and Human Services WIC Program.

For purposes of this Request for Proposal ("RFP"), the State Alliance is composed of New Mexico, Arkansas, and North Carolina.² No additional States will be added to the State Alliance between the date this RFP is issued, January 5, 2018, and the expiration date of the States' contracts on September 30, 2021 or if extended until September 30, 2023.

B. Statement of Purpose

The States are seeking a method by which the lowest total monthly net cost to the WIC Programs for infant formula can be secured. In addition, the States wish to continue to distribute infant formulas through their respective retail distribution systems. The States seek to expand their services to unserved, but eligible, populations by containing the cost of infant formula. This shall be accomplished through a single-source formula system.

The offer of a rebate is voluntary and is in no way a payment for concessions or services by the States, but once the offer is accepted and contracts are entered into, the offer becomes a binding contractual agreement. The laws of the States impose civil and criminal penalties for bribes, gratuities, and kickbacks in transactions involving the States. The States will not accept gratis items, such as sample units of formula, and/or educational materials, such as flyers and brochures.

C. Administrative Information

1. Sample Contracts

²North Carolina has a longstanding contractual relationship with the Eastern Band of Cherokee Indians ("EBCI"). Through the EBCI contract, North Carolina bills rebates under North Carolina's WIC infant formula rebate contract on behalf of the EBCI for units of infant formula redeemed that are issued by the EBCI. EBCI's total infant participation is 120. These infants have been included in North Carolina's average monthly participation and usage data provided with this RFP.

- a. Included with this RFP are sample contracts containing the contract provisions for the State of New Mexico, the State of Arkansas and the State of North Carolina.
 - (1) The terms contained in these contracts shall be binding upon any successful offeror.
 - (2) These contracts will not be modified for the purposes of proposal submission or proposal evaluation unless the offerors request and the States agree to all proposed changes in writing prior to the deadline for proposal submission. In no event, will the States consider any modifications to their contracts or this RFP for the purposes of proposal evaluation and contract award unless the proposed modifications are requested by offerors in writing prior to the January 22, 2018, 3:00 p.m. Mountain Time (MT) deadline for the offerors' questions.
- b. The actual contracts shall be forwarded to the successful offeror at the time of award. The successful offeror shall return the signed contracts simultaneously to the individual States' Contract Administrators identified in this RFP within 14 calendar days from the date the States mail the contracts. Failure to do so may, at the option of the States, cause the contract to be awarded to another offeror.

2. Proposal Preparation Cost

Costs for preparing the proposals are solely the responsibility of the offerors. None of the States shall provide reimbursement for such costs. Any costs associated with the delivery of proposals to the States shall be the responsibility of the offeror and may not be billed to the States or otherwise compensated by the States.

3. Contract Period

The contracts shall be effective from October 1, 2018 through September 30, 2021, a period of thirty-six months with one (1) optional twenty-four-month extension.

The Contractor shall agree to pay rebates to the States on any redeemed units of primary contract brand infant formula and any other contract brand infant formulas approved for issuance by any or all of the States that are issued with a food instrument having a "first date to use" on or between October 1, 2018 and September 30, 2021, or if extended to September 30, 2023. The extension will be implemented solely at the States' discretion. Contract pricing applies to the extension period.

Rebate payment shall be made, notwithstanding that the States' contracts may have expired or otherwise terminated at the time the units are redeemed or payment of the rebate is due.

4. Contract Administrators

NEW MEXICO

Sarah Flores-Sievers, Director
WIC/FMN Programs
New Mexico Department of Health
2040 S. Pacheco, Suite 124
Santa Fe, NM 87505

ARKANSAS

Mitzi Fritschen, Director
WIC/Nutrition Branch
Arkansas Department of
Health
5800 West Tenth Street, Suite 300
Little Rock, AR 72204-3867

NORTH CAROLINA

Kim Lovenduski, Operations
Manager
Nutrition Services Branch
North Carolina Department of Health and Human Services
1914 Mail Service Center
5601 Six Forks Road
Raleigh, NC 27699-1914

5. Assistance for Disabled People Available

Public documents, including this RFP, can be provided in various accessible forms for offerors who require assistance. Contact the Contract Administrators listed above if a summary or other type of accessible form is needed. The written document as issued shall be legal and binding.

6. Minorities, Women, and the Disabled Encouraged to Participate

The States encourage participation in this RFP by businesses owned by minorities, women and the disabled.

7. Timeline for Proposal:

January 5, 2018 - Request for Proposals issued.

January 22, 2018 - Deadline for written questions from offerors
3:00 p.m. MT.

March 2, 2018 - The States' responses to questions released.

March 23, 2018 - Proposal submission deadline 11:00 a.m. MT in
Santa Fe, New Mexico.

March 23, 2018 - Public proposal opening at 11:30 a.m. MT at the
New Mexico Department of Health, Colgate Building, 2040 S.
Pacheco, Suite 152, Conference Room, Santa Fe, New Mexico. The
following will be read at the public proposal opening: offeror's name,
product name, unit size and physical form, wholesale price per unit,
and rebate per unit.

April 2018 - The States award their contracts and notify offerors of
the outcome.

II. PROPOSAL SUBMISSION

- A. Offerors shall use the attached Quote Sheet (Attachment III) to submit an offer for a single milk-based infant formula in powder, concentrate and ready-to-feed physical forms and shall also complete and submit the attached Contractor Certification (Attachment IV).
- B. All proposals shall be submitted as a specific dollar and cent amount rounded to three places to the right of the decimal.
- C. All offerors shall submit one original and nine copies of their proposal. All attachments must be provided with every copy submitted. All proposals that are not submitted by hand delivery must be sent via overnight delivery with a tracking mechanism.
- D. Telefax or electronic proposals shall not be accepted.
- E. Proposals shall be signed by a company representative with authority to commit the company to this proposal.

- F. Proposals shall be received no later than 11:00 a.m. MT, Friday, March 23, 2018 by:

Sarah Flores-Sievers, Director
WIC/FMN Programs
New Mexico Department of
Health 2040 S. Pacheco, Suite 124
Santa Fe, New Mexico 87505
Phone: 505-476-8801

1. Any proposal received after this time shall be rejected as not meeting the mandatory requirements of this RFP.
 2. Proposals delivered to any other office shall not be considered.
- G. During the evaluation process, written correspondence may be conducted with offerors whose proposals are determined to be reasonably likely to be selected based on the requirements of this RFP.
- H. All materials submitted in response to this RFP become the property of the States. The contents of any proposal shall not be disclosed so as to be available to competing offerors during the evaluation process, except during the bid opening as provided in section IC7 above. The proposal shall become a public document after notification of the selected bidder for the award and its contents shall be subject to disclosure, exclusive of proprietary information, including trade secrets, clearly identified upon submission. The States have the right to use any or all ideas presented in any response to the RFP. Selection or rejection of a proposal does not affect this right.
- I. All questions shall be received by all Contract Administrators no later than 3:00 p.m. MT, Monday, January 22, 2018. All questions must be submitted electronically, using Microsoft Word, to the following email addresses:
- Sarah.Flores-Siever@state.nm.us
Mitzi.Fritschen@arkansas.gov
Kim.Lovenduski@dhhs.nc.gov
- J. Any information given to a prospective offeror concerning the RFP, including the States' acceptance of any proposed modification of the RFP or any of the States' contracts, shall be given to all prospective offerors in writing prior to the proposal submission deadline and that information may, at the discretion of the States, be incorporated into the contracts.

1. Questions shall be submitted electronically. Questions specific to a provision of the RFP or State contract(s) shall cite the specific provision of the RFP or State contract(s). The States' responses will be sent to all prospective offerors that received the RFP.
 2. The State's responses to questions may incorporate proposed alterations to the terms and conditions of this RFP, as well as revisions to the State's respective State contracts terms and conditions. To the extent that the State's responses to questions agree to alterations to the terms and conditions of this RFP or revisions to the State's respective State contracts terms and conditions, such responses shall be considered to be an amendment to this RFP and/or revisions to the State's respective State contracts terms and conditions.
 3. Oral communication between representatives of the States and agents of any prospective offeror regarding substantive issues relating to this RFP in the time period between the issuance of this RFP and the award of contracts shall disqualify any proposal submitted by that offeror from consideration.
 4. All correspondence from prospective offerors relating to this RFP should be labeled NM/AR/NC WIC Multistate Infant Formula Rebate RFP.
- K. The States reserve the right to amend the RFP prior to the deadline for submission of proposals. Any amendments shall be sent to all prospective offerors who received copies of the RFP no less than twenty-one (21) days prior to the deadline for submission of proposals.
- L. The offeror shall assure the States of its commitment to abide by all Federal and State laws, rules, regulations, and executive orders pertaining to equal opportunity. Pursuant to all such laws, rules, regulations, and executive orders, the offeror assures the States that no person shall, on the grounds of race, color, national origin, sex, disability, or age be excluded from employment with or participation in, be denied the benefit of, or be otherwise subjected to discrimination under any activity performed under a contract entered into pursuant to this RFP.
- M. The States reserve the right to accept or reject all or any part of any proposal, waive minor technicalities and award the contracts to best serve the interests of the States.
- N. Incomplete or unresponsive proposals shall not be considered under this RFP.
1. The States shall make the final determination as to a proposal's completeness or responsiveness.

2. Proposals contingent upon subsequent modification of the RFP or any State's contract shall be deemed unresponsive and shall not be eligible for consideration.
3. Proposals that do not include information requested on a single milk-based infant formula in powder, concentrate and ready-to-feed physical forms shall be deemed unresponsive and shall not be eligible for consideration.
4. A proposal expressed as a contingency, percentage, monetary discount or increase based on some other proposal received shall be deemed unresponsive and shall not be eligible for consideration.
5. Proposals submitted without the offeror's acceptance of all requirements, specifications, terms and conditions of the RFP and the States' contracts, including any amendments made by the States prior to the deadline for the submission of proposals, shall be deemed unresponsive and shall not be eligible for consideration.

III. PROPOSAL SPECIFICATIONS

A. CONSIDERATIONS

1. This RFP is a single-supplier solicitation issued in accordance with 7 CFR 246.16a. The States intend to contract with one manufacturer whose primary milk-based contract brand infant formula will be the formula of first choice for issuance to infants in the New Mexico WIC Program, the Arkansas WIC Program and the North Carolina WIC Program. Any other contract brand infant formulas approved for issuance by any or all of the States will be issued as an alternative to the primary milk-based contract brand infant formula.

The States provide no guarantee of the quantity, type or physical forms that will be used under a new contract.

2. The States are soliciting sealed bids from infant formula manufacturers to supply and provide a rebate on all infant formulas, except exempt infant formulas, produced by the manufacturer and approved for issuance by any or all of the States. Rebates shall also be paid on any new infant formulas, except exempt infant formulas, that are introduced by the successful offeror after the contracts are awarded and are approved for issuance by any or all of the States. An offeror that does not produce a soy-based infant formula must subcontract with another manufacturer to supply a soy-based infant formula

under each State's contract. The successful offeror must pay a rebate on all soy-based infant formula supplied by the subcontractor and issued by the States under each State's contract. All rebates, including those for soy-based infant formula supplied by the subcontractor, shall be calculated in accordance with Section III.A.7.

3. The successful offeror shall supply and provide a rebate on a single milk-based infant formula in the physical forms and sizes stated in Section III.A.4. of this RFP. The successful offeror shall also supply and provide a rebate on any other contract brand infant formulas that any or all of the States approve for issuance. These formulas shall be provided in sufficient quantity to meet 100% of WIC caseload requirements throughout the contract period.
4. The offeror shall specify a rebate for a single milk-based infant formula in the following physical forms and sizes: 12.1 to 13 oz. concentrated liquid, 12.4 to 12.7 oz. powdered, and 32 to 33.8 oz. ready-to-feed. The milk-based infant formula shall be nutritionally complete, not requiring the addition of any ingredients other than water prior to being served in a liquid state, and suitable for routine issuance to the majority of generally healthy, full-term infants. The infant formula also shall contain at least 10 milligrams of iron per liter at standard dilution and supply 67 kilocalories per 100 milliliters (i.e., approximately 20 kilocalories per fluid ounce of infant formula) at standard dilution. The offeror shall specify the brand name and unit size of the milk-based infant formula for which the rebate is being offered. A different rebate amount may be submitted for each physical form of the milk-based infant formula. The milk-based infant formula for which rebate(s) are offered shall be the primary contract brand infant formula upon contract award.
5. At the time of contract award, each State will identify and designate in their respective contracts the contract brand infant formulas in the successful offeror's product line that each State will approve for issuance and establish the rebate to be paid on each of these infant formulas in accordance with Section III.A.7. If during the term of the contract, a new contract brand infant formula introduced into the Contractor's product line is approved for issuance by a State or a State decides to add more contract brand infant formulas to its approved list, the rebate for the additional infant formula will be calculated in accordance with Section III.A.7. The State shall notify the Contractor 90 days, or less if mutually agreed upon, prior to the approval of a new or additional formula for issuance. The State will notify the affected parties in the WIC community and bill the Contractor accordingly if and when an additional infant formula is issued.

6. The States shall print the successful offeror's brand(s) of contract brand infant formula on WIC food instruments or the participant's EBT Shopping List. Payment due to the States shall be based on the number of units of the successful offeror's brand(s) printed on the food instruments or added to the EBT card that were redeemed within the federally allowed time period for redemption. The States intend to bill the successful offeror only for the units of formula actually paid for by the States. Each State's methodology for determining partial redemption of food instruments is contained in the State's contract, as applicable. Except as provided in Section III.B.2.c. of this RFP for an increase or decrease in wholesale price, the rebate amount applied to the redeemed units shall be the rebate amount as of the first day of the month of redemption.
7. Rebates for contract brand infant formulas approved for issuance by any or all of the States, other than the primary contract brand infant formula for which bids were received, shall be calculated as follows, except as provided in Section III.A.8.
 - a. The percentage discount for each physical form (i.e., concentrated liquid, powdered, and ready-to-feed) of the primary contract brand infant formula will be calculated by dividing the rebate amount per unit by the successful offeror's lowest national wholesale price per unit, as of the date of the bid opening, for a full truckload of that physical form of the primary contract brand infant formula. As described in Section III.A.7.b., the percentage discount for each physical form of the primary contract brand infant formula will be used to determine the rebate for each physical form of the other contract brand infant formulas approved for issuance by any or all of the States.
 - b. The rebate amount per unit for the other contract brand infant formulas approved for issuance by any or all of the States will be calculated by multiplying the percentage discount established at the time of bid opening for the corresponding physical form of primary contract brand infant formula, (e.g., percentage discount for concentrated liquid), by the successful offeror's lowest national wholesale price per unit, as of the date of the bid opening, for a full truckload of the other contract brand infant formula in that physical form, (i.e., wholesale price per unit for the other contract brand infant formula in concentrated liquid). For example, if the percentage discount provided for the primary contract brand infant formula in

concentrated liquid is 98 percent of its wholesale price, the same percentage discount will apply to all other contract brand infant formulas in concentrated liquid.

- c. Rebates for any new contract brand infant formulas introduced into the Contractor's product line during the contract and rebates for any additional contract brand infant formulas a State decides to add to its approved list during the contract will be calculated in accordance with Section III.A.7.b., except that the lowest national wholesale price per unit for a full truckload at the time the infant formula is approved for issuance by the State will be used to calculate the rebate.
8. Notwithstanding any other provisions of this RFP, the successful offeror shall agree that a rebate yielding the same net price per reconstituted fluid ounce shall be paid if the primary contract brand infant formula is replaced during the term of the contract, including, but not limited to, replacement by change in formulation or unit size. The lowest national wholesale price per unit for a full truckload of the replacement infant formula at the time the replacement formula is approved for issuance by the State will be used to calculate the rebate.
9. The successful offeror shall give the States no fewer than 120 days advance written notice prior to any of the actions listed below in this Section III.A.9.a. through e. The 120 days advance written notice shall not begin prior to the date of any required Food and Drug Administration approval for the action.
- a. The introduction of any new contract brand infant formula into its product line and when it will become available in each State's market;
 - b. A change in the label of the primary contract brand infant formula or any other contract brand infant formula approved for issuance by any or all of the States;
 - c. The replacement of the primary contract brand infant formula or any other contract brand infant formula approved for issuance by any or all of the States, including, but not limited to, replacement by change in formulation or unit size;
 - d. A change in the name of the primary contract brand infant formula or any other contract brand infant formula approved for issuance by any or all of the States; and

- e. A change in size of the product which impacts the amount of yield and the amount of product issued per month. Due to the impact on an EBT system, products that change size and/or yield must change the Universal Product Code (UPC) or the contractor must work with the States to reset the authorized WIC vendors' shelves and the wholesalers' inventory.
10. The three States' WIC Programs presently receive infant formula rebates of about \$90,827,963.36 annually. In order to comply with the requirements of (U.S.) Treasury Circular 1075 and the Cash Management Improvement Act, as amended, the three States' WIC Programs desire to receive rebate payments in installments. The successful offeror shall remit payments monthly or as described below for each calendar month. In the event that any due date occurs on a Saturday, Sunday, or legal holiday, the rebate payment will be due on the last business day preceding the due date.

Invoices are submitted at least monthly, which will be based on the total number of units, by brand, physical form and size, redeemed during that redemption period. Payment by the successful offeror is due no more than thirty (30) calendar days of receipt of the State's invoice. Specific requirements by State are detailed in each State's contract.

The States' WIC Programs may transition to new systems during the term of this contract including Management Information or Electronic Benefit Transfer Systems or both. Should rebate functionality in the new systems be delayed, the State(s) will submit an invoice(s) to the successful offeror based on 90% of the total number of units, by brand, physical form and size, redeemed for the last month statewide data is available from the State's system as an initial partial invoice. Once the data is available from the new system(s) the State(s) will submit an invoice to the successful offeror for the remaining rebate balance which will be based on the total number of units, by brand, physical form and size, redeemed for that billing month. Payment by the successful offeror is due within thirty (30) calendar days of receipt of the State's invoice.

Payments will be made to the State by Electronic Funds Transfer (EFT) or Automated Clearing House (ACH) wire transfer.

The successful offeror shall make advance payment, if requested by any of the States. The requested advance payment may not

exceed the number of units issued, by brand, physical form and size, less the number of units issued but not redeemed, for the most recent closed-out month for which data is available. A State may request a partial advance payment.

11. The successful offeror agrees to pay interest penalties to the State in the amount of 1 percent per month or any portion thereof calculated on the installment amount due or invoice total for any properly delivered invoice for which funds have not been transferred to the State by the successful offeror by the close of business on the due date for the payment.
12. The successful offeror shall guarantee that sufficient quantities of all three forms of the primary contract brand infant formula and all other contract brand infant formulas approved for issuance by any or all of the States will be available to wholesalers and all WIC- authorized retailers to meet the States' WIC needs.
 - a. The successful offeror shall make contact with all wholesalers and authorized WIC retail outlets to assure adequate knowledge on how to order quantities of its formula after the contract is awarded. The contact must be made no less than 60 calendar days prior to the start of the contract.
 - b. When the successful offeror's product is not available in the State for 72 hours or more, the State shall have the right to substitute contract brand infant formulas currently not approved by the State for issuance or non-contract brand infant formulas, except exempt infant formulas. The State shall invoice and the successful offeror shall pay rebates for the units issued during the period when the offeror's formula was not available, notwithstanding that food instruments issued during a shortage may be redeemed after the shortage is remedied. The lowest national wholesale price per unit at the time of issuance for a full truckload of the substitute formula shall be used to calculate the rebate amount. The rebate paid for the substitute formula shall yield the same net price per reconstituted fluid ounce as the rebate for the formula for which it is being substituted.
13. The proposal shall represent only the products of the offeror, except where the offeror does not produce a soy-based infant formula and must subcontract with another manufacturer to supply a soy-based infant formula under each State's contract.
14. The products shall comply with all applicable regulations relevant to infant formulas (21 CFR Parts 1-190) pursuant to the provisions

of the Federal Food, Drug and Cosmetic Act.

15. The following definitions shall control the RFP process and subsequent contracts:
 - a. Brand: The name of a specific infant formula manufactured by a specific manufacturer.
 - b. Contract brand infant formula: All infant formulas, except exempt infant formulas, produced by the manufacturer awarded the infant formula cost containment contract. If the manufacturer subcontracts for soy-based infant formula, then all soy-based infant formulas covered by the subcontract are also considered contract brand infant formulas. Contract brand infant formulas also include all infant formulas, except exempt infant formulas, introduced after the contract is awarded.
 - c. 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.
 - d. Infant formula: A 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 in 21 CFR Parts 106 and 107.
 - e. First Date to Use: The first date on which the food instrument or cash-value voucher may be used to obtain supplemental foods. 7 CFR 246.12.
 - f. Food Instrument: voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used to obtain supplemental foods. 7 CFR 246.2
 - g. Net price: The difference between an infant formula manufacturer's lowest national wholesale price per unit for a full truckload of infant formula and the rebate amount offered or provided per unit by the manufacturer under an infant formula cost containment contract.
 - h. Non-contract brand infant formula: All infant formula,

including exempt infant formula, not covered by an infant formula cost containment contract awarded by the States under this RFP.

- i. Primary contract brand infant formula: The specific milk-based infant formula for which the successful offeror submits a bid to the States in response to this rebate solicitation and for which a contract is awarded by the States as a result of the bid.
- j. Redemption: A unit of infant formula shall be deemed to have been redeemed when a unit issued has been cleared for payment and paid.
- k. Responsible offeror: an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that their financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.
- l. Responsive offer: an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for a proposal include, but are not limited to, price, quality, quantity, or delivery requirements.

B. PROPOSAL FORMAT AND CONTENT

Proposals shall include a concise description of the manufacturer's capabilities to satisfy the requirements of this RFP. Emphasis shall be on completeness and clarity of content.

There is no intent to limit the contents of a proposal. The States permit the inclusion of any additional information an offeror deems pertinent. The States request that the following section headings be used in the proposals submitted in response to this RFP and that it be arranged in the order listed below. The proposal must provide sufficient detail and clarity to permit comprehensive evaluation of the offer. A copy of the proposal and the manufacturer's nationally published wholesale full truckload price list(s) as of March 23, 2018, for each non-exempt infant formula produced by the manufacturer must be furnished. If applicable, the nationally published wholesale full truckload price list(s) as of March 23, 2018, for each soy-based infant formula subcontracted by the manufacturer must also be furnished.

All proposals submitted shall contain, at a minimum, the following two sections:

1. Technical Proposal

The following technical requirements will be evaluated on a pass/fail basis. Offerors must:

- a. Include all pertinent data relating to their organization, personnel, and experience that would support the offeror's qualifications and capabilities to perform the services called for in this RFP, beginning October 1, 2018.
- b. Provide a copy of their 2017 or latest annual financial report or similar evidence of financial stability to permit the States to be satisfied with the financial stability of the offeror. The proposal should include financial reports of the offeror's parent corporation and any subsidiaries or divisions associated with the performance of the States' contracts. Offerors may include financial reports electronically on CDs or Flash Drives, instead of submitting them in hard copy with their bid.
- c. Provide a brief narrative describing all non-exempt infant formulas in their product line and, if applicable, each soy-based infant formula to be subcontracted by the offeror.
- d. Describe their plans and approach for accomplishing the tasks herein described in Section III.A. Describe the distribution network to be used in the States, including a list of wholesale distributors with their addresses (physical, mail and electronic) and phone numbers, who will carry the offeror's infant formulas.
- e. Provide a description of their disaster response and recovery plan.
- f. Label information that is relevant to the proposal, as applicable.
- g. Register to do business with each State's Secretary of State; NM– www.sos.state.nm.us ; AR – www.SOS.arkansas.gov; NC – www.secretary.state.nc.us/
- h. Submit documentation of their legal name, such as an IRS

w-9, and/or Doing Business As (DBA) documentation.

- i. Provide their Employer Identification Number (EIN).
- j. Provide their Data Universal Numbering System (DUNS) number.
- k. Register with the System for Award Management (SAM) at www.sam.gov/portal/SAM/#1#1.
- l. Provide contact name and information for the offerors contract administrator should contract be awarded, include mailing address, phone and email.

2. Cost Proposal

- a. The proposal shall include a rebate amount on the Quote Sheet (Attachment III) for a single milk-based infant formula in concentrated liquid, powdered and ready-to-feed physical forms. A different rebate amount may be submitted for each physical form of the formula.
- b. The manufacturer's nationally published wholesale full truckload price list(s) as of March 23, 2018, shall accompany the proposal to determine the base commercial wholesale price (i.e., the lowest national wholesale price per unit for a full truckload) on the Quote Sheet (Attachment III). Any wholesale price adjustments after March 23, 2018, shall cause the rebate to be adjusted automatically by the same amount on a cent-for-cent basis.
- c. The rebate amount for the primary contract brand infant formula shall be the rebate amount stated on the Quote Sheet and in each State's contract, applied to the volume of purchases the States invoice the successful offeror. The successful offeror shall agree that the rebate amount shall increase or decrease effective the first day of the month in which the wholesale price per unit (i.e., the lowest national wholesale price per unit for a full truckload) increases or decreases. The price per unit rebate will increase or decrease effective the first day of the month in which the wholesale price per unit increased or decreased. This increase or decrease shall be on a cent-for-cent basis.

The rebate amount for all other contract brand infant formulas shall be the rebate amount determined in

accordance with Section III.A.7. of this RFP and stated in each State's contract, applied to the volume of purchases the States invoice the successful offeror. The successful offeror shall agree that the rebate amount for these contract brand infant formulas shall increase or decrease effective the first day of the month in which the wholesale price per unit (i.e., the lowest national wholesale price per unit for a full truckload) increases or decreases. The price per unit rebate will increase or decrease effective the first day of the month in which the wholesale price per unit increased or decreased. This increase or decrease shall be on a cent-for-cent basis.

- d. The successful offeror agrees to notify the States in writing no less than thirty (30) calendar days prior to any changes in wholesale prices. The notification shall include both the date and amount of the increase or decrease.

IV. EVALUATION OF PROPOSALS

A. GENERAL CONDITIONS

The States will award their contracts to the responsive and responsible bidder offering the lowest total monthly net price, for the three States combined, for a standardized number of units of a single milk-based infant formula. The **total monthly net price** will be determined as follows:

1. The **net price** per unit for each physical form of formula will be determined by subtracting the rebate amount offered per unit from the lowest national wholesale price per unit for a full truckload of that physical form of infant formula on the date of the bid opening.
2. The **monthly net price** for each physical form of formula will be determined by multiplying the net price per unit by the standardized number of total monthly units for that physical form of formula.
3. The **total monthly net price** will be the sum of the monthly net price for each physical form of a single milk-based infant formula.
4. NOTE: The standardized number of **total monthly units** used in the bid evaluation is determined as follows:
 - a. The total monthly reconstituted ounces for bid by physical form (column E of Attachment II, Standardized Number

of Reconstituted Fluid Ounces by Physical Form) is determined by multiplying the federal maximum monthly allowable ounces established in 7 CFR §246.10(e)(9)(Table 1) for each physical form and food package by the average monthly number of infants using each physical form and food package for the three States combined (see Attachment I, Infant Report, depicting average monthly infant participation and usage data).

- b. The total monthly reconstituted ounces for bid by physical form (transferred to column C of Quote Sheet, Attachment III) is divided by the can yield (in reconstituted fluid ounces) of the corresponding unit of milk-based infant formula submitted for bid by the offeror, to arrive at the standardized number of **total monthly units** used in the bid evaluation for each physical form of formula.

B. INFANT PARTICIPATION AND INFANT FORMULA USAGE DATA

Attachment I to the RFP (Infant Report) contains the average monthly infant participation and infant formula usage data by physical form and food package for the three States combined.³ The data does not include infant participants who are exclusively breastfed and those who are issued exempt infant formula.

The infant formula usage data includes all brands of infant formula the States currently use, except exempt infant formulas. The infant participation and infant formula usage data does not necessarily reflect the actual issuance and redemption that will occur under the States' contracts. The data is presented for reference only as a tool for potential offerors to size the magnitude of purchases via this RFP. The States cannot guarantee any actual level of purchases that will result from this RFP. Over the life of the contracts, the number of units purchased monthly may increase or decrease given the availability of USDA grant funds, changes in the number of clients eligible for the WIC Program, or for other reasons.

V. **NOTIFICATION OF OUTCOME AND DISPUTE RESOLUTION**

- A. The States shall send a written notice of the outcome of the proposal review to each offeror after the award is made.
- B. Throughout the contract awarding process, the Contract Administrators acting *en banc* shall have authority, prior to the commencement of an action or protest in court, or any other action provided by law concerning

a controversy, to settle and resolve any such disagreement. The Contract Administrators shall promptly issue a decision in writing. The decision shall state the reasons for the action taken by the Contract Administrators.

Notices of any protest shall be served with all attachments upon all of the States' WIC Directors simultaneously with the filing of any action in any forum.

- C. Any offeror who is aggrieved in connection with a solicitation or award may file a formal written protest pursuant to the New Mexico's Procurement Code Regulations, 1.4.1 NMAC. Any decision rendered in New Mexico shall be binding upon the New Mexico WIC Program, the Arkansas WIC Program, and the North Carolina WIC Program by agreement of the States.

³ Participation and usage data is from October 1, 2016 through September 30, 2017.