

**STATES' RESPONSES TO POTENTIAL OFFERORS' QUESTIONS ABOUT WIC  
INFANT FORMULA REBATE INITIATIVES**

**REQUEST FOR PROPOSAL**

1. Section I.A.

- a. Please provide the number of infants currently receiving an exempt infant formula for each State program. **The approximate number of infants receiving exempt infant formula for each month: Arkansas = 2,742; North Carolina = 7,556; New Mexico = 1,249.**
- b. Please indicate, for each State, what percent of infants that are enrolled in the WIC program were enrolled with incomes higher than 185% of the Federal poverty level. **Arkansas - 0 %; New Mexico - 0%; North Carolina – 0%.**
- c. Please indicate, for each State, what percent of infants that are enrolled in the WIC program were enrolled via adjunctive eligibility (i.e., they demonstrated active participation in SNAP, TANF, Medicaid or CHIP). **The States decline to provide the data because it is not readily available.**
- d. Please provide, by State, the number of WIC authorized above 50% vendors. **Arkansas - 0; New Mexico - 1; North Carolina - 0.**

2. Section I.B

- a. Are all infants that qualify to receive WIC benefits currently being served in each State? **The States serve all eligible infants who apply.**
  - i. If not, please provide an estimate of the number of infants currently eligible, but not served in each State. **Not Applicable.**

3. Section I.C.1

- a. Please confirm that the State contracts included with the RFP are sample contracts and are not required to be submitted with an offeror's proposal. **The States confirm.**
- b. Please change the timing in section b to return signed contracts within 14 *business* days. **The States decline.**

4. Section I.C.3

- a. Contracts with mutual extension options can be more attractive to potential bidders. Please consider changing this section and the States' contracts to make the extension options subject to mutual agreement. (question also applicable to State contracts) **The States decline.**
- b. If a new Contractor is awarded the contract, please describe in detail each State's transition plan. **All States inform vendors, staff, medical providers, participants, conduct training, and create written materials. The States will also hold an introductory meeting with the selected offeror.**
- c. Please confirm, for each State, that if a participant comes to a clinic in September to receive three months of infant formula benefits, they will receive September benefits for the current contract holder's formula and October and November's infant formula

benefits for the new contract holder's formula. **Food instruments with a first date to spend/use on or after October 1, 2018, would include the new contractor's products. Food instruments with a first date to spend/use prior to October 1, 2018, would include the existing contractor's products.**

5. Section I.C.7

- a. In addition to the elements listed, please confirm the following elements will also be read aloud at the public bid opening: reconstituted fluid ounces per unit, net price per unit, monthly net price, percent rebate and total monthly net price. **The States will read aloud physical form, product brand name and unit size, reconstituted fluid ounces per unit, and rebate per unit.**
- b. Please provide a call-in number where bidders can call in to listen to the public bid opening. **The States agree, and a number will be provided at a later date to each manufacturer's point of contact.**
- c. Please describe the method for securing the sealed bids between the bid submission time and the bid opening time. **The bids are stored in a locked safe immediately upon receipt.**
- d. Please provide an approximate date in April that the States anticipate awarding the contract. **The States anticipate notifying the successful bidder and other offerors of the result of the RFP on April 20, 2018. Contract awards of each of the respective State's contracts occur upon approval of each by all their respective required authorities.**
- e. Please confirm all bidders will be notified of the award via email. If not confirmed, please advise how all bidders will be notified of the award. **As stated in Section V.A of the RFP, "the States shall send a written notice of the outcome of the proposal review to each offeror after the award is made." The States agree to also notify by email. The States anticipate awarding contracts on April 20, 2018.**

6. Sections II.A and B

- a. We have the following questions on the excel version of the Quote Sheet (Attachment III):
  - i. The RFP requires all proposals submitted be rounded to three places to the right of the decimal. The columns in the Quote Sheet provided do not consistently reflect three decimals. Please provide a revised Excel Quote sheet with all columns/fields reflecting three decimal places, as required. **An updated version has been sent to potential bidders via email and an update will be posted on the New Mexico website.**
- b. The Contractor Certification (Attachment IV) is required for submission but Section III.B does not identify where it should be included in the submitted proposal. Please provide additional information on where it should be included within the proposal. **Include it as an attachment labeled as Contractor Certification.**

7. Section II.J.2

- c. Please confirm if any amendments issued will be required to be signed and/or included as part of an offeror's proposal. **There will be an acknowledgement form for any amendments that will need to be signed and submitted within the**

**specified timeframe. The offeror's response shall be to the amended RFP.**

8. Section II.L

- d. Please confirm that a signature on Attachment IV is sufficient to provide assurance for this section. If not, please identify where this assurance should be provided within an offeror's proposal. **Completing and signing the Contractor Certification, Attachment IV, certifies the offeror's assurance that it will comply with the requirements in Section II. L. of the RFP and statement 8 of the Contractor Certification. The Contractor Certification Form has been added on the New Mexico website.**

9. Section II.N.5

- e. Please confirm that a signature on Attachment IV is sufficient to indicate acceptance for this section. **The States confirm.** If not, please identify where this assurance should be provided within an offeror's proposal. **Not applicable.**

10. Section III.A.1

- a. Do the States intend to allow the issuance of any non-contract routine formulas? **The States have no exception policies.**
- b. It is imperative for a bidder to understand how the State will conduct its WIC Program and to be able to rely on the State's responses to the questions about the conduct of the WIC Program in submitting a bid. In conducting its WIC Program, will the States allow the issuance of any formulas that do not meet the minimum WIC requirements as specified in Table 4 at 246.10(e)(12)? **No.** Do the States intend to allow the issuance of any 19 calorie routine products? **No. The primary contract brand infant formula and any other contract brand infant formulas approved for issuance by any or all of the States under their respective contracts must meet the minimum requirements and specifications in Table 4 of 7 C.F.R. 246.10(e)(12) for infant formula, which include providing at least 67 kilocalories per 100 milliliters (19.814 kcals per fluid ounce) at standard dilution.**

11. Section III.A.4 (question also applicable to State contracts)

- a. Please adjust the ready-to-feed sizes to allow for a 48 oz. size to accommodate all the sizes currently available in the market. **The States confirm. See the RFP and quote sheet, as amended.**

12. Section III.A.8 (question also applicable to State contracts)

- a. Please revise this section to read that a replacement product will receive the same percentage discount as the product it is replacing. **The States decline.**

13. Section III.A.9 (questions also applicable to State contracts)

- a. Changes detailed in this section can be confidential and might be considered trade secrets. It would be a disadvantage to the Contractor to provide this information 120 calendar days prior to a change.
  - i. Please revise the time period listed in the RFP and State contracts for

advance notification from 120 days to 90 days or the same time notification is provided to the Contractor's customers, whichever is sooner.

**The States decline.**

- ii. If not revised, please describe the procedure the States will follow to ensure they keep trade secrets confidential. **Proprietary information submitted in response to this RFP (Section II.H., "proprietary information including trade secret, clearly identified as such upon submission") will not be subject to disclosure. Arkansas follows AR Code Annotated §§ 4-75-601 et seq. New Mexico follows the Uniform Trade Secrets Act §§ 57-3A-1 to 57-3A-7 NMSA 1978. North Carolina follows N.C.G.S. § 132-1.2(1) regarding conditions for nondisclosure of proprietary information.**
- b. Please remove the requirements to change a UPC code when unit size or reconstituted ounces change or revise this section to state that a manufacturer must follow the UPC code guidelines issued by GS1 (see <http://www.gs1.org/1/gtinrules/>) as to when manufacturers are required to change UPC codes. **The States decline.**

**14. Section III.A.10 (questions also applicable to State contracts)**

- a. Please confirm how many initial partial invoices (90% of previous month invoice) each state has requested during the current contract. **During the current contract, none of the States requested payment of any partial invoices.**
- b. Since the States have elected a different payment method which expedites monthly payments, the need for advance payments should be eliminated. Please eliminate the advance payment option. **The States decline to eliminate the advance payment option from the RFP and each of the State contracts. New Mexico is amending the advance payment provision in Article 1.C. as follows: "Advance payment is due upon receipt of the request and becomes delinquent after twenty (20) calendar days. A late payment charge of one-half of one percent per month accrued on a daily basis (6% annual percentage rate) shall be assessed on any advance payment request that has not been paid within twenty (20) calendar days of its receipt. Late payment penalties will begin on the twenty-first day. The CONTRACTOR shall be entitled to a non-refundable discount of one-half of one percent, accrued on a daily basis (6% annual percentage rate), for each month that payment is in advance of its original due date, with such discount applied against the actual amount of advance payment made. Any amount in excess of actual rebates due to the DEPARTMENT shall be deducted from the next payment due to the DEPARTMENT."**
  - i. If not eliminated, please confirm advance payments will be limited to one per year per State. **The States decline to limit the number of advance payments in the RFP.**
  - ii. If not confirmed, please provide the justification for an unlimited number of advance (full and/or partial) payments given the payment method contained in this section. **The justification by the States for the unlimited number of advance payments is due to the fluctuation of available funds and the timing of appropriations. Advances may be needed during Federal Government shutdowns if available cash is insufficient to maintain**

**operations.**

- iii. Please provide the number of advance (full and/or partial) payments by State that have been requested during the current contract period. **During the current contract, none of the States requested an advance payment.**

15. Section III.A.12.b (questions also applicable to State contracts)

- a. Please revise the time limitation in this section from “72 hours or more” to “5 business days or more.” **The States decline.**
- b. In the event the successful offeror is unable to supply a specific form of a product, please confirm the States will issue an alternate form of the same brand. **The States decline to confirm.**
  - a. If not confirmed, please list all of the reasons why the States will not substitute an alternate form of the contracted infant formula prior to issuing a non-contract brand. **The States are unable to predict what circumstances may invoke this provision.**
- c. Please revise the last sentence of this section to read as follows – “The rebate paid for the substitute formula shall yield the same percentage discount as the rebate for the formula for which it is being substituted”. **The States decline to revise the sentence.**

16. Section III.B.1.d

- a. Due to privacy law considerations, we would like to request the States accept the physical & mail addresses along with phone numbers and remove the requirement to provide electronic addresses. **The States decline.**

17. Section III.B.1.f

- a. Please confirm this section is referencing labeling anything included in the bid proposal and it is not indicating the product labels are required. If not confirmed, please give further details/clarification as to what this section is requiring. **Section III.B.1.f. of the RFP pertains to proposal submission, not product labels.**

18. Section III.B.1.g

- a. Please confirm that a signature on Attachment IV is sufficient to confirm a manufacturer is registered in all three States. **The States decline to confirm.**
- b. If not confirmed, please identify what is required in an offeror’s proposal to indicate compliance with this requirement. **Please provide documentation of registration from the Secretary of State office for each State, included as an attachment and labeled accordingly.**

19. Section III.B.2.c. (questions also applicable to State contracts)

- a. Please revise the effective date of a price increase or decrease to be the first day of the month after the price increase or decrease takes effect to be consistent with when the price change would be reflected at retail shelves. **The States decline to revise the effective date.**
- b. Please confirm that each month’s processed food instruments included in the rebate invoices will be divided according to issued month and that any changes in the rebate per can as a result of a wholesale price change or can resize will be applied at

the highest effective rebate amount associated with the appropriate issued month. Preparing rebate invoices in this manner will ensure that retail price adjustments and can resizes which affect the rebate per can applied to the invoice will comply with federal law and more accurately correspond to the retail price per can reimbursed to the vendor by the States. **The States cannot confirm.**

- c. Please confirm signature on Attachment IV is sufficient to indicate agreement to all required elements in this section. **The States confirm.**

**20. Section IV.B**

- a. For infants categorized as mostly breastfeeding, please provide for each State the AVERAGE infant formula allotment by baby age. **The States decline to provide the data because it is not readily available.**
- b. For infants categorized as some breastfeeding, please provide for each State the AVERAGE infant formula allotment by baby age. **The States decline to provide the data because it is not readily available. Each issuance is driven by the dyads needs. Issuance is in accordance with federal regulations.**

**21. Section V**

- a. In the event of a protest, please confirm that all bidders will be made aware via email. **Upon the filing of a timely protest, notice is given to the contractor if an award has been made or, if no award has been made, to all offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. The point in time in which a contract is awarded is that point at which a legally enforceable contract is created pursuant to 1.4.1.83(A) NMAC.**

**ATTACHMENT I**

22. The total infants shown for Arkansas on this page match exactly the number shown on page two of the RFP. These two numbers should not align since the numbers on page two indicate that they include exclusively breast fed and exempt infants whereas the numbers on Attachment I indicate they exclude exclusively breast fed and exempt infants. Please clarify which numbers are correct. **Arkansas acknowledges that there was a discrepancy in the numbers provided in the RFP. The numbers were from a Management Information System (MIS) Report that contained preliminary point in time numbers instead of final as reported to USDA. Arkansas confirms that the numbers reported in the USDA State Level Participation report are correct. The average monthly participation for FY2017 was 76,631, of which 22,303 were infants. Of the total number of infants, 1,962 were fully breastfed and 17,813 received exempt formula.**

**ATTACHMENT III**

23. The Quote Sheet has an incorrect calculation in the Monthly net price column (column H) for the Ready to Feed form. Please revise the calculation to correctly calculate the net price multiplied by the total monthly units and provide an updated electronic version of the Quote Sheet. **An updated version has been sent to potential bidders via email.**
24. Please revise the Ready to Feed line to allow for a 48-ounce size to reflect what is currently being using in the marketplace. **The States confirm. See the RFP and quote sheet, as**

**amended.**

#### **ATTACHMENT IV**

25. This document was not provided on the bid website. Please provide an electronic copy of this document for manufacturers to populate for a bid submission. **The Contractor Certification Form has been added on the New Mexico website.**

#### **NEW MEXICO SAMPLE CONTRACT (These questions are in addition to what was submitted above that was applicable to the State contracts)**

##### **26. Article 1.C**

- a. This section mentions the State will be transitioning to a new EBT system. Please provide additional details as to when this transition will occur. **The scheduled completion date for both MIS/EBT is August 31, 2018.**
- b. Please allow for a penalty discount percentage of 0.5% if the State elects to request an advance payment similar to what the other two State contracts include. **New Mexico confirms.**
- c. In the event of a natural disaster, please confirm that the State will issue an alternate form of the contract brands prior to issuing a non-contract formula. **New Mexico does not confirm. The provision will apply to all circumstances where the Contractor is unable to supply formula regardless of the cause of the inability to supply. However, the State will contact the manufacturer first to ensure sufficient quantities.**
- d. Please confirm how many reconciliation invoices have been submitted in the last 12 months and the reasons for submitting a reconciliation invoice. **New Mexico rarely uses reconciliation invoices, but two instances did occur. One was due to switching to a new EBT system, and the second due to a late claim file submission from a point of sale (POS) provider.**

##### **27. Article 1.D**

- a. Please confirm that there is no time limit on disputes arising from fraud or other illegal activity that prevents the Contractor from being able to identify the incorrect billing earlier. **The States decline to confirm.**
- b. Please confirm that this provision does not apply to claims that invoices and /or invoiced amounts are in violation of federal law. **The States decline to confirm. The States will comply with all requirements under federal law.**
- c. If no unique identifier per participant (e.g. pseudo Participant ID) is provided and the State's EBT systems allows for multiple formula purchases by a participant for one month's worth of benefits, please detail how the Contractor would be able to sum up the total number of infant formula cans redeemed by a single participant for the month to ensure that total cans issued did not exceed the federally regulated monthly maximums. **The States have system controls in place to ensure that the total number of units of infant formula issued to a single participant does not exceed the federally regulated monthly maximums. The States reconcile redemption**



**and issuance files. In order to validate issuance by participant, data would need to be accessed on site by reviewing individual records within the individual State's Management Information Systems (MIS).**

- d. The last sentence in this section appears to be referencing the wrong Article/Section. Please revise to the appropriate Article/Section. **New Mexico will amend the contract revising Article 1 C3 to refer to Article 1G.**

28. Article 1.E

- a. Consistent with the States rights to audit the Contractor, please confirm that the Contractor will be allowed to audit the records and policies and procedures relevant to the infant formula rebate process. **The States confirm.**
- b. Please confirm that documents and/or information regarding policies, procedures and operations of the WIC Program and infant formula monthly issuance allotments by brand and can size, infant age category and feeding method will be provided based on the State's open records law. **The States agree to provide data that is readily available.**
- c. Please confirm that redacted food instruments including infant age in months and feeding method type will be made available to the Contractor upon request for the purpose of verifying that appropriate issuance is maintained. **The States cannot confirm.**
- d. If not confirmed, please describe what process is in place for the Contractor to validate issuance/redemption and program compliance. **In order to validate issuance by participant, data would need to be accessed on site by reviewing individual records within each respective State's Management Information System (MIS).**

**ARKANSAS SAMPLE CONTRACT**

29. Section I.C.8

- a. In the event of a natural disaster, please confirm that the State will issue an alternate form of the contract brands prior to issuing a non-contract formula. **Arkansas does not confirm. The provision will apply to all circumstances where the Contractor is unable to supply formula, regardless of the cause of the inability to supply. However, the State will contact the manufacturer first to ensure sufficient quantities.**

30. Section I.D

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

31. Section I.H

- a. Consistent with the States rights to audit the Contractor, please confirm that the Contractor will be allowed to audit the records and policies and procedures relevant to the infant formula rebate process. **Arkansas confirms.**



- b. Please confirm that documents and/or information regarding policies, procedures and operations of the WIC Program and infant formula monthly issuance allotments by brand and can size, infant age category and feeding method will be provided based on the State's open records law. **Arkansas agrees to provide access to data that is readily available.**
- c. Please confirm that redacted food instruments including infant age in months and feeding method type will be made available to the Contractor upon request for the purpose of verifying that appropriate issuance is maintained. **Arkansas cannot confirm.**
- d. If not confirmed, please describe what process is in place for the Contractor to validate issuance/redemption and program compliance. **In order to validate issuance by participant, data would need to be accessed on site by reviewing individual records within Arkansas' State Management Information System (MIS).**

32. Section II.A

- a. If no unique identifier per participant (e.g. pseudo Participant ID) is provided and multiple food instruments are issued to participants for one month's worth of benefits, please detail how the Contractor would be able to sum up the total number of infant formula cans redeemed by a single participant for the month to ensure that total cans issued did not exceed the federally regulated monthly maximums. **The States have system controls in place to ensure that the total number of unit of infant formula issued to a single participant does not exceed the federally regulated monthly maximums. The States reconcile redemption and issuance files. In order to validate issuance by participant, data would need to be accessed on site by reviewing individual records within the individual State's Management Information Systems (MIS).**

33. Section III.M

- a. Please confirm how many reconciliation invoices have been submitted in the last 12 months and the reasons for submitting a reconciliation invoice. **Arkansas has submitted no reconciliation invoices in the last 12 months.**

**NORTH CAROLINA SAMPLE CONTRACT**

34. Section 3.j

- a. In the event of a natural disaster, please confirm that the State will issue an alternate form of the contract brands prior to issuing a non-contract formula. **North Carolina does not confirm. The provision will apply to all circumstances where the Contractor is unable to supply formula regardless of the cause of the inability to supply. However, North Carolina will contact the manufacturer first to ensure sufficient quantities.**

35. Section 4

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

36. Section 8

- a. Consistent with the States rights to audit the Contractor, please confirm that the Contractor will be allowed to audit the records and policies and procedures relevant to the infant formula rebate process. **North Carolina confirms.**
- b. Please confirm that documents and/or information regarding policies, procedures and operations of the WIC Program and infant formula monthly issuance allotments by brand and can size, infant age category and feeding method will be provided based on the State's open records law. **North Carolina agrees to provide access to data that is readily available.**
- c. Please confirm that redacted food instruments including infant age in months and feeding method type will be made available to the Contractor upon request for the purpose of verifying that appropriate issuance is maintained. **North Carolina cannot confirm.**
- d. If not confirmed, please describe what process is in place for the Contractor to validate issuance/redemption and program compliance. **In order to validate issuance by participant, data would need to be accessed on site by reviewing individual records within North Carolina's Management Information System (MIS).**

37. Section 13

- a. If no unique identifier per participant (e.g. pseudo Participant ID) is provided and multiple food instruments are issued to participants for one month's worth of benefits, please detail how the Contractor would be able to sum up the total number of infant formula cans redeemed by a single participant for the month to ensure that total cans issued did not exceed the federally regulated monthly maximums. **In order to validate issuance by participant, data would need to be accessed on site by reviewing individual records within North Carolina's Management Information System (MIS).**

38. Section 27

- a. Please confirm how many reconciliation invoices have been submitted in the last 12 months and the reasons for submitting a reconciliation invoice. **One reconciliation invoice was submitted due to not receiving notification from the manufacturer of a price change.**

**GENERAL QUESTIONS**

39. Are participants required to come into the clinic for their benefits every three months, or are benefits automatically reloaded for months four and five? **The States require participants to come into the clinic for initial certification and for nutrition education contacts. The states issue benefits monthly, bi-monthly or tri-monthly. Benefits are not automatically**

**reloaded.** For each State, please provide general information on participant requirements for visiting the clinic during the first year in which an infant receives WIC benefits. **The States require participants to come into a clinic for initial certification and four nutrition education contacts.**

40. Please provide the percentage of infants, for each State, that are issued benefits 3 months at a time, 2 months at a time and 1 month at a time. **The States decline to provide the data because it is not readily available.**
41. During 2017 (or the most recent period data is available), for each State, please advise what percentage of infant formula food instruments were issued to participants but never redeemed. **The States decline to provide the data because it is not readily available.**
42. Please provide the most recent 3 months of rebate invoices for each state. This would be information the current contractor has that would be a disadvantage for the other bidders. **See Attachment A.**
43. Please confirm the following:
  - a. The States will not issue quantities of infant formula in excess of the monthly maximums prescribed by federal law for each WIC participant. **The States confirm.**
  - b. The Contractor will not be required to pay rebates on quantities of infant formula in excess of the federal monthly maximums. **The States confirm.**
  - c. If rebates for quantities in excess of the federal monthly maximums are billed and rebated in error, the amounts associated with the over issuance and redemption will be reimbursed to the Contractor upon discovery. **The States confirm to provide reimbursement based on availability of funding per Federal Regulations.**
  - d. If any portion of above is not confirmed, please provide a detailed explanation of why such portion was not confirmed. **Not Applicable.**
44. Please explain how award will be made in the event of a tie bid. **In the unlikely event of a tie, the award will be made in accordance with 7 CFR 246.16a(c)(5) and Section 1.4.1.41 NMAC (Best and Final Offers) and Section 1.4.1.44(A) NMAC (Award); in the event of an unresolved tie, Section 1.4.1.26(B)(4) NMAC (Identical Low Bids) will be implemented.**

#### **RFP**

1. Page 1, Section I.A. – For each State, how many months of food instruments are typically issued to participants at each clinic visit or at certification? **Typically, three months of benefits are issued.** If a participant visits a clinic in the middle of the month are food benefits prorated for that month, or is the first day to use that day and the last day to use 30 days later (i.e. are benefits issued on a rolling basis)? **Arkansas and North Carolina typically issue three months of benefits, use a rolling month, and prorate benefits if participants come in mid-month. New Mexico typically issues three months of benefits, uses a calendar month, and prorates benefits if participants come in mid-month.**

2. Page 2, Section I.A. – The number of infants stated in the first paragraph on this page does not appear to match the infant counts reported to USDA and included on its State Level Participation report. The USDA report states 57,559 infants participated in the North Carolina WIC program in FY 2017; 11,603 participated in New Mexico; and 22,303 participated in Arkansas. Please explain the discrepancy in these numbers, particularly the significant discrepancy in the Arkansas participation numbers. Comparing the numbers reported to USDA against the participation numbers included in this section, there is a difference of 11,335 infants. **Arkansas acknowledges there was a discrepancy in the numbers provided in the RFP. The numbers were from a Management Information System (MIS) Report that contained preliminary point in time numbers instead of final as reported to USDA. Arkansas confirms that the numbers reported in the USDA State Level Participation report are correct. The average monthly participation for FY2017 was 76,631, of which 22,303 were infants. For the purpose of the Rebate RFP and subsequent contracts, North Carolina includes Eastern Band of Cherokee Indians (EBCI) which has 120 infants in our infant participant numbers. However, USDA reports them separately. Therefore, the numbers of infants do balance for North Carolina when taking EBCI's data into consideration. New Mexico is assuming the USDA report referenced is for FFY 2017. USDA reported 11,603 total infants (Breastfed and Formula fed) participated in New Mexico. New Mexico's actual numbers were 11,427 for total infants in FFY2017. The discrepancy is due to preliminary reports.**
  
3. Page 2, Section I.A. – We have the following additional questions related to infant participation:
  - a. For each State, how many infants receive exempt infant formula each month? **The approximate number of infants receiving exempt infant formula for each month: Arkansas = 2,742; North Carolina = 7,556; New Mexico = 1,249.**
  - b. For each State, how many infants receive non-contract, non-exempt infant formula each month? **AR = 0; NC = 0; NM=0**
  - c. If any or all of the States do not issue non-contract, non-exempt infant formulas, please indicate whether each state expects to continue this zero tolerance policy with respect to non-contract issuance. **All States confirm.**
  - d. For each State, how many infants are exclusively breastfed each month? **Arkansas – 1,962; North Carolina –6,997; New Mexico 9,891.**
  - e. The USDA State Level Participation report, indicates a total of 79,489 infants were either partially breastfed or fully formula fed in FY 2017 – the same time period included in Attachment I. However, Attachment I indicates 68,154 infants received non-exempt infant formula. The infant counts on Attachment I were used to calculate the standardized number of units included on Attachment II and the Quote Sheet. Please explain the differences between these infant participation counts, and revise the documents and Quote Sheet as appropriate. **The USDA state level participation report includes the total number of infants for the three states while attachment 1 only refers to exempt formula fed infants. The USDA numbers are preliminary**

- numbers and continue to change until the Federal Fiscal Year is closed out.**
- f. For each State, please indicate whether participation is expected to increase, decrease, or remain level for the next 2-3 years? **While it is difficult to project participation levels with accuracy, we expect participation to increase over the next 2-3 years.**
4. Page 2-3, Section I.C.1. – Please confirm the sample contracts do not need to be included in the bid submission package. **The States confirm.**
5. Page 2-3, Section I.C.1.b. – We request the States agree to send the actual contracts to the successful offeror by email rather than regular mail. The States are requesting a short timeline for the execution of these contract and delays in delivery may further substantially reduce this timeframe. Please confirm the contracts will be sent via email. **The States confirm.**
6. Page 3, Section I.C.3. – Contract Period – In order to attract the best possible bids, would the States consider requiring mutual consent for the option to extend the contract period for up to two additional? **The States decline.**
7. Page 5, Section I.C.7. – Public Proposal Opening – We have the following questions:
- a. We request the States agree to read aloud the number of reconstituted fluid ounces for each product being bid. **The States confirm.**
  - b. We request the States agree to read aloud the monthly net price for each form bid, as well as the total monthly net price. **The States will read aloud physical form, product brand name and unit size, reconstituted fluid ounces per unit, and rebate per unit.**
  - c. Would the States consider providing a call-in number for those bidders who are unable to attend the bid opening in person? **The States agree and a number will be provided at a later date to each manufacturer’s point of contact.**
8. Page 5 – Contract Award – Are the States able to provide a more specific anticipated award date? **The States anticipate notifying the successful bidder and other offerors of the result of the RFP on April 20, 2018. Contract awards of each of the respective State’s contracts occur upon approval of each by all their respective required authorities.** How will bidders be notified when the award is made? **As stated in Section V.A. of the RFP, “the States shall send a written notice of the outcome of the proposal review to each offeror after the award is made.”** We request all bidders be notified by email as soon as the award is made? **The States agree.**
9. Page 5, Section II.B. – Columns F and G in the Quote Sheet automatically round to four decimal places, and column H rounds to two decimal places. Please revise the Quote Sheet to be consistent with this provision. **See revised quote sheet attached to the RFP amendment and posted to the New Mexico website.**

10. Page 7, Section II.J.1. – Would the States agree to send the States’ responses to prospective offerors via email? **The States agree.**
11. Page 9, Section III.A.5. – Do any of the States currently authorize contract infant formulas that do not meet the minimum WIC requirements as specified in Table 4 at 246.10(e)(12)? **No.** Do any of the States intend to authorize such formulas during the term of the contract resulting from this RFP? **No.**
12. Page 10, Section III.A.6. – Please confirm the States will only bill the successful offeror for rebates on containers of infant formula lawfully purchased at authorized retail vendors by WIC participants. **The States confirm that they will bill the Contractor for units of formula that meet all redemption criteria.**
13. Page 11, Section III.A.9. – We request the States amend this section to require 90 days’ notice rather than the 120 days’ notice specified in this section. Ninety days is more consistent with commercial practices and would make this contract more appealing to bidders. **The States decline.**
14. Pages 12-13, Section III.A.10. – We request the States revise this section to allow only one advance payment per year. **The States decline.** We further request this provision be modified to provide a one percent discount on any advance payment made to a State. **The States decline.**
15. Page 13, Section III.A.11. – Please confirm the States intend to prorate the interest amount due by the number of days the payment is late? **The States confirm.** For example, if payment is received 10 days late, will the interest be calculated as approximately one-third of the 1% interest penalty? **No, it is dependent upon how many days are in the month.** We request the States amend the solicitation to clarify the interest will be prorated. Doing so will encourage prompt payment by the contractor once it has discovered the payment is overdue. **The States decline to amend.**
16. Page 13, Section III.A.12.a. – For each State, please provide a list of all authorized WIC vendors. **Refer to Attachment B.**
17. Page 13, Section III.A.12.a. – Do any of the States currently authorize WIC-only stores (i.e. above 50% vendors)? **No, the States do not authorize WIC only stores.** What percentage of WIC Food Instruments is redeemed at WIC- only stores? Please provide information separately for each State. **Not Applicable.**
18. Page 13, Section III.A.12.a. – Do the States intend to contact authorized vendors if there is a change in supplier for this contract? **Yes, the States will notify authorized vendors.** Do the States intend to contact healthcare providers and hospitals? **The States will notify providers.** Please provide additional information from each State on activities they will undertake if a new supplier is awarded this contract, including when relevant contacts will be

made. **All States inform vendors, staff, medical providers, participants, conduct training, and create written materials. The States will also hold an introductory meeting with the selected offeror. Outreach to stakeholders will occur between May and September.**

19. Page 13, Section III.A.12.b. – We request this provision be amended by changing “72 hours” to “five days”. **The States decline.** We further request the States agree to substitute other contractor formulas or forms prior to issuing any non-contract formulas if there is a temporary shortage of contract infant formulas. **The States decline.**
20. Page 13, Section III.A.12.b. – Please confirm the States will take reasonable steps to work with the contractor to ensure all participants receive the infant formula products they require while minimizing the issuance of non-contract formulas should product availability become a temporary issue during the term of the contract. **The States confirm.**
21. Page 16, Section III.B.1.b. – Please confirm the annual report of the offeror’s parent corporation will be sufficient to comply with this provision. **The States cannot confirm.**
22. Page 17, Section III.B.1k. – SAM Registration – Please remove this provision or confirm this requirement is not applicable to this solicitation. We are not aware of any other WIC infant formula rebate contract that includes this requirement. **The States confirm. Please see RFP, as amended.**
23. Pages 17-18, Section III.B.2.c. – We request this section be amended to state the amount of a price increase or decrease shall be effective on the first day of the month following the effective date of the price increase or decrease. As currently written, the States will receive the higher rebate per unit for products purchased prior to the effective date of the price increase. In the alternative, we request the States agree to only apply the higher rebate amount to products purchased prior to the effective date of the price increase. **The States decline.**
24. Page 19, Section IV.B. – Infant Participation and Infant Formula Usage Data – In order to ensure all bidders have access to the same information prior to submission of bids, please provide actual invoices submitted to the current contractor (and prospective bidder) for the period June 2017 through December 2017). **See Attachment A.**
25. Page 19, Section IV.B. – Infant Participation and Infant Formula Usage Data – For each State, please provide a list of all currently authorized infant formulas and exempt infant formulas. **See Attachment C.**



## Quote Sheet

26. Would the States consider using the Quote/Bid Sheet currently used by virtually all of the States when requesting WIC infant formula bids? This other format has become standard with WIC infant formula bids and all prospective bidders are familiar with this format. It is provided as an Excel file with two separate sheets (page 1 and page 2) included within the file. Use of this standard Bid Sheet format would minimize any confusion associated with the alternative format provided with this solicitation. We appreciate the States' consideration of this request. **The States decline.**

## New Mexico and Other Sample Contracts

27. We note the sample contracts provided are similar in content. Therefore, we will use the New Mexico sample contract as the basis for our questions. Please confirm each State will address the issue(s) raised in the following questions and modify all the sample contracts accordingly? **Any issue(s) addressed in the following questions pertaining to the New Mexico contract will be addressed in the Arkansas and North Carolina contracts only where expressly stated in the States' Responses.**
28. Page 2 – Article 1. Scope of Work, Section C. – In the third complete paragraph on this page this provision discusses and alternative payment method. Does New Mexico or any other State currently utilize this alternative payment method? **Yes, North Carolina is currently the only state utilizing the payment method outlined in the paragraph referenced.** If no, would the State agree to remove this provision? **The States decline.**
29. Page 3 – Article 1. Scope of Work, Section C. – 5<sup>th</sup> paragraph – event of natural disaster – We agree to fully cooperate with the States in the event of a natural disaster, and to take reasonable steps to ensure WIC infants and all infants in affected areas have access to infant formula. However, we believe it is unreasonable to request that the contractor pay rebates on non-contract formulas for situations outside of the control of the contractor. This type of provision is ripe for abuse by the States and violates basic tenets of fairness and fair dealing. Moreover, the USDA and FEMA have a process in place to deal with natural disasters and this process should be utilized. We strongly urge the States to delete this provision from each of the State contracts. Including such an onerous and inequitable provision makes this contract unattractive and will only serve to work against the States in the bidding process. Please confirm this change will be made to all of the State contracts. **The States decline.**
30. Page 4, Article 1. Scope of Work, Section C. – 3rd paragraph – Are reconciliation invoices currently used? Please provide additional information on how any why reconciliation invoices are used by each State. **North Carolina - While rarely used, the reconciliation invoice process is used to correct invoices when errors are identified. For example, this**

**year North Carolina contract staff were not notified of a price change from the manufacturer. Therefore, the price submitted was incorrect and a reconciliation invoice was issued to adjust the initial invoice to reflect correct pricing. Arkansas has not used reconciliation invoices during the current contract period. New Mexico rarely uses reconciliation invoices, but two instances did occur. One was due to switching to a new EBT system, and the second due to a late claim file submission from a point of sale (POS) provider.**

**31.** Page 4 – Article 1. Scope of Work, Section D. – Payment Disputes – We have the following questions regarding Section D.1.:

- a.** We request the States amend this provision by requiring at least 90 days' notice of a dispute or error. Ninety days is provided by most other WIC State Agencies. **The States decline to amend.**
- b.** Please confirm this provision applies only to disputes involving mathematical or other obvious errors on the invoice. **The States decline to confirm.**
- c.** Please confirm this provision applies to the States as well – i.e., if the State(s) does not notify the contractor of any dispute or error in the rebate invoice within the specified time period, the State(s) waives its right to receive additional funds resulting from a dispute or under billing error. **The States decline to confirm.**
- d.** Please confirm this provision does not apply in cases of fraud identified by the contractor, the States, USDA, or other governmental agencies. **The States decline to confirm.**

**32.** Page 4 – Article 1. Scope of Work, Section D. – Payment Disputes – We have the following questions regarding Section D.2.:

- a.** We request States remove the provision regarding late penalties on invoice amounts in disputes. The Contractor is not permitted to withhold payment on disputed invoices. Therefore, this provision is unnecessary. Moreover, a different late interest penalty is specified in this section (18%), which adds confusion to the overall contract. Please confirm this provision will be removed from all the State contracts. **The States decline to confirm.**
- b.** Please confirm the States agree to refund or credit the contractor for erroneous invoice amounts identified through contractor audits, and which have been accepted by the States. **The States confirm.**
- c.** Please confirm the States agree to refund or credit the contractor when the States or other governmental entities confirm infant formula redemptions were completed as part of a fraudulent transaction (i.e., WIC trafficking, etc.). **The States decline to confirm. If and when the States recoup funds, the manufacturer will be reimbursed accordingly.**

**33.** Page 4 – Article 1. Scope of Work, Section D. – Payment Disputes – We request the States agree to discuss with the contractor awarded this contract appropriate contract language for addressing payment issues identified through contractor audits and/or fraud-related issues directly affecting the contractor. **The States**

**decline. Pursuant to Sections II.J.2 and II.N.2 of the RFP, negotiated contract language after the deadline for submission of contract amendments is prohibited refer to Article I Section C Subsection 1(a2).**

34. Page 5 – Article 1. Scope of Work, Section E.3. – Have any progress, inventory or other reports been filed during the current contract? **No.** If yes, please provide a sample report that has been filed. If no reports have been filed, please confirm this provision is not applicable to this contract. **Not applicable.**
35. Page 6 – Article 1. Scope of Work – We request the provision included in Article 1.E.1,2,5 and 6 be included under the heading: “The Department shall:” **The States decline to amend.**
36. Page 6 – Article 1. Scope of Work – We request this section be amended to provide specific audit right to the contractor. **The States have amended their contracts accordingly.**
37. Page 7, Article 5. – Compliance – Has New Mexico and the other States identified instances of WIC trafficking or other forms of vendor and/or participant fraud in the last five years? **The States have not prosecuted or otherwise adjudicated any cases of fraud in the last five years. Vendor investigations are conducted within each State when fraud is suspected and vendors and participants have been disqualified and/or sanctioned for violations of regulations as a result of these investigations.** If yes, for each State please indicate how many vendors have been disqualified or otherwise sanctioned for fraudulent activity. **Not Applicable.**
38. Page 7, Article 5. – Compliance – New Mexico has utilized an EBT system for many years now. Has the Department identified specific reports that can be utilized to detect fraudulent activity? **Yes.** Please confirm the State will work with the contractor to produce reports how available through its EBT system to help detect fraudulent activities. **New Mexico declines. New Mexico works with multiple State and Federal entities to address fraudulent activities. The States agree to include an agenda item when we meet with the selected contractor to obtain information on industry trends and best strategies for fraud identification.**
39. Page 8 – Article 11. Assignment – We request this provision be amended by adding: “without the express permission of the DEPARTMENT” at the end of the first sentence. As currently written, this provision provides no flexibility for assigning this contract should the contractor sell or otherwise transfer its business to another entity. Therefore, we request the States amend the assignment provision by including the clause above or indicating the States will not unreasonably withhold permission to any requested assignment of these contracts. **The States agree to amend.**
40. Page 9, Article 12. Force Majeure – As requested in a previous question, we request the States amend this provision by replacing “72 hours” with “5 days”. **The States decline.**

41. Page 9 – Article 13. Disaster – As discussed in a previous question, we strongly urge the States to remove the provision in the Section suggesting the contractor must pay rebates on non-contract infant formulas in the event of a natural disaster. **The States decline.**
42. Page 9 – Article 14. Formulas – As discussed in a previous question, we request the notice requirement be amended to 90 days. **The States decline.**

### **North Carolina Sample Contract**

43. Page 1, Section 3. – Does North Carolina currently bill twice monthly for infant formula rebates? **Yes.** Does NC plan to bill twice monthly during the term of the new contract? **Yes.**
44. Page 2, Section 3.f. – We urge the State to remove the provision in this section providing for a late charge when advance payments are requested. This type of provision is unreasonable and make this contract unattractive to potential bidders. **North Carolina declines.**
45. Page 2, Section 3.f. – We request the payment discount be increased to 1% for any advance payment received by the State. **North Carolina declines.**
46. Page 1 of 15, Section (7) – Does North Carolina have a policy of not allowing “predominantly WIC vendors”? **Yes.**
47. Page 3 of 15, Section (3) – Does the State compare individual vendor redemptions of infant formula with the invoice receipts of vendors documenting their purchases of infant formula? **Yes, when North Carolina conducts inventory audits.** Would the State agree to undertake this type of compliance check if fraud is suspected for individual vendors? **Yes.**
48. Page 6 of 15, Section (10) – Are free-standing pharmacies not permitted to sell contract infant formula to WIC participants? **North Carolina confirms.**
49. Page 8-15, Section (25) – Please confirm North Carolina does not have minimum stocking requirements for concentrate and RTF infant formulas regardless of vendor type and/or size. **North Carolina confirms.**

### **Arkansas Sample Contract**

50. Page 2, Section 4. – We urge the State to remove the provision in this section providing for a late charge when advance payments are requested. This type of provision is unreasonable and make this contract unattractive to potential bidders. **Arkansas declines.**

51. Page 2, Section 4. – We request the payment discount be increased to 1% for any advance payment received by the State. **Arkansas declines.**
52. Page 6, Section H.4. – We urge the State to delete this provision. For this type of contract, the contractor does not have any information that wouldn't already be in possession of the State. The contractor receives invoices provided *by the State* and pays such invoices in accordance with the terms of the contract. This provision is unnecessary and should be deleted. Please confirm. **Arkansas declines to confirm.**
53. Page 12, Section M. – Does the State currently utilize reconciliation invoices? Please provide a recent sample of this type of invoice. **Arkansas has not used reconciliation invoices during the current contract period.**
54. Page 12, Section N. – The labels for the attachments referenced in this section do not match the labels on the attachments. Please amend accordingly. **See revised sample Arkansas Contract posted on New Mexico website.**

#### **Additional Questions**

55. We request the States include provisions detailing the method by which participants will be transitioned to the new Contractor's products. For example, will participants entering the WIC clinic on August 1, 2018 or August 15, 2018 receive Food Instruments for August, September, and October that include the existing contractor's products, or will the August and September Food Instruments cover the existing contractor's products and the October Food Instrument cover the new contractor's products? **Food instruments with a first date to spend/use on or after October 1, 2018 would include the new contractor's products. Food instruments with a first date to spend/use prior to October 1, 2018 would include the existing contractor's products.**
- For each State, please provide more details on the Food Instrument issuance process to be used during the contract transition. **Food instruments with a first date to spend/use on or after October 1, 2018 would include the new contractor's products. Food instruments with a first date to spend/use prior to October 1, 2018 would include the existing contractor's products.** We request the solicitation be amended to include such details. **The States decline to amend.**
56. Please confirm each State will fully cooperate with the contractor when the contractor is conducting an audit and please further confirm the States will comply with all reasonable requests for information necessary to conduct a proper audit. **The States confirm. See the RFP, as amended.**
57. We request each State contract include a provision acknowledging the contractor may recover funds in instances in which fraud has been discovered, and it has been further determined the contractor was overbilled for infant formula. **The States decline to amend. If and when the States recoup funds the manufacturer will**

**be reimbursed accordingly.**

58. Have the States identified any instances of fraud, either by authorized vendors or by WIC participants in the last five years? **No.** If yes, what actions were taken in response to these findings? **The States have not prosecuted or otherwise adjudicated any cases of fraud. Vendor investigations are conducted within each State when fraud is suspected and vendors and participants have been disqualified and/or sanctioned for violations of regulations as a result of these investigations.**
59. We request the States agree to notify the contractor if the States or other State or federal governmental entities have prosecuted or otherwise identified fraud potentially affecting the billing of rebates to the contractor. We understand such notification would take place in a manner that would not interfere with any ongoing investigations. Please confirm the States agree to such notification. **The States agree to notify to the extent that federal and state laws allow.**
60. We request the States agree that when fraud has been identified (prosecuted or otherwise adjudicated), the States agree to provide an accounting to the contractor of the number of units of infant formula involved in such fraudulent activity. **The States agree to provide an accounting of the number of units of infant formula involved in any fraudulent activities, upon a vendor being prosecuted or adjudicated for fraud, as allowable by federal and state regulations.**
61. We request the States agree to work with the contractor to identify reports or other strategies aimed at identifying WIC trafficking or other fraudulent activities. **The States decline. The States work with multiple state and federal entities to address fraudulent activities. The States agree to include an agenda item when we meet with the selected contractor to obtain information on industry trends and best strategies for fraud identification.**
62. For Arkansas and New Mexico, what are the minimum stocking requirements for each infant formula product expected to be authorized (or currently authorized)? Please provide the minimum stocking requirements for all three forms of formula in each of the two types (milk and soy). Do these requirements vary by retail vendor categories? **See Attachment D.**
63. For each State, what are the top five (5) WIC retailers measured by the percentage of WIC food volume (i.e., redeemed food instruments). **The States decline to provide this information.**
64. Would any of the States consider limiting authorized products to powder and ready-to-feed forms? Powdered infant formula is more cost-effective and the RTF form is available to those who have issues with water quality. **The States decline.**



65. Would the States consider providing a specific “checklist” describing the items that must be contained in the bid envelope? **The States decline.**

### **Questions for NM/AR/NC WIC Multistate Infant Formula Rebate RFP**

1. Page 1, Section I.A. INTRODUCTION (Background) - Please supply a timeline regarding Arkansas and North Carolina conversions to EBT: including Pilot and Final conversion timelines. **Arkansas anticipates piloting EBT March 2018 through May 2018 and will begin statewide rollout July 2018. North Carolina piloted the system from October – December 2017 and is currently rolling out the system statewide. We anticipate all rollouts to be completed by June 2018.**
2. Page 1, Section I.A. INTRODUCTION (Background) – Please comment on the relationship between the average participation by state in this section and the Infant Report. The numbers are identical for the state of Arkansas, which would indicate that this state has no breast-fed infants or infants utilizing exempt formula. Please confirm if this is the case, or provide an amended infant report/quote sheet. **Arkansas acknowledges that there was a discrepancy in the numbers provided in the RFP. The numbers were from a Management Information System (MIS) Report that contained preliminary point in time numbers instead of final as reported to USDA. Arkansas confirms that the numbers reported in the USDA State Level Participation report are correct. The average monthly participation for FY2017 was 76,631, of which 22,303 were infants. Of the total number of infants, 1,962 were fully breastfed and 17,813 received exempt formula.**
3. Page 3, Section I.C.3. (Contract Period) - Will the states please consider two (2) twelve month extensions by mutual written consent? **The States decline.**
  - a. Also, confirm that all states will act in the same manner where extensions are concerned. **The States confirm.**
4. Page 3, Section I.C.3. (Contract Period) - Please provide additional information on transition from the current contractor to a potential new contractor. Please explain the procedure to be utilized in making the transition. **All States inform vendors, staff, medical providers, participants, conduct training, and create written materials. The States will also hold an introductory meeting with the selected offeror.**
  - a. If a participant visits a local WIC agency on September 28, 2018, what will be the “first day to use” date for the food instrument issued to this participant? **If the participant is certified on September 28, 2018 the initial month benefit would have a first day to use of September 28, 2018. If the same participant received benefits for additional months, those benefits would have a first day to use under the new contractor.** Will this participant receive a food instrument for the existing contractor’s formula or the new contractor’s formula? **See above answer.**
  - b. Will a participant visiting a local agency in September receive one food instrument for the current contractor’s infant formula and two food instruments for the new contractor’s formula? **If the participant is certified in September, the initial month benefit would have a first day to use of September 2018. If the same participant received benefits for additional months, those benefits would have a first day to use**



**under the new contractor.**

5. Page 5, Section I. C. 7. (Proposal Submission) – In the event of a tie, how will the winner be determined? **In the unlikely event of a tie, the award will be in accordance with 7 CFR 246.16a(c)(5) and Section 1.4.1.41 NMAC (Best and Final Offers) and Section 1.4.1.44(A) NMAC (Award); but in the event of an unresolved tie, Section 1.4.1.26(B)(4) NMAC (Identical Low Bids) will be implemented.**
  - a. Please provide details as to when all submitted bids will be published and available via public records request. **The bids will not be published. Public records requests will be processed according to the applicable laws and regulations in effect at the time of the request.**
  
6. Page 5, Section I. C. 7. (Proposal Submission) Notice of Award
  - a. Will awards be posted to the website? **No.** Please provide the exact link to where the award will be posted. **Not Applicable.**
  - b. Do the States intend to publish an intent to award? **No.** Please provide the exact link to where the Intent to Award will be posted. **Not Applicable.**
  
7. Page 5, Section II E. (Proposal Submission) – Is a Certificate of Incumbency required to prove that the person signing the bid is an authorized company representative? **No. It is required that the person signing the bid be an authorized company representative of the entity whose documentation is being submitted in response to Articles III.B.1.g and III.B.1.h.**
  
8. Page 6, Section II F. (Proposal Submission) – Will the states please provide the phone number and email address of the person that will provide written confirmation of bid receipt? **Yes, Sarah Flores-Sievers, [Sarah.Flores-Siever@state.nm.us](mailto:Sarah.Flores-Siever@state.nm.us), (505) 476-8801.**
  
9. Page 6, Section II J. (Proposal Submission) - Please confirm any clarifications/changes made to the RFP will be incorporated into the actual contract documents.  
**Changes to the RFP, resulting from the Questions and Answers responses, will be made by an amendment issued by the States. Changes to the respective States contracts, resulting from the Q & A responses, will be made by amendments by the respective States contracts in the RFP. Clarifications resulting from the Q&A responses, not requiring amendments to either the RFP or to the respective States contracts, will not be incorporated into either the RFP or the respective States contracts.**
  - a. In the event of a discrepancy, explain the order of precedence between Q&A responses, RFP and the states' contracts. **The order of precedence is the respective States contracts, the RFP, as amended, and the responses to the questions and answers.**
  
10. Page 7, Section II. L. (Proposal Submission) – Please confirm that completion and signing of Attachment 3 will satisfy this requirement. **Completing and signing the Contractor Certification (Attachment IV) to the amended RFP satisfies this requirement.**

11. Page 7, Section II. L. (Proposal Submission) - Please explain further and provide the criteria under which a bid will be rejected. **To avoid rejection, the bid must be responsive, meaning it conforms in all material respects to the requirements set forth in the request for proposals. Material respects of the request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.**
12. Page 8, Section III.A.1 (Proposal Specifications, Considerations) - Will the states please explain which rebated products will be utilized in the programs? **The selected products will depend upon the successful offeror's response.**
- a. Please confirm that the states are aware that the USDA has made a correction to regulations that provides for non-exempt formulas that are less than 20 kcal/fl. oz. to be provided and rebated through the WIC program with a prescribers' authorization as alternate to the primary contracted infant formulas. Our company produces several non-exempt alternates to the primary contracted formulas that are ~19 kcal/fl. oz. that are widely used and rebated in states where we hold the contract. **The primary contract brand infant formula and any other contract brand infant formulas, approved for issuance by any or all of the States under their respective contracts, must meet the minimum requirements and specifications in Table 4 of 7 C.F.R. 246.10(e)(12) for infant formula, which include providing at least 67 kilocalories per 100 milliliters (19.814 kcals per fluid ounce) at standard dilution. The States will not approve for issuance, under their respective contracts, any formula that provides only 19 calories per oz.**
  - b. Should Abbott be the successful Bidder on this contract, please confirm that the alternate to the primary infant formulas would be allowable and utilized ahead of non-contract non-exempt formulas produced by other manufacturers. **The States decline.**
13. Page 11, Section III.A.9, a-e (Proposal Specifications, Considerations) – We request this provision be amended to no fewer than ninety (90) calendar days advance written notice prior to any of the actions listed in this provision. **The States decline.**
14. Page 11, Section III.A.9, e (Proposal Specifications, Considerations) – Please remove the requirements to change a UPC code when unit size or reconstituted ounces change or revise this section to state that a manufacturer must follow the UPC code guidelines issued by GS1 (see <http://www.gs1.org/1/gtinrules/>) as to when manufacturers are required to change UPC codes. As stated, this request is financially burdensome to the manufacturer and has additional retail implications for a product that is in nationwide distribution and is not specific to the Arkansas, North Carolina, and New Mexico contract. **The States decline.**
- a. At a minimum, please confirm that UPC codes do not need to be changed if there is not a change to the number of units issued in the food packages. **The States decline.**
15. Page 12, Section III.A.10 (Proposal Specifications, Considerations) – *“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.”*

- a. Will the states please consider changing this to the day following a weekend or legal holiday? **The States decline.**
- b. In order to be a more attractive contract, will the states consider allowing 90 days for invoice payment? **The States decline.**

16. Page 12, Section III.A.10. (Proposal Specifications, Considerations) – The successful offeror shall make advance payment, if requested by any of the States. Will the states consider striking this provision? **The States decline.** If not stricken, please amend this provision to provide a discount to the Contractor at a rate of 1% per month should the State elect to request an advance payment – the same rate specified in paragraph 11 of this section for payment received after the due date. **The States decline.**

17. Page 13, Section III.A.12.a. (Proposal Specifications, Considerations) – Please provide a list of all WIC authorized retailers by state. **Refer to States’ Responses, Attachment B.**

- a. Do the states authorize vendors doing more than 50% of their sales via the WIC program? **No.**
- b. Please provide what percentage of contracted formula is redeemed at over 50% vendors. **0%.**
- c. Please provide a list of all over 50% vendors. **Arkansas and North Carolina do not have any over 50% vendors. New Mexico has one vendor that is over 50% but declines to provide the vendor name due to Federal Regulations.**
- d. Please provide the WIC vendors’ minimum stocking requirements. **See Attachment D.**
- e. Will the states provide the Contractor with a list, including addresses, of the authorized WIC retailers in each state? **See Attachment B.**
- f. What are the top 5 retail chains within each state? **The States decline to provide this information due to Federal Regulations.**

18. Page 13, Section III.A.12.a. (Proposal Specifications, Considerations) – Additionally, please provide all compliance buy reports pertaining to infant formula over the past six months. **The States have not conducted any compliance buy investigations pertaining to infant formula over the past six months.**

- a. Please confirm the states will provide vendor redemption data to the Contractor when issues of fraud arise. **The States decline to confirm.**
- b. Please confirm the states will work with the Contractor to provide such data in instances in which rebates have been paid for contracted products based on fraudulent transactions that involve infant formula. **The States decline to confirm.**
- c. Please confirm the states agree to discuss with the Contractor appropriate means for addressing payment issues identified through manufacturer audits and/or fraud-related issues directly affecting the manufacturer. **The States will discuss payment issues identified through manufacturer audits. The States decline to discuss fraud related issues until such time that a vendor has been prosecuted or adjudicated for fraud. At that time, the State will provide an accounting of the manufacturer’s units of infant formula involved in any fraudulent activities, as allowable by federal and state regulations.**

- d. Please confirm the states will partner with the Contractor on recovery in instances where fraud has been discovered, and it has been further determined the manufacturer was overbilled for infant formula. **The States decline to confirm.**
  - e. How many vendors have been disqualified due to fraud issues in each of the states in the last three years? **See response to Question #37 on Page 18.**
  - f. Please explain the states' processes to identify and curb fraud. **The States complete compliance investigations on high risk vendors, identified utilizing standard high risk vendor reports. Investigated vendors are prioritized based on their level of risk calculated using redemption data. In addition, complaints and/or allegations made against vendors and/or participants are investigated.**
19. Page 13, Section III.A.12.b. (Proposal Specifications, Considerations) – Please confirm this provision will only apply in instance in which the offeror's product is not available due to a manufacturing or distribution problem, and will not be held liable if shortages arise due to the actions or non-actions attributable to the retailer or wholesaler and which arise through no fault of the offeror. **The States decline to confirm. The provision will apply to all circumstances where the Contractor's product is unavailable, regardless of the cause of the inability to supply.**
20. Page 13, Section III.A.12. b (Proposal Specifications, Considerations) – Please also confirm that should there be a supply interruption, the states will first issue a different physical form of the contractor's formula, secondly, consider issuing another sub brand of rebate eligible formula of the contracted manufacturer prior to issuing another manufacturer's formula and seeking a rebate from the contractor. **The States decline to confirm.**
21. Page 16, Section III.B.1. b (Technical Proposal) - Will the states consider receiving copies of the Financial report on one flash disk per envelope or 9 Annual Financial reports on one flash drive? **To clarify, a financial report shall be submitted on one flash drive per envelope.**
22. Page 16, Section III.B.1. f (Technical Proposal) – Are the states looking for products' nutritional information or actual labels? And, is this requirement related to products on bid or all rebate eligible products? **This section does not refer to nutritional labels. This section refers to proposals being labeled appropriately to address cost and technical requirements of the RFP.**
23. Page 16, Section III.B.2. b (Cost Proposal) - Is the entire Pediatric Wholesale Price list to be included with the RFP or are the products being bid upon sufficient? **No, the entire Pediatric Wholesale Price list is not required. The States confirm the products being bid upon are sufficient.**
24. Page 19, Section IV.B. (Infant Participation and Infant Formula Usage Data) – Please provide:
- a. Latest six months of non-contract (non-exempt) issuance by brand and units issued **AR= 0; NC= 0; NM=0**

- b. Latest six months of non-contract (exempt) issuance by brand and unit. **See Attachment E.**

25. Page 19, Section V.B. (Notification of Outcome and Dispute Resolution) “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.” We are not familiar with this kind of pre-protest mechanism for resolving disputes.

- a. Is this mechanism to be used pre-award only, or also for post-award disputes? **Pre-award only.**
- b. Has this mechanism been used in other solicitations? **Yes.**
- c. Is there any further guidance on timelines for when a dispute may be filed and how long the states have to respond, contact persons, method of delivery or format for materials? As written this is very ambiguous in how the process would actually work. **Disputes should be submitted by email, on or before the deadline for submitting RFP responses, to all of the States’ contract administrators. The States will respond on or before the date of notification of the successful bidder, April 20, 2018.**
- d. Please confirm all bidders will be notified in the event of a protest on this bid. **Notice of the protest shall be given to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied.**

26. Arkansas Contract, Page 3, C.8 – “*In the event of a natural disaster, the PROGRAM agrees to contact the CONTRACTOR to ensure sufficient quantities. In the event quantities are not sufficient, the PROGRAM may substitute a contract brand infant formula that is currently not approved for issuance by the PROGRAM or a non-contract brand infant formula, except exempt infant formula. The CONTRACTOR shall pay a rebate amount per unit calculated in accordance with Section III.A.7.b of the Request for Proposals, except that the lowest national wholesale price per unit for a full truckload at the time the infant formula is issued by the PROGRAM will be used to calculate the rebate.*”

- a. Does the state agree that in the event of a natural disaster any non-contract brand infant formula issued will not be subject to a rebate payment? **Arkansas does not agree. The provision will apply to all circumstances where the Contractor is unable to supply formula, regardless of the cause of the inability to supply.**

27. Arkansas Contract, Page 4, D.2 - “Late penalties shall be assessed against the CONTRACTOR during the time any amounts are in dispute and will accrue at a rate of 1.5% per months accrued on a daily basis...” Please amend this provision to 1% penalty to be consistent with the RFP providing for a charge of 1% per month to be assessed as a late payment penalty. **Arkansas declines to amend this provision.**

28. Arkansas Contract, Page 5, F.4. – We request this provision be amended to no fewer than ninety (90) calendar days advance written notice prior to any of the actions listed in this provision. **Arkansas declines.**

29. Arkansas Contract, Page 6, F.4.e. – Please remove the requirements to change a UPC code when unit size or reconstituted ounces change or revise this section to state that a manufacturer must follow the UPC code guidelines issued by GS1 (see <http://www.gs1.org/1/gtinrules/>) as to when manufacturers are required to change UPC codes. As stated, this request is financially burdensome to the manufacturer and has additional retail implications for a product that is in nationwide distribution and is not specific to the Arkansas, North Carolina, and New Mexico contract. **Arkansas declines.**
30. Arkansas Contract, Page 7, I.1. – We request this provision be modified to require the Contractor to retain all financial records, supporting documents, statistical records and any other documents created solely for the contract of a period of three (3) years. And request that the PROGRAM also retain records pertaining to this contract for the same duration. **Arkansas declines.**
31. Arkansas Contract, Page 8, II.B. (Compliance) – Please describe in detail how the state intends to monitor compliance, and what sanctions may be employed. **Arkansas completes compliance investigations on high risk vendors, identified utilizing standard high risk vendor reports. Investigated vendors are prioritized based on level of risk calculated using redemption data. In addition, complaints and/or allegations made against vendors and/or participants are investigated. Sanctions include disqualification of the vendor from the WIC Program from one to three years.** We request this section be revised to include a provision that the results of any monitoring or audits be shared with the Contractor. **Arkansas declines.** Please also outline how the state addresses or penalizes retailers who allow the purchase of an infant formula not specified on the FI or EBT food list. **EBT does not allow for purchases of any unapproved formula. Providing unauthorized formula is sanctioned under the federal mandatory sanctions of 7 C.F.R 246.12(l)(1). A pattern of providing unauthorized formula in exchange for food instruments can result in a one-year disqualification under 7 C.F. R. 246.12(l)(1)(iv)(A).**
32. New Mexico Contract, Page 3. C. – “Agree that in the event of a natural disaster, the DEPARTMENT may issue a contract brand infant formula that is currently not approved for issuance by the DEPARTMENT or non-contract brand infant formula, except exempt infant formula. The CONTRACTOR shall pay a rebate amount per unit calculated in accordance with Section III.A.7.b of the Request for Proposals, except that the lowest national wholesale price per unit for a full truckload at the time the milk-based infant formula is issued by the DEPARTMENT will be used to calculate the rebate.”
- a. Does the state agree that in the event of a natural disaster any non-contract brand infant formula issued will not be subject to a rebate payment? **New Mexico does not agree. The provision will apply to all circumstances where the Contractor is unable to supply formula, regardless of the cause of the inability to supply.**
  - b. Please confirm the Contract Manufacturer will first be contacted to ensure sufficient quantities of formula may be made available. **New Mexico will contact the contractor first to ensure sufficient quantities.**
  - c. Please confirm a list of data elements that the state will provide on monthly data files and explain how the Contractor can validate that the total number of infant formula cans



redeemed by a single participant for the month did not exceed the federally regulated monthly maximums. **New Mexico will provide monthly invoices, which includes, Redemption Month/Issue Month, UPC, Description, Cat/Sub Cat, Total Units, Rebate Per Item and Total Rebate Amount. New Mexico has system controls in place to ensure that the total number of infant formula units issued to a single participant does not exceed the federally regulated monthly maximums. Additional supporting documentation upon request, and no identifiable vendor information can be provided other than vendor number and authorization status.**

33. New Mexico Contract, Page 4, D.1 - Please confirm that this section is reciprocal and applies to the state as well as the Manufacturer. **New Mexico does not confirm.**
34. New Mexico Contract, Page 4 D.2 – This provision states “*Agree that late penalties will accrue against the Contractor during the period of time any invoiced amounts are in dispute and will accrue at a rate of 1.5% per months accrued on a daily basis.*” Please amend this provision to 1% penalty to be consistent with the RFP providing for a charge of 1% per month to be assessed as a late payment penalty. **New Mexico declines.**
35. New Mexico Contract, Page 7, Article 5 (Compliance) – Please describe in detail how the state intends to monitor compliance, and what sanctions may be employed. **New Mexico completes compliance investigations on high risk vendors, identified utilizing standard high risk vendor reports. Investigated vendors are prioritized based on level of risk calculated using redemption data. In addition, complaints and/or allegations made against vendors and/or participants are investigated. Sanctions include disqualification of the vendor from the WIC Program from one to three years.** We request this section be revised to include a provision that the results of any monitoring or audits be shared with the Contractor. **New Mexico declines.** Please also outline how the state addresses or penalizes retailers who allow the purchase of an infant formula not specified on the FI or EBT food list. **EBT does not allow for purchases of any unapproved formula. Providing unauthorized formula is sanctioned under the federal mandatory sanctions of 7 C.F.R 246.12(l)(1). A pattern of providing unauthorized formula in exchange for food instruments can result in a one-year disqualification under 7 C.F.R. 246.12(l)(1)(iv)(A).** Additionally, please provide all compliance buy reports pertaining to infant formula over the past six months. **New Mexico declines.**
36. New Mexico Contract, Page 9, Article 12. Force Majeure. - Please confirm this provision will only apply in instance in which the offeror’ s product is not available due to a manufacturing or distribution problem, and will not be held liable if shortages arise due to the actions or non-actions attributable to the retailer or wholesaler and which arise through no fault of the offeror. **New Mexico declines to confirm.** Please also confirm the states agree to first substitute alternate forms of the primary contract brand formula to WIC participants or in the alternative, the states will first provide an alternate brand of the manufacturer’s formula to address any situation involving the adequate supply of infant formula to participants, before resorting to the use of a non-contract brand. **New Mexico declines to confirm.**



37. *New Mexico Contract, Page 9, Article 13. Disaster Relief*– “*In the event of a natural disaster, the DEPARTMENT may issue a milk-based contract brand infant formula that is currently not approved for issuance by the DEPARTMENT or a milk-based non- contract brand infant formula, except exempt infant formula. The CONTRACTOR shall pay a rebate amount per unit calculated in accordance with Section III.A.7.b of the Request for Proposals, except that the lowest national wholesale price per unit for a full truckload at the time the milk-based infant formula is issued by the DEPARTMENT will be used to calculate the rebate.*” *Does the state agree that in the event of a natural disaster any non-contract brand infant formula issued will not be subject to a rebate payment?* **New Mexico does not agree. The provision will apply to all circumstances where the Contractor is unable to supply formula, regardless of the cause of the inability to supply.** Please confirm the Contract Manufacturer will first be contacted to ensure sufficient quantities of formula may be made available. **New Mexico will contact the contractor first to ensure sufficient quantities.**
38. *New Mexico Contract, Page 9 Article 14. Formulas*– We request this provision be amended to no fewer than ninety (90) calendar days advance written notice prior to any of the actions listed in this provision. **New Mexico declines.** Please remove the requirements to change a UPC code when unit size or reconstituted ounces change or revise this section to state that a manufacturer must follow the UPC code guidelines issued by GS1 (see <http://www.gs1.org/1/gtinrules/>) as to when manufacturers are required to change UPC codes. As stated, this request is financially burdensome to the manufacturer and has additional retail implications for a product that is in nationwide distribution and is not specific to the Arkansas, North Carolina, and New Mexico contract. **New Mexico declines.**
39. *North Carolina Contract, Page 1 of 12, 3. a* – We request the state to change these terms to, invoices should be paid 30 days after receipt by the manufacturer as stipulated in the Federal Regulations. **North Carolina declines.**
40. *North Carolina Contract, Page 2 of 12, 3.f.1* - We request this provision be amended as 20 days is a short period to make an advance payment. A 90 calendar days’ period would be ideal as this would help the contractor with purposes of planning. **North Carolina declines to revise, as advances are required when cash flow becomes problematic and is needed to keep the program operating (ex. Federal government shutdowns).**
41. *North Carolina Contract, Page 3 of 12, j.* – Does the state agree that in the event of a natural disaster any non-contract brand infant formula issued will not be subject to a rebate payment? **North Carolina does not agree. The provision will apply to all circumstances where the Contractor is unable to supply formula, regardless of the cause of the inability to supply.** Please confirm the Contract Manufacturer will first be contacted to ensure sufficient quantities of formula may be made available. **North Carolina will contact the contractor first to ensure sufficient quantities.**
42. *North Carolina Contract, Page 4 of 12, 4.b. (Payment Disputes)* This provision states “*Agree that late penalties will accrue against the Contractor during the period of time any invoiced amounts are in dispute and will accrue at a rate of 1.5% per months accrued on a daily basis.*” Please amend this provision to 1% penalty to be consistent with the RFP providing for a

charge of 1% per month to be assessed as a late payment penalty. **North Carolina declines.**

43. North Carolina Contract, Page 5 of 12., d. – We request this provision be amended to no fewer than ninety (90) calendar days advance written notice prior to any of the actions listed in this provision. **North Carolina declines.** Please remove the requirements to change a UPC code when unit size or reconstituted ounces change or revise this section to state that a manufacturer must follow the UPC code guidelines issued by GS1 (see <http://www.gs1.org/1/gtinrules/>) as to when manufacturers are required to change UPC codes. As stated, this request is financially burdensome to the manufacturer and has additional retail implications for a product that is in nationwide distribution and is not specific to the Arkansas, North Carolina, and New Mexico contract. **North Carolina declines.**
44. North Carolina Contract, Page 7 of 12, 14 (Compliance Monitoring) - Please describe in detail how the state intends to monitor compliance, and what sanctions may be employed. **North Carolina completes compliance investigations on high risk vendors, identified utilizing standard high risk vendor reports. Investigated vendors are prioritized based on level of risk calculated using redemption data. In addition, complaints and/or allegations made against vendors and/or participants are investigated. Sanctions include disqualification of the vendor from the WIC Program from one to three years.** We request this section be revised to include a provision that the results of any monitoring or audits be shared with the Contractor. **North Carolina declines.** Please also outline how the state addresses or penalizes retailers who allow the purchase of an infant formula not specified on the FI or EBT food list. **Allowing the purchase of an infant formula not specified on the food instrument is sanctioned under the federal mandatory sanctions of 7 C.F.R. 246.12(l)(1). Substituting unauthorized formula for the authorized formula, printed on the food instrument, can result in a one-year disqualification under 7 C.F.R. 246.12(l)(1)(iv)(A) for a pattern of providing unauthorized food items in exchange for food instruments.** Additionally, please provide all compliance buy reports pertaining to infant formula over the past six months. **North Carolina does not purchase infant formula when conducting compliance buys.**
45. North Carolina Contract, Page 9 of 12, 24 (Force Majeure) – Please confirm this provision will only apply in instance in which the offeror’s product is not available due to a manufacturing or distribution problem and will not be held liable if shortages arise due to the actions or non-actions attributable to the retailer or wholesaler and which arise through no fault of the offeror. **North Carolina does not confirm. The provision will apply to all circumstances where the Contractor’s product is unavailable, regardless of the cause of the inability to supply.** Please also confirm the States agree to first substitute alternate forms of the primary contract brand formula to WIC participants or in the alternative, the States will first provide an alternate brand of the manufacturer’s formula to address any situation involving the adequate supply of infant formula to participants, before resorting to the use of a non-contract brand. **North Carolina declines to confirm.**
46. Attachment III, Quote Sheet – The Quote sheet provided appears to have a formula error in the calculation for Monthly Net Price for 32oz Ready-to-Feed, cell H13. The formula should be the same as the other forms (cell H9 and H11). Please make this correction and issue a new

quote sheet. **An updated version has been sent to potential bidders via email and an update will be posted on the New Mexico website.**

47. Attachment III, Quote Sheet – Please confirm that it is the state’s intention that the monthly net cost column of the bid sheet only displays 2 decimal places. **An updated version has been sent to potential bidders via email and an update will be posted on the New Mexico website.**