

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

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

AMENDMENT No. 1 OF THE REQUEST FOR PROPOSALS (RFP)

WIC INFANT FORMULA REBATE INITIATIVE

Amendment Issue Date:

March 2, 2018

Acknowledgement of Receipt Form Due Date:

March 9, 2018

RFP Due Date:

March 23, 2018

This Amendment No. 1 serves to modify and amend the following articles, sections or paragraphs on the specified pages of the RFP, and the RFP Attachments, including the States' respective Sample Contracts:

CHANGE ON PAGE 5 OF THE RFP.

Article I, INTRODUCTION, Section C. Administrative Information.

Paragraph seven (7) of said Section, on page 5 of the RFP, is hereby amended to read as follows:

7. **Timeline for Proposal**

January 5, 2018 - Request for Proposals issued.

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

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

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

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

April 20, 2018 - The States notify offerors of the outcome of the RFP. Subsequently, the States' will award their contracts, which will be effective upon the completion of approval of all required authorities. Once contracts are executed for all three States, notification will be sent to all offerors.

CHANGE ON PAGE 9 OF THE RFP.

Article III, PROPOSAL SPECIFICATIONS, Section A. CONSIDERATIONS.

Paragraph four (4) of said Section, on page 9 of the RFP, is hereby amended to read as follows:

1. The offeror shall specify a rebate for a single milk-based infant formula in the following physical forms and sizes: 12.1 to 13 oz. concentrated liquid; 12.4 to 12.7 oz. powdered; and 32 to 48 oz. ready-to-feed. The milk-based infant formula shall be nutritionally complete, not requiring the addition of any ingredients other than water prior to being served in a liquid state, and suitable for routine issuance to the majority of generally healthy, full-term infants. The infant formula also shall contain at least 10 milligrams of iron per liter at standard dilution and supply 67 kilocalories per 100 milliliters (i.e., approximately 20 kilocalories per fluid ounce of infant formula) at standard dilution. The offeror shall specify the brand name and unit size of the milk-based infant formula for which the rebate is being offered. A different rebate amount may be submitted for each physical form of the milk-based infant formula. The milk-based infant formula for which rebate(s) are offered shall be the primary contract brand infant formula upon contract award.

CHANGE ON PAGES 16-17 OF THE RFP.

Article III, PROPOSAL SPECIFICATIONS, Section B. PROPOSAL FORMAT AND CONTENT.

Paragraph one (1) of said Section, on pages 16-17 of the RFP, is hereby amended to read as follows:

1. Technical Proposal

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

- a. Include all pertinent data relating to their organization, personnel, and experience that would support the offeror's qualifications and capabilities to perform the services called for in this RFP, beginning October 1, 2018.
- b. Provide a copy of their 2017 or latest annual financial report or similar evidence of financial stability to permit the States to be

satisfied with the financial stability of the offeror. The proposal should include financial reports of the offeror's parent corporation and any subsidiaries or divisions associated with the performance of the States' contracts. Offerors may include financial reports electronically on CDs or Flash Drives, instead of submitting them in hard copy with their bid.

- c. Provide a - brief narrative describing all non-exempt infant formulas in the offeror's product line and, if applicable, each soy- based infant formula to be subcontracted by the offeror.
- d. Provide a - description of their plans and approach for accomplishing the tasks herein described in Section III.A. Describe the distribution network to be used in the States, including a list of wholesale distributors with their addresses (physical, mail and electronic) and phone numbers, who will carry the offeror's infant formulas.
- e. Provide a description of their disaster response and recovery plan.
- f. Label information that is relevant to the proposal, as applicable.
- g. Register to do business with each State's Secretary of State; NM – www.sos.state.nm.us; AR – www.SOS.arkansas.gov; NC – www.secretary.state.nc.us/.
- h. Submit documentation of their legal name, such as an IRS w-9, and/or Doing Business As (DBA) documentation.
- i. Provide Employer Identification Number (EIN).
- j. Provide their Data Universal Numbering System (DUNS) number.
- k. Provide contact name and information for the offerors contract administrator should contract be awarded, include mailing address, phone and email.

CHANGES TO SAMPLE CONTRACTS ATTACHED TO THE RFP.

Sample Contract for the State of New Mexico (WIC Program Infant Formula Rebate Contract), Article 1. SCOPE OF WORK, Section C. Payment.

The following paragraphs are hereby added and included after the sixth full paragraph of Section C, on page 2 of the Sample Contract, to read as follows:

Advance payment is due upon receipt of the request and becomes delinquent after (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 discounts 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.

Sample Contract for the State of New Mexico (WIC Program Infant Formula Rebate Contract), Article 1. SCOPE OF WORK, Section D. Payment Disputes.

The second paragraph of subsection 3, last sentence, on page 5 of the Sample Contract, is hereby amended to read as follows:

Supporting documentation provided by the DEPARTMENT in the event of a dispute shall be limited to the documentation identified in Article 1.G of this contract.

Sample Contract for the State of New Mexico (WIC Program Infant Formula Rebate Contract), Article 1. SCOPE OF WORK, Sections G, H and new section I.

The said Sections G and H on page 6 of the Sample Contract, are hereby amended, and a new Section I is added, to read as follows:

- G. Provide the calculations and the supporting documentation upon request. The supporting documentation is limited to the food instrument number, EBT transaction number, redeemed amount, redemption date, issue date, unit count, brand name, physical form and size. No identifiable participant information will be provided. Should vendor information be requested, no identifiable vendor information can be provided other than vendor number and authorization status.

- H. The CONTRACTOR may audit the records that directly support the volume of units reported as purchased by the DEPARTMENT on each rebate invoice, including applicable policies and procedures, upon sixty (60) days prior written notice to the DEPARTMENT. Any CONTRACTOR audit shall be conducted by qualified auditors and conform to Generally Accepted Auditing Standards. CONTRACTOR audit findings shall be documented with specific data and not based on extrapolations of data. The DEPARTMENT shall retain all records supporting this contract for a minimum of five (5) years. Individual applicant and/or participant records, as well as individual vendor records, are confidential

and exempt from audit by the CONTRACTOR in accordance with 7 CFR Part 246 of the Federal Regulations for the Special Supplemental Nutrition Program for Women, Infants and Children. The costs of any audits by the CONTRACTOR shall be borne solely by the CONTRACTOR and are not recoverable from the DEPARTMENT.

- I. Notify the CONTRACTOR 90 days, or less if mutually agreed upon, prior to the approval of a new or additional formula for issuance.

Sample Contract for the State of New Mexico (WIC Program Infant Formula Rebate Contract), Article 11. ASSIGNMENT.

The said Article, on page 8 of the Sample Contract, is hereby amended to read as follows:

The CONTRACTOR shall not assign, sublicense or otherwise transfer its rights, duties and/or obligations under this contract without the express written consent of the DEPARTMENT, which shall not be unreasonably withheld. The DEPARTMENT shall at all times be entitled to assign or transfer its rights, duties and/or obligations under this contract to another governmental agency in the State of New Mexico without the CONTRACTOR's consent.

Sample Contract for the State of New Mexico (WIC Program Infant Formula Rebate Contract), Article 16. ENTIRE AGREEMENT, Section B.

The said Section B, on page 11 of the Sample Contract, is hereby amended to read as follows:

- B. All terms and conditions of the DEPARTMENT'S WIC Infant Formula Rebate Initiative Request for Proposals as amended, the States' Answers to Prebid Questions and the CONTRACTOR'S accepted response to the RFP are hereby incorporated, and are a part of the contract. Also incorporated in the contract are the New Mexico Formulas Approved for Issuance (Attachment 1), the CONTRACTOR'S Quote Sheet (Attachment 2), and the CONTRACTOR'S Certification, (Attachment 3).

Sample Contract for the State of Arkansas (WIC Infant Formula Rebate Contract), Article II, Section A. INVOICE REPORTS.

A new third paragraph is hereby added to said Section, on page 8 of the Sample Contract, to read as follows:

The CONTRACTOR may audit the records that directly support the volume of units reported as purchased by the PROGRAM on each rebate invoice, including applicable policies and procedures, upon sixty (60) days prior written notice to the PROGRAM.

Any CONTRACTOR audit shall be conducted by qualified auditors and conform to Generally Accepted Auditing Standards. CONTRACTOR audit findings shall be documented with specific data and not based on extrapolations of data. The PROGRAM shall retain all records supporting this contract for a minimum of five (5) years. Individual applicant and/or participant records, as well as individual vendor records, are confidential and exempt from audit by the CONTRACTOR in accordance with 7 CFR Part 246 of the Federal Regulations for the Special Supplemental Nutrition Program for Women, Infants and Children. The costs of any audits by the CONTRACTOR shall be borne solely by the CONTRACTOR and are not recoverable from the PROGRAM.

Sample Contract for the State of Arkansas (WIC Infant Formula Rebate Contract), Article III, Section I. NON-ASSIGNMENT.

The said Section on page 10 of the Sample Contract, is hereby amended to read as follows:

The CONTRACTOR shall not assign, sublicense, subcontract or otherwise transfer its rights, duties and/or obligations under this Contract without prior written approval by the PROGRAM, which shall not be unreasonably withheld. Any sublicense, subcontract, assignment or transfer otherwise occurring shall be null and void; provided, however, that the PROGRAM shall at all times be entitled to assign or transfer its rights, duties and/or obligations under this Contract to another governmental agency in the State of Arkansas upon giving prior written notice to the CONTRACTOR.

Sample Contract for the State of Arkansas (WIC Infant Formula Rebate Contract), Article III, Section N. ALL TERMS AND CONDITIONS INCLUDED.

The said Section, on page 12 of the Sample Contract, is hereby amended to read as follows:

The Contract and its attachments contain all the terms and conditions agreed upon by the parties.

All terms and conditions of the ARKANSAS/NORTH CAROLINA/NEW MEXICO WIC INFANT FORMULA REBATE INITIATIVE REQUEST FOR PROPOSALS (issued January 5, 2018, as amended March 2, 2018), STATES' ANSWERS TO PRE-BID QUESTIONS (issued March 2, 2018) and the CONTRACTOR'S accepted response to the Request for Proposals, are hereby incorporated, and are a part of the Contract. Also incorporated in the Contract are the CONTRACT BRAND INFANT FORMULAS APPROVED FOR ISSUANCE (Attachment 1), the QUOTE SHEET (Attachment 2), the CONTRACTOR CERTIFICATION (Attachment 3) and the ARKANSAS METHODOLOGY FOR DETERMINING PARTIAL REDEMPTIONS (Attachment 4).

Sample Contract for the State of North Carolina (WIC Infant Formula Rebate Contract), Section 9. RETENTION OF RECORDS.

The said Section, on page 6 of the Sample Contract, is hereby amended to read as follows:

- a. The CONTRACTOR shall retain all financial records, supporting documents, statistical records, and any other documents created solely for this Contract for a period of five (5) years, or if an audit has been initiated and audit findings have not been resolved at the end of the five (5) years, the records shall be retained until resolution of the audit findings. Any routine audits of such records or documents shall be upon reasonable notice and during normal business hours.
- b. Persons duly authorized by the DIVISION and federal auditors pursuant to 2 CFR Section 200.517 shall have full access to and the right to examine any of said records and documents during said retention period. Such access shall occur during normal business hours.

**Sample Contract for the State of North Carolina (WIC Infant Formula Rebate Contract),
Section 13. INVOICE REPORTS.**

The said Section, on page 7 of the Sample Contract, is hereby amended to read as follows:

- a. The DIVISION shall provide the CONTRACTOR an invoice report specifying the number of units of each contract brand infant formula, by brand, physical form and size, approved for issuance by the DIVISION and paid for during the invoice period. The DIVISION shall provide these calculations and supporting documentation with each invoice. The supporting documentation will be made available to the CONTRACTOR to access through an ftp site and is limited to the food instrument number, food instrument redeemed amount, redemption date, first date to use, unit count, brand name, physical form and size. No identifiable participant information will be provided. Should vendor information be requested, no identifiable vendor information can be provided other than vendor number and address.
- b. The CONTRACTOR may audit the records that directly support the volume of units reported as purchased by the DIVISION on each rebate invoice, including applicable policies and procedures, upon sixty (60) days prior written notice to the DIVISION. Any CONTRACTOR audit shall be conducted by qualified auditors and conform to Generally Accepted Auditing Standards. CONTRACTOR audit findings shall be documented with specific data and not based on extrapolations of data. The PROGRAM shall retain all records supporting this contract for a minimum of five (5) years. Individual applicant and/or participant records, as well as individual vendor records, are confidential and exempt from audit by the CONTRACTOR in accordance with 7 CFR Part 246 of the Federal Regulations for the Special Supplemental Nutrition Program for Women, Infants and Children. The costs of any audits by the CONTRACTOR shall be borne solely by the CONTRACTOR and are not recoverable from the DIVISION.

**Sample Contract for the State of North Carolina (WIC Infant Formula Rebate Contract),
Section 23. ASSIGNMENT.**

The said Section, on page 9 of the Sample Contract, is hereby amended to read as follows:

The CONTRACTOR shall not assign, sublicense, subcontract or otherwise transfer its rights, duties or obligations under this Contract without the express written approval of the DIVISION, which shall not be unreasonably withheld. The DIVISION shall at all times be entitled to assign or transfer its rights, duties and/or obligations under this Contract to another governmental agency in the State of North Carolina upon giving prior written notice to the CONTRACTOR.

Sample Contract for the State of North Carolina (WIC Infant Formula Rebate Contract), Section 28. ALL TERMS AND CONDITIONS INCLUDED.

The said Section, on page 11 of the Sample Contract, is hereby amended to read as follows:

The Contract and its Attachments contain all the terms and conditions agreed upon by the parties.

All terms and conditions of the DIVISION'S WIC INFANT FORMULA REBATE INITIATIVE REQUEST FOR PROPOSALS (issued January 5, 2018, as amended March 2, 2018), STATES' ANSWERS TO PRE-BID QUESTIONS (issued March 2, 2018) and the CONTRACTOR'S accepted response to the Request for Proposals are hereby incorporated, and are a part of the Contract. Also incorporated in the Contract are the CONTRACT BRAND INFANT FORMULAS APPROVED FOR ISSUANCE (Attachment 1), QUOTE SHEET (Attachment 2), the CONTRACTOR'S CERTIFICATION (Attachment 3), and 10A N.C.A.C. § 43D.0706 through .0710 (Attachment 4).

CHANGES TO QUOTE SHEET (ATTACHMENT III) ATTACHED TO THE RFP.

Article II, PROPOSAL SUBMISSION, Section A.

The Quote Sheet referred to in this Section, and originally included as Attachment III is hereby deleted and replaced in its entirety by the attached amended Quote Sheet.

CHANGES TO CONTRACTOR'S CERTIFICATION (ATTACHMENT IV) ATTACHED TO THE RFP AND AS ATTACHMENT 3 TO THE STATES' RESPECTIVE SAMPLE CONTRACTS.

Contractor's Certification, Attachment IV to the RFP and Attachment 3 to the States' respective Sample Contracts.

The Contractor's Certification, originally included as Attachment IV to the RFP and as Attachment 3 to the States' respective Sample Contracts, is hereby deleted and replaced in its entirety by the attached amended Contractor's Certification (RFP Attachment IV and States' respective Sample Contracts Attachment 3).

All other terms and conditions of the Request For Proposals, including all attachments and Sample Contracts, remain the same.

ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposal, Amendment No. 1, the undersigned agrees that they have received a complete copy.

The acknowledgement of receipt should be signed and returned to the New Mexico Contract Administrator no later than 3:00 PM MST or MDT on March 9, 2018. Only potential Offerors who elect to return this form completed with the intention of submitting a proposal will receive copies of all Offeror’s written questions and the written responses to those questions as well as RFP and Sample Contract amendments, if any are issued.

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

All other terms in the Timeline for Proposal remain the same.

Signature

Name of Company

Title

Date

Request For Proposals (RFP) Amendment No. 1
Special Supplemental Nutrition Program for Women, Infants and Children
WIC Infant Formula Rebate Initiative