

State of Washington
DEPARTMENT OF GENERAL ADMINISTRATION

Office of State Procurement

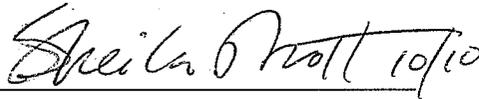
Rm. 201 General Administration Building, P.O. Box 41017 • Olympia, Washington 98504-1017 • (360) 902-7400
<http://www.ga.wa.gov>

INVITATION FOR BID (IFB)

**WESTERN STATES CONTRACTING ALLIANCE (WSCA)
INFANT FORMULA REBATE CONTRACT**

| <u>Contract Number</u> | <u>Prebid Meeting Date & Time</u> | <u>Bid Due Date & Time</u> |
|------------------------|---------------------------------------|-----------------------------------|
| 06406 | NOVEMBER 8, 2006 – 9:00 AM. (PST) | DECEMBER 13, 2006- 2:00 PM. (PST) |

**BIDS MUST BE RECEIVED & STAMPED ON OR BEFORE THE DUE DATE & TIME AT THIS LOCATION:
210 11TH AVE SW, RM. 201, GENERAL ADMINISTRATION BUILDING OLYMPIA WA 98504-1017**



SHEILA MOTT
CONTRACTS SPECIALIST
(Procurement Coordinator)
Phone (360) 902-7438
Fax (360) 586-2426
E-mail smott@ga.wa.gov

For a site map to the Capitol Campus, click http://access.wa.gov/government/images/campus_map.jpg.
Driving directions and parking information <http://www.leg.wa.gov/common/maps/parking.htm>

Washington State Department of General Administration
Office of State Procurement, PO Box 41017, Olympia, WA 98504-1017

The State of Washington is an equal opportunity employer. To request this information in alternative formats call (360) 902-7400, or TDD (360) 664-3799.
REV 2006-03-09

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1 ANNOUNCEMENT AND SPECIAL INFORMATION

1.1 PUBLIC DISCLOSURE

A public bid opening will be held at the Office of State Procurement (OSP) 210 11th Avenue Southwest, Rm. 201, General Administration Building Olympia Washington 98504-1017. The OSP receptionist will direct any bidder(s) attending the bid opening to the correct room. At the time of bid opening, only the name of the bidder and time of bid receipt will be read aloud. Bid information, including price sheets, will not be available for public disclosure until after award of the contract.

Bidders may call the bid clerk at (360) 902-7415, to obtain confirmation of receipt of bid response. An alternate contact is the receptionist at (360) 902-7400.

1.2 SCOPE

SCOPE AND INTENT

The State of Washington Office of State Procurement (OSP) is releasing this Western States Contracting Alliance (WSCA) Invitation for Bid (IFB) on behalf of Alaska, American Samoa, Arizona, Commonwealth of the Northern Mariana Islands (CNMI), Delaware, District of Columbia, Guam, Hawaii, Idaho, Inter Tribal Council of Arizona (ITCA), Inter Tribal Council of Nevada (ITCN), Kansas, Maryland, Montana, Navajo Nation, Nevada, Oregon, Utah, Virgin Islands, Washington, West Virginia and Wyoming, hereafter referred to as the Participating State Agencies. Washington is seeking a per unit Rebate for infant formulas that qualify for a rebate under the provisions described in this IFB. The State of Washington will contract on behalf of the Participating State Agencies with the Responsive and Responsible Bidder(s) offering the lowest Total Monthly Net Price for milk- and soy-based infant formulas as specified on the bid evaluation sheets, Attachment 3A and 3B.

This IFB consists of two categories. One category is for milk-based non-exempt infant formula and one category is for soy-based non-exempt infant formula. Each category will be awarded separately. The award(s) may be with two different manufacturers (one award for milk-based and one award for soy-based) or both milk-based and soy-based may be with the same manufacturer. As required by federal law, the milk-based formula specified by the bidder awarded the contract for milk-based formula will be the first choice of issuance to infants utilizing milk-based formula and the soy-based formula specified by the bidder awarded the contract for soy-based formula will be the first choice of issuance to infants utilizing soy-based formula.

The Contractor will pay a rebate for the manufacture's entire milk-based or soy-based product line that meet the definition of milk-based contract infant formula and/or soy-based contract infant formula. The same percent discount by physical form awarded for their Primary Contract Infant Formula will be applied. The Contractor will also pay rebates on any new milk-based or soy-based contract infant formula it introduces after the Contract is awarded and are subsequently added to the contract.

The Participating State Agencies will continue to purchase and/or distribute infant formula through their existing retail food delivery systems. Participating State Agencies will provide guidance to local WIC clinic staff regarding policies/protocols for using Primary Contract Infant Formula as the first choice of issuance. Current policies and/or protocols for each Participating State Agency are in Attachment 8. Participating State Agencies reserve the right to revise policies/protocols with the award of a new Contract. If revised, policies/protocols will be subject to United States Department of Agriculture (USDA), Food and Nutrition Services (FNS) approval.

1.3 CONTRACT TERM AND EXTENSIONS

- 1.3.1. The Contract will be effective October 1, 2007 through September 30, 2010.
- 1.3.2. The Contract may be extended up to three additional years in 1-year, 2-year or 3-year terms.
- 1.3.3. Total Contract period with extensions will not exceed six (6) years.
- 1.3.4. Contract extensions are subject to mutual agreement by OSP, Participating State Agencies and the Contractor, and will be process approximately one year in advance of contract expiration date.
- 1.3.5. The Contractor must respond within fifteen (15) calendar days following receipt of the OSP request for extension.
- 1.3.6. All terms and conditions of the Contract will continue in force in the event of a Contract extension.

1.4 BACKGROUND INFORMATION

1.4.1. WESTERN STATES CONTRACTING ALLIANCE (WSCA)

The Western States Contracting Alliance (WSCA) was formed in October 1992 by the state purchasing directors from fifteen western states. The primary purpose is to establish the means by which participating states may join together in cooperative multi-State contracting in order to achieve cost-effective and efficient acquisition of quality products and services. Cooperative purchases are developed by member states.

The WSCA alliance of states contracting for WIC infant formula rebates was first formed in 1992. Washington State is the lead state for this WSCA Infant Formula Rebate solicitation. As lead state, the State of Washington Office of State Procurement (OSP) is responsible for the solicitation process and contract management. Twenty-one other states and eligible organizations have elected to participate by signing a Memorandum of Agreement. No state or eligible organization can be added after the IFB is released to bidders. Washington State laws and regulatory requirements govern the solicitation and Contract.

This is a re-bid of an existing contract 09500 which was originally awarded in September, 2001 and will expire September 30, 2007. The WSCA state agencies have all participated on this contract since 2001. This re-bid has been expanded to include Commonwealth of the Northern Mariana Islands (CNMI), a state agency serving less than 5000 participants. It has also been modified to reflect separate pricing for milk-based products and soy-based products.

1.4.2. WIC PROGRAM AND INFANT FORMULA REBATES

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program) is a federally funded program carried out pursuant to the Child Nutrition Act of 1966. The program is funded primarily through the Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA). State and local government funds are also used in some states.

WIC services are provided to participants at locally based WIC clinics. WIC services include health and nutrition assessment, nutrition education, breastfeeding promotion and support, a prescribed supplemental food package, and referral to social and health services. Eligibility is based on category (pregnant, breastfeeding and postpartum women, infants and children to five years of age), income at or below 185% of the federal poverty level, and the presence of health or nutrition risk factors.

1.5 SCHEDULE OF EVENTS*

| | |
|---|--|
| Issuance Of New Re-Bid IFB | October 10, 2006 |
| IFB Questions Submitted By Bidders | Oct. 10 – Oct. 20, 2006 |
| Responses To Bidders' Questions | November 3, 2006 |
| Pre-Bid Conference | November 8, 2006 |
| Amendment Developed & Issued (To Include Bidders' Questions And Responses) | November 22, 2006 |
| Responses To Bidders Additional Questions | December 6, 2006 |
| Bids Are Due / Bid Opening | December 13, 2006 |
| Evaluation Finalized | January 7, 2007 |
| Award Announced | January 21, 2007 |
| Transition & Implementation | March 1 st – September 30, 2007 |
| Effective Date Of New Contract | October 1, 2007 |

* This schedule is tentative and subject to change. These dates are for informational purposes only. Changes to this date/time table may be through an amendment.

1.6 ESTIMATED USAGE

It is estimated that REBATES for this contract over the initial three-year term of the contract will be approximately \$500,000,000. Estimated usage data as stated herein is not binding. Estimates are based on past usage and are not guaranteed.

1.7 PRE-BID CONFERENCE

Attendance at the Pre-bid Conference is optional; however, bidders are encouraged to attend.

Date: NOVEMBER 8, 2006

Time: 9:00 am – 12:00 pm Pacific Standard Time

Location: Office of State Procurement
 General Administration Building, Room 201
 210 11th Avenue SW (Corner of 11th & Columbia Streets)
 Olympia, Washington 98504

Assistance for handicapped, blind or hearing-impaired persons who wish to attend is available with prearrangement through OSP. Contact Sheila Mott, Contract Administrator, at (360) 902-7438.

2 DEFINITIONS

- 2.1. Contract:** The agreement entered into by the State of Washington and the Responsive and Responsible Bidder(s). The Contract documents include this IFB, IFB attachments and IFB amendments.
- 2.2. Contractor:** The infant formula manufacturer with whom the State of Washington enters into a Contract for a Rebate on infant formula.
- 2.3. Contractor Representative:** An individual, or individuals, designated by the Contractor to act on its behalf with the authority to legally bind the Contractor concerning the terms and conditions set forth in this IFB and Contract.
- 2.4. Exempt Infant Formula:** An infant formula that meets the exempt specifications under section 412(h) of the federal Food, Drug and Cosmetic Act (21 U.S.C. 350 a(h)) and the regulations of 21 CFR parts 106 and 107.
- 2.5. Food Instruments (FI):** Documents such as checks, drafts, vouchers, coupons or electronic benefits transfer cards (EBT), used by WIC participants to obtain WIC supplemental foods. Federal regulations allow a WIC FI to be valid up to ninety (90) days after the date the FI was issued to a WIC participant. Some Participating State Agencies use a shortened time period (e.g. 60 days).
- 2.6. Infant Formula:** A food that meets the definition of an infant formula in Section 201(z) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(z)) and the requirements for an infant formula under section 412 of the federal Food, Drug and Cosmetic Act (21 U.S.C. 350a) and the regulations of 21 CFR parts 106 and 107.
- 2.7. Milk-based contract infant formula:** All milk-based infant formulas (except exempt infant formulas) produced by the manufacturer awarded this rebate contract. This includes lactose reduced and protein modified formulas.
- 2.8. OSP:** Washington State Office of State Procurement.
- 2.9. Participating State Agency:** The state and eligible organizations participating in this WSCA solicitation and Contract for infant formula Rebates which are Alaska, American Samoa, Arizona, Commonwealth of Northern Mariana Islands (CNMI), Delaware, District of Columbia, Guam, Hawaii, Idaho, Inter Tribal Council of Arizona (ITCA), Inter Tribal Council of Nevada (ITCN), Kansas, Maryland, Montana, Navajo Nation, Nevada, Oregon, Utah, Virgin Islands, Washington, West Virginia and Wyoming.
- 2.10. Percent Discount:** The percent discount is the "rebate per unit" divided by the "wholesale price" as displayed on bid sheets, Attachment 3A and 3B. A percent discount is established for each physical form of the Primary Contract Infant Formulas. The percent discount is then applied to the bidder's milk-based contract infant formulas and/or soy-based contract infant formulas (except exempt infant formulas) by physical form to establish the rebate amount for each of the bidder's products.
- 2.11. Primary Contract Infant Formula:** The milk-based infant formula and the soy-based infant formula for which a bid was submitted and a contract awarded. There is one primary milk-based contract infant formula and one primary soy-based contract infant formula under the contract. They are the first choice for issuance to WIC infants.
- 2.12. Procurement Coordinator:** The Contracts Specialist designated by OSP to act on behalf of the State of Washington in conjunction with this IFB and Contract.
- 2.13. Rebate:** The amount of money refunded under cost containment procedures to a Participating State Agency from the infant formula manufacturer in accordance with 7 CFR 246, this IFB and the Contract.

2.14. Responsive and Responsible Bidder: Responsive: a manufacturer of infant formula who submits a Bid that conforms to this solicitation. Responsible: a bidder registered with the Secretary of Health and Human Services under the federal Food, Drug and Cosmetic Act. The bidder must certify to OSP that its infant formulas comply with all Food and Drug Administration (FDA) requirements.

2.15. Soy-based contract infant formula: all soy-based infant formulas (except exempt infant formulas) produced by the manufacturer awarded this rebate contract.

2.16. Total Monthly Net Price: The sum of the bidder's individual Monthly Net Price for each unit size and physical form of the bidder's milk-based and soy-based Primary Contract Infant Formula as specified on Attachment 3A and Attachment 3B. Lowest net price is based on the manufacturers' best national wholesale price per unit for a full truckload on the date of bid opening.

2.17. Unit: A container, generally a can, which holds liquid concentrate, powdered concentrate and/or ready-to-feed infant formula.

2.18. WIC-Eligible Medical Food: Enteral products that are formulated to provide nutritional support for individuals with a diagnosed medical condition, when the use of conventional foods is precluded, restricted or inadequate. WIC-Eligible Medical Foods may be nutritionally complete or incomplete, but they must serve the purpose of a food, provide a source of calories and one or more nutrients, and be designed for enteral digestion via an oral or tube feeding. WIC-Eligible Medical Foods include many, but not all, products that meet the definition of medical food in section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360 ee (b)(3)).

2.19. Wholesale Price: The bidder's dated and nationally published best full truckload wholesale price for a unit of the bidder's milk-based and soy-based Primary infant formula offered as a Rebate under this IFB and Contract.

3. INSTRUCTIONS TO BIDDERS

3.1. RESPONSIBILITIES

Bidders will examine and understand this entire document and seek clarification from the Procurement Coordinator as required pursuant to Washington Administrative Code (WAC) 236-48-013 and WAC 236-48-081. Negligence in preparing a Bid does not constitute the right of withdrawal after Bid opening. Bidders will comply with federal, tribal, state and local laws, statutes, regulations and ordinances relevant to performance with the Contract. This includes licensing and certification requirements.

3.2. INQUIRIES

- 3.2.1. All questions related to this IFB will be directed to the Procurement Coordinator. Inquiries will be in writing and will reference the section and paragraph number of this document.
- 3.2.1. Only answers issued by formal written addenda from the Procurement Coordinator will be binding. Oral interpretations will be without legal effect.

3.3. PRE-BID QUESTIONS

- 3.3.1 There will be a Pre-bid Conference to address contractual requirements and to clarify requirements of the IFB.
- 3.3.2. Bidders are directed to submit written questions prior to the Pre-bid Conference. Questions are to pertain to this IFB only and may be submitted via mail, fax or email to the attention of the Procurement Coordinator at the address shown on the cover page.
- 3.3.3. Questions will not be accepted verbally over the telephone.
- 3.3.4. Pre-bid questions are due by October 20, 2006, no later than 4:00 PM PST.
- 3.3.5. Questions received in advance will establish the agenda for the Pre-bid Conference. The agenda will include, but not be limited to the following:
 - 3.3.5.1 Review of the IFB and Contract,
 - 3.3.5.2 Responses to written questions submitted prior to the Pre-bid Conference that ask for clarification of the IFB or Contract,
 - 3.3.5.3. Verbal questions regarding the IFB or contract presented during the Pre-bid Conference will be answered verbally during the conference.
- 3.3.6. No discussions regarding this IFB or verbal responses to questions are binding upon the State of Washington or any Participating State Agency unless issued by formal written addenda from the Procurement Coordinator.

3.4. SUBMISSION OF BID RESPONSE

- 3.4.1. Bids are due December 13, 2006, no later than 2:00 PM PST.
- 3.4.2. The method of delivery of Bid responses, whether mailed or hand delivered is at the discretion of the bidder. It is the bidder's sole responsibility to assure delivery at the designated office by the bid due date and time.
- 3.4.3. Prior to receipt of the Bid by OSP, neither the State of Washington nor any Participating State Agency is responsible for mis-direction or delivery of Bid documents.
- 3.4.4. Bids must be submitted to one of the following addresses. The mailing label must bear the exact address information below:

Mailing address:

State of Washington
Department of General Administration
Office of State Procurement
General Administration Building
210 11th Avenue SW, Room 201
P.O. Box 41017
Olympia, WA 98504-1017

Physical location address:

State of Washington
Department of General Administration
Office of State Procurement
General Administration Building
210 11th Avenue SW, Room 201
Olympia, WA 98504

Attn: Sheila Mott, Contract Administrator
IFB 06406
Bid Opening: December 13, 2006
Time: 2:00 PM PST

Attn: Sheila Mott, Contract Administrator
IFB 06406
Bid Opening: December 13, 2006
Time: 2:00 PM PST

3.5. BID RESPONSE

- 3.5.1. Bidders may submit a bid on milk or soy-based infant formula or both. Bidders must submit one complete response to this IFB using the format provided herein to be considered. Bidders offering rebates on both milk-based and soy-based products are required to submit only one complete response including both the price sheets (Attachment 3A and 3B) in one bid response. The bidder is specifically notified that failure to comply with any part of the IFB may be cause for finding its response non-responsive.
- 3.5.2. Bid responses must include the following documents completely filled out and signed as indicated:
 - 3.5.2.1. Attachment 1: Bidder Contact and Tax Information
 - 3.5.2.2. Attachment 3A: Primary Milk-Based Infant Formula Bid Sheet and/or Attachment 3B: Primary Soy-Based Infant Formula Bid Sheet
 - 3.5.1.3. Bidder's nationally published best full truckload wholesale price list in effect the date of bid opening.
 - 3.5.2.4. Attachment 5: Bid Certification
 - 3.5.2.5. Attachment 6: Offer and Award
 - 3.5.2.6. Attachment 10: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions
- 3.5.3. Bids must be typewritten or written in ink.
- 3.5.4. An official authorized to bind the bidder to the terms, conditions and specifications submitted in its bid response must sign bid response. (Documentation indicating authorization is not required.)
- 3.5.5. Bids, including all items in 3.5.2 above must be submitted in a sealed envelope. Only one original response is required.

3.6. BID RECEIPT AND OPENING

- 3.6.1. Bid envelope must be officially time stamped by OSP as received no later than December 13, 2006 at 2:00 PM PST.
- 3.6.2. Bid responses will be opened publicly on December 13, 2006, at 2:00 PM PST at OSP in the room designated for the opening. Attendees will be directed to the correct room by the OSP receptionist.
- 3.6.3. At the time of bid opening, only the name of the bidder and time of bid receipt will be read aloud. Additional bid information will not be available until after the contract is awarded.

- 3.6.4. Late Bids will not be accepted and will automatically be disqualified from further consideration. Late Bids will be returned unopened at the bidder's expense.
- 3.6.5. Facsimile submitted Bids will not be accepted.
- 3.6.6. Electronically submitted Bids will not be accepted.
- 3.6.7. Bidders may contact the OSP Bid Clerk to verify receipt of bid response: 360-902-7400.

3.7. EVALUATION AND AWARD

- 3.7.1. Award of the Contract will be to the Responsive and Responsible Bidder offering the lowest Total Monthly Net Price as specified on the Primary Milk-Based Infant Formula Bid Sheet (Attachment 3A) and to the Responsive and Responsible Bidder offering the lowest Total Monthly Net Price as specified on the Primary Soy-Based Infant Formula Bid Sheet (Attachment 3B).

The awards will be an "All-or-none" basis within each category. The State of Washington reserves the right to award the contract either to a single supplier for both milk and soy, or one supplier for milk-based formula and one supplier for soy-based formula.

- 3.7.2. In the event more than one bidder submitted bids for the exact same Total Monthly Net Price, OSP will consult with the Participating State Agencies to determine what, if any, mitigating factors should be taken into consideration to break the tie.
- 3.7.3. The following checklist identifies the bid documents that must be submitted with bid response. Any bids received without these documents may be deemed non-responsive and may not be considered for award:

- Attachment 1, Bidder Contact & Tax Information
- Attachment 3A, Primary Milk-Based Infant Formula Bid Sheets and/or Attachment 3B, Primary Soy-Based Infant Formula Bid Sheets
- Attachment 5, Bidder Certification
- Attachment 6, Offer & Award
- Attachment 9, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

3.8. WITHDRAWAL OR MODIFICATION OF BID

- 3.8.1. Prior to Submittal: An official company representative will initial Bid modifications in ink.
- 3.8.2. After Submittal: At any time prior to the specified Bid opening date and time, bidder may withdraw the Bid if such a request is submitted in writing. Bid withdrawals or modifications must be submitted in writing and officially time stamped by OSP prior to Bid opening date and time.
- 3.8.3. After Bid Opening: No Bid will be altered or amended. The Washington State General Administration Director or designee may allow a Bid to be withdrawn if the bidder demonstrates they miscalculated Bid prices. A low bidder, who claims error and fails to enter into a Contract, will be prohibited from bidding on the same commodity or service if the requirement is subsequently re-bid. Negligence in preparing a Bid does not give a Bidder the right to withdraw its Bid after opening.

3.9. CONTRACT FORMATION/MODIFICATION

- 3.9.1. A Bid responding to this IFB is an offer to contract with the State of Washington.
- 3.9.2. A Bid response becomes the Contract when officially accepted by OSP as evidenced by the return of a countersigned Offer and Award document (Attachment 6).
- 3.9.3. The Contract may be modified only by written amendment agreed upon by OSP, the Participating State Agencies and the Contractor.
- 3.9.4. All requests for amendments or modification to the Contract will be directed to OSP for consideration on behalf of the Participating State Agencies.

3.10. AWARD RESULTS

- 3.10.1. All Bids submitted become the property of the State of Washington and are a matter of public record. They will be on file at OSP.
- 3.10.2. Notification of the award will be sent via email and a copy of the Contract award notice will be distributed to all bidders and posted on the OSP website: <http://www.ga.wa.gov/purchase>
- 3.10.3. Additional information may be obtained by reviewing the Contract file after Contract award.

3.11. GOVERNING LAWS

- 3.11.1. The Contract will be construed under and governed by the laws of the State of Washington.
- 3.11.2. Any claims specific to a Participating State Agency resulting from an alleged act or omission of that Participating State Agency must be brought in the courts, or before the administrative body of that Participating State Agency in accordance with the laws of that State or Tribe.
- 3.11.3. Each Participating State Agency's liability will be limited to claims arising from activity specific to the Participating State Agency.
- 3.11.4. Each Participating State Agency's administrative or adjudicative hearing process will be followed by the Contractor if issues arise concerning a particular Participating State Agency.

3.12. PROTESTS

Any protests will be filed and resolved in accordance with WAC 236-48-141 through 143. Protests filed prior to award are to be addressed to the OSP Contract Administrator. Protests filed after the award, and in accordance with above referenced WAC, are to be addressed to the OSP Assistant Director referencing the IFB and Contract 06406:

Ken Harden, Assistant Director
Department of General Administration
Office of State Procurement
201 General Administration Building
P.O. Box 41017
Olympia, Washington 98504-1017

3.13 NON-NEGOTIABLE TERMS:

- Rebate amounts that will apply to the contract and any extension period(s)
- The method by which the rebates will be calculated

4. WESTERN STATES CONTRACTING ALLIANCE, STANDARD CONTRACT TERMS AND CONDITIONS

(WSCA Terms and Conditions are included herein in their entirety per WSCA Solicitation Guide II, February, 2001 for inclusion in all WSCA contracts. The following WSCA Terms & Conditions do NOT pertain to this solicitation: 4.6 Samples, 4.7 Cash Discount Terms, 4.8 Taxes, 4.9 Modification or Withdrawal of Bids and Proposals, 4.11 Awards, 4.17 Reports, 4.21 Delivery, 4.22 Warranty, 4.30 Hazardous Chemical Information, 4.36 Political Subdivisions Participation and 4.40 Pricing as Ceiling.)

4.1 PARTICIPANTS

Western States Contracting Alliance ("WSCA") is a cooperative group contracting consortium for state government departments, institutions and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming. Obligations under this contract are limited to those Participating States who have signed (and not revoked) an Intent to Contract at the time of award, or who have executed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting price agreement(s) will be permissive.

4.2. DEFINITIONS:

- 4.2.1. "Lead State" means the State conducting this cooperative solicitation and centrally administering any resulting price agreement.
- 4.2.2. "Offer" or "Bid" or "Proposal" refers to the offer submitted in response to a solicitation, whether denominated as an invitation to bid, invitation for bid, request for proposal, or otherwise. "Bidder" or "Offeror" similarly refers to the person, company, or other entity submitting the bid or proposal that constitutes an offer capable of acceptance, regardless of the solicitation method used.
- 4.2.3. "Permissive price agreement" means that placement of orders through the price agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the price agreement without using statutory or regulatory procedures (e.g. invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the price agreement so long as applicable procurement statutes and rules are followed.
- 4.2.4. "Participating Addendum" means a bilateral agreement executed by the contractor and a Participating State that clarifies the operation of the price agreement for the State concerned, e.g. ordering procedures specific to a State, and may add other state-specific language or other requirements.
- 4.2.5. "Participating State" means a member of WSCA who has indicated its intent to participate as disclosed on the solicitation, or who subsequently signs a Participating Addendum where contemplated by the solicitation.
- 4.2.6. "Purchasing Entity" means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing

Entities and Participants authorized to purchase the goods and/or services described in this solicitation.

4.3 QUANTITY ESTIMATES

Estimated quantities are informational and not to be construed as a warranty of accuracy of historical or anticipated volumes or a guarantee to purchase any amount.

4.4. SPECIFICATIONS

Any deviation from specifications must be clearly indicated by offeror, otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the solicitation says "no substitute." Offers will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

4.5 ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS

The Lead State reserves the right to accept or reject any or all bids or proposals, or parts of bids or proposals, and to waive informalities therein.

4.6. SAMPLES

Generally, when required, samples will be specifically requested in the solicitation. Samples, when required, are to be furnished free of charge. Except for those samples destroyed or mutilated during testing, samples will be returned at an offeror's request, transportation collect.

4.7. CASH DISCOUNT TERMS

Offeror may quote a cash discount based upon early payment; however discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

4.8. TAXES

Offered prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.

4.9. MODIFICATION OR WITHDRAWAL OF BIDS AND PROPOSALS

Bids and proposals may be modified or withdrawn prior to the time set for receipt of bids or proposals. After the time set for receipt of bids or proposals, no proposal may be modified or withdrawn.

4.10 PATENTS, COPYRIGHTS, ETC.

The Contractor shall release, defend, indemnify, and hold harmless WSCA, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of WSCA, the Participating States and the Purchasing Entities, from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, process, patented or unpatented invention, article or appliance furnished or used in performance of this contract.

4.11. AWARD

Multiple contracts may be awarded as a result of this solicitation. Awards in requests for proposals (competitive sealed proposals) shall be made to the responsible offeror(s) whose proposals are determined to be the most advantageous to the Participating States, taking into consideration price and the other evaluation factors set forth in the solicitation. Unless otherwise stated in the solicitation, an award in an solicitation denominated as an invitation to bid will be made to the lowest responsive and responsible

bidder(s) meeting specifications and all bid terms and conditions. The Participating States reserve the right to award items separately or by grouping items, or by total lot.

4.12. NON-COLLUSION

By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the solicitation, designed to limit independent bidding or competition.

4.13. TERMINATION

Unless otherwise stated in the solicitation, any contract entered into as a result of this solicitation may be terminated by either party upon 60-days notice, in writing, prior to the effective date of the termination. Further, any Participating State may terminate its participation upon 30-days written notice, unless otherwise limited or stated in the special terms and conditions of the solicitation. Any termination under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order.”

4.14. DEFAULT AND REMEDIES

4.14.1. Any of the following shall constitute cause to declare the contract or any order under this contract in default:

4.14.1.1. Nonperformance of contractual requirements, or

4.14.1.2. A material breach of any term or condition of this contract.

4.14.2. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire agreement), a Participating State (in the case of a breach of the Participating Addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.

4.14.3. If the default remains after the opportunity for cure, the non-defaulting party may:

4.14.3.1. Exercise any remedy provided by law or equity;

4.14.3.2. Terminate the contract or any portion thereof, including any orders issued against the contract;

4.14.3.3. Impose liquidated damages, as specified in the solicitation or contract;

4.14.3.4. In the case of default by the contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend contractor from receiving future solicitations.

4.15. LAWS AND REGULATION

Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

4.16. CONFLICT OF TERMS

In the event of any conflict between these standard terms and conditions and any special terms and conditions in the solicitation, the special terms and conditions shall govern.

4.17. REPORTS

The contractor shall submit quarterly reports to the Lead State contract administrator, and upon request to any Participating State, showing the quantities and dollar volume of purchases by each Purchasing Entity.

4.18. HOLD HARMLESS

The contractor shall release, defend, indemnify and hold harmless WSCA, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of WSCA, the Participating States and the Purchasing Entities, from and against any damage, cost or liability, including reasonable attorneys fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, its employees or subcontractors or volunteers.

4.19. ORDER NUMBERS

Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

4.20. GOVERNING LAW AND VENUE

This procurement shall be governed and the resulting price agreement construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against the price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the price agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's State.

4.21. DELIVERY

The prices offered shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

4.22. WARRANTY (including Year 2000)

As used herein "Purchasing entity" refers to any WSCA state agency or political subdivision. The contractor agrees to warrant and assume responsibility for each hardware, firmware, and/or software product (hereafter called the product) that it licenses, or sells, to the Purchasing Entity under this contract. The contractor acknowledges that the Uniform Commercial Code applies to this contract. In general, the contractor warrants that: (a) the product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any *special purposes* that the Purchasing Entity has relied on the contractor's skill or judgement to consider when it advised the Purchasing Entity about the product, (e) the product has been properly designed and manufactured, and (f) the product is free of significant defects or unusual problems about which the Purchasing Entity has not been warned. In general, "year 2000 compatibility and fitness" means: (1) the product warranted by the contractor will not cease to perform before, during, or after the calendar year 2000, (2) the product will not produce abnormal, invalid, and/or incorrect results before, during, or after the calendar year 2000, (3) will include, but not be limited to, date data century recognition, calculations

that accommodate same century and multi-century formats, date data values that reflect century, and (4) accurately process date data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations. If problems arise, the contractor will repair or replace (at no charge to the Purchasing Entity) the product whose noncompliance is discovered and made known to the contractor in writing. Nothing in this warranty will be construed to limit any rights or remedies the Purchasing Entity may otherwise have under this contract with respect to defects.

4.23. AMENDMENTS

The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Contract Administrator of the Lead State.

4.24. ASSIGNMENT/SUBCONTRACT

Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the Contract Administrator of the Lead State.

4.25. NONDISCRIMINATION

The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

4.26. SEVERABILITY

If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

4.27. INSPECTIONS

Goods furnished under this contract shall be subject to inspection and test by the Purchasing Entity at times and places determined by the Purchasing Entity. If the Purchasing Entity finds goods furnished to be incomplete or in compliance with proposal specifications, the Purchasing Entity may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Purchasing Entity, the Purchasing Entity may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Purchasing Entity's rights including the rights and remedies under the Uniform Commercial Code.

4.28. PAYMENT

Payment for completion of a contract is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding

balance. Payments will be remitted by mail. Payments may be made via a Purchasing Entity's "Purchasing Card".

4.29. FORCE MAJEURE

Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which are beyond that party's reasonable control. The Lead State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

4.30. HAZARDOUS CHEMICAL INFORMATION

The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the Purchasing Entity agency. All safety data sheets and labels will be in accordance with each participating state's requirements

4.31. FIRM PRICE

Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of receipt of bids or proposals. Prices must remain firm for the full term of the contract.

4.32. EXTENSION OF PRICES

In the case of error in the extension of prices in the proposal, the unit prices will govern

4.33. PROPOSAL PREPARATION COSTS

WSCA is not liable for any costs incurred by the offeror in preparation of the bid or proposal.

4.34. CERTIFICATION REGARDING CONFLICT OF INTEREST

Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any Participating State to any officer or employee of WSCA or Participating States to secure favorable treatment with respect to being awarded this contract.

4.35. INDEPENDENT CONTRACTOR

Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind the Participating States to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.

4.36. POLITICAL SUBDIVISION PARTICIPATION

Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) of the WSCA participating states shall be voluntarily determined by the political subdivision. The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

4.37. CERTIFICATION REGARDING DEBARMENT

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by WSCA.

4.38. RECORDS ADMINISTRATION

The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this contract. These records will be retained by the contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.

4.39. AUDIT OF RECORDS

The contractor agrees to allow VSCA, State and Federal auditors, and State agency staff access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment

4.40. PRICES AS CEILING

Price agreement prices represent ceiling prices for the supplies and services priced in the price agreement. The vendor shall report to the Lead State any price reduction or discount, or other more favorable terms, offered to any Purchasing Entity, and the awarded vendor agrees to negotiate in good faith to reestablish ceiling prices or other more favorable terms and conditions applicable to future orders.

Revision Date: February 2001

5. SPECIAL TERMS & CONDITIONS

5.1. POINTS OF CONTACT

- 5.1.1. The Contractor will provide the name, address, and telephone number of their primary representative and alternate representative for this Contract. The Contractor's representative will function as the primary point of contact, will ensure supervision and coordination, and will take corrective action as necessary to meet contractual requirements.
- 5.1.2. OSP will provide the name, address, and telephone number of the OSP Contracts Specialist who will be the Procurement Coordinator for this WSCA Infant Formula Rebate Contract. The Contractor agrees that OSP will be the first point of contact in all Contract-related matters.
- 5.1.3. A contact person for each Participating State Agency, their address, and telephone number is provided in Attachment 8. If a matter solely affects an individual Participating State Agency, the Contractor may contact that person directly.

5.2. REBATE SOLICITATION AND CONTRACT

- 5.2.1. The bidder will specify on Attachment 3A and/or Attachment 3B the product name and offer a per unit rebate for each unit size and physical form of the Primary milk-based and/or soy-based infant formula it manufactures that meets the requirements in item 5.2.2 and 5.2.3 below.
- 5.2.2. The Primary Contract milk-based infant formula for which a Rebate is offered in response to this IFB will meet the following specifications:
 - 5.2.2.1. The milk-based infant formula will be lactose containing and suitable for routine issuance to the majority of generally healthy, full-term infants.
 - 5.2.2.2. The milk-based infant formula will meet the definition of an infant formula as stated in section 201(z) of the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)), the requirements for an infant formula under section 412 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a), and the regulations 21 CFR parts 106 and 107.
 - 5.2.2.3. The milk-based infant formula will satisfy all requirements under 7 CFR 246.10(c)(1)(i).
 - 5.2.2.4. The milk-based infant formula will 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.
 - 5.2.2.5. The milk-based infant formula will be nutritionally complete not requiring the addition of any ingredients other than water prior to being served in a liquid state.
 - 5.2.2.6. The milk-based infant formula will be available in liquid concentrate, powdered concentrate and ready-to-feed.
- 5.2.3. The Primary Contract soy-based infant formula for which a rebate is offered in response to this IFB will meet the following specifications:
 - 5.2.3.1. The soy-based infant formula will be suitable for routine issuance to the majority of generally healthy, full-term infants.
 - 5.2.3.2. The soy-based infant formula will meet the definition of an infant formula as stated in section 201(z) of the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)), the requirements for an infant formula under section 412 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a), and the regulations 21 CFR parts 106 and 107.
 - 5.2.3.3. The soy-based infant formula will satisfy all requirements under 7 CFR 246.10(c)(1)(i).

- 5.2.3.4. The soy-based infant formula will contain at least 1 milligram 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.
- 5.2.3.5. The soy-based infant formula will be nutritionally complete not requiring the addition of any ingredients other than water prior to being served in a liquid state.
- 5.2.3.6. The soy-based infant formula will be available in liquid concentrate, powdered concentrate and ready-to-feed.
- 5.2.4. The bidder agrees to supply and pay a "per unit" Rebate on any new milk-based or soy-based contract infant formulas, it introduces to the marketplace after the Contract is awarded. The bidder agrees to provide the wholesale price of any new products at the time the product is added to the contract.
- 5.2.5. Within ten (10) days of receipt of the Offer and Award notice, the Contractor will furnish OSP with a list of their milk-based infant formulas and/or soy-based infant formula that meet the FDA requirements for an infant formula. These formulas will be included in the contract. The list will not include WIC eligible Exempt Infant Formula or WIC-Eligible Medical Foods. The list will include the Contractor's nationally published best full truckload wholesale price, at the time of the Bid opening, for each unit size and physical form of infant formula.
- 5.2.6. The Rebate offered for each unit size and physical form of the Primary Contract milk-based or soy-based infant formula, as specified on the Infant Formula Bid Sheet (Attachment 3A or Attachment 3B) will be converted to a Percent Discount and used to calculate the Rebate for the corresponding physical form of each milk-based or soy-based Contract Infant Formula. The Percent Discount is multiplied by the bidder's nationally published best full truckload wholesale price to establish the rebate for the contract infant formulas.

5.3. USE OF PRIMARY CONTRACT INFANT FORMULA

Participating State Agencies will approve the Primary Contract Formula. Primary Contract Formula will be the first choice of issuance to infants covered by this contract. Participating State Agencies are not required to approve or issue the manufacturer's entire product line of milk-based or soy based contracted infant formula. Participating State Agencies reserve the right to issue non-contract brands of infant formula with medical documentation. Participating State Agencies reserve the right to require medical documentation per individual state agency policy. Participation and usage data provided in the IFB does not necessarily reflect actual issuance that will occur under the new contract.

5.4. CONTRACTOR REGISTRATION AND CERTIFICATION

The bidder will certify to OSP, on Attachment 5, that its company is registered with the Secretary of Health and Human Services under the federal Food, Drug and Cosmetic Act and that its infant formulas satisfy FDA requirements, are in compliance with the Infant Formula Act of 1980 and all amendments including all federal regulations issued pursuant to the Act. This certification is a requirement of 7 CFR 246.10(f) and 7 CFR 246.16a.(j)(2).

5.5. CONTRACT INFANT FORMULA AVAILABILITY

- 5.5.1. By September 1, 2007, the Primary Contract Infant Formula will be in full statewide distribution. Full statewide distribution means the formula is readily available from wholesale suppliers that supply WIC authorized retail vendors for each Participating State Agency.

- 5.5.2. The Contractor shall manufacture and make available supplies of Primary Contract Infant Formula in sufficient quantity to serve WIC participants of the Participating State Agencies through their wholesale distribution system.

5.6.WHOLESALE NOTIFICATION

- 5.6.1. By August 1, 2007, the Contractor(s) will contact wholesale suppliers in the geographic service locations of all of the Participating State Agencies to notify them of the Contract award and the implementation date of the Primary Contract Infant Formula under the Contract.
- 5.6.2. Participating State Agencies will provide lists and/or mailing labels of wholesale suppliers prior to August 1, 2007, if requested.

5.7.PRODUCT CHANGES

- 5.7.1. The Contractor will give Participating State Agencies six (6) months advance written notice of a planned change in formulation of any of its milk-based or soy-based Contract Infant Formula.
- 5.7.2. The Contractor will give the Participating State Agencies six (6) months advance written notice of planned changes in milk-based or soy-based Contract Infant Formula product packaging including size, weight and/or label. The Contractor will provide product labels showing any changes.
- 5.7.3. The Contractor will cooperate with a Participating State Agency to plan and execute a communication strategy regarding product changes when a Participating State Agency determines product change information will be distributed to WIC clinics, authorized retail vendors and/or the medical community.
- 5.7.4. The Contractor will provide pro rated Rebates (i.e. the same Percent Discount as remitted for the Primary Contract Infant Formula) should any of the milk-based or soy-based Contract Infant Formula be discontinued, reformulated or produced in a different can size, or should any new product be introduced which is designed to take the place of the milk-based or soy-based Contract Infant Formula.

5.8.WHOLESALE PRICE CHANGES

- 5.8.1. The Contractor will provide written notification to OSP and all Participating State Agencies of wholesale price changes. Notification will be provided at the same time other customers are notified of the change. The notification will include both the effective date and the amount of the change for all products meeting the Primary Contract Infant Formula definition.
- 5.8.2. Effective after the Bid opening and throughout the term of the Contract, any increase or decrease in the wholesale price per unit will be matched by a cent-for-cent increase or decrease in the Rebate per unit and be applied the first day of the month following the wholesale price changes. This applies to all products meeting the Contract Infant Formula definition.

5.9.FAILURE TO SUPPLY SUFFICIENT QUANTITIES

- 5.9.1 A Participating State Agency will notify the Contractor within twenty-four (24) hours of any report that the milk-based or soy-based Contract Infant Formula is not available or available in an inadequate supply through a wholesale supplier in their service location. The Contractor will investigate the alleged supply problem and notify the Participating State Agency of its findings within forty-eight (48) hours.

- 5.9.2 The Contractor will notify OSP and all Participating State Agencies immediately of the Contractor's inability to supply and/or inability to supply sufficient quantities of milk-based or soy-based Contract Infant Formula to wholesale suppliers.
- 5.9.3 The Contractor will pay the contracted Rebate amount for alternate FDA approved infant formulas substituted by the Participating State Agencies until the supply problem is resolved or a new Contract is awarded.
- 5.9.4 The Contractor is not responsible for lack of milk-based or soy-based Contract Infant Formula inventory at the retail level due to the failure of individual retail vendors to appropriately order stock from their wholesale supplier.

5.10. MONTHLY INVOICES AND DOCUMENTATION

- 5.10.1. Each Participating State Agency will send the Contractor a monthly invoice with supporting documentation. The invoice and documentation will list the number of units that qualify for a Rebate, the Rebate per unit, and the dollar amount due thirty (30) calendar days from the date of the invoice.
 - 5.10.1.1. The first monthly invoice will be no earlier than November, 2007 reflecting information about Contract Infant Formula that qualified for a Rebate in October, 2007.
 - 5.10.1.2. Invoices will continue past the Contract termination date to account for all Food Instruments (FI) issued during the term of the Contract. This is necessary because FI may be valid to be paid up to ninety (90) days after the issuance date although some Participating State Agencies use a shortened time period (e.g. 60 days). For example, FI issued the last day of the Contract (September 30) may be valid to be paid up to ninety (90) days later (December 29).
 - 5.10.1.3. The monthly invoice will list the name and address of the person to whom the Rebate payment will be sent.
- 5.10.2. Descriptions of each Participating State Agency method for determining the number of units that qualify for a Rebate are in Attachment 8.
- 5.10.3. Participating State Agency documentation used to support the monthly invoice will vary in format due to differences in information systems.
- 5.10.4. Participating State Agencies reserve the right to change the format of the monthly invoice and associated documentation as needed due to information system changes.
- 5.10.5. Participating State Agency sample invoices are in Attachment 8.

5.11. REBATE PAYMENT

- 5.11.1. The Contractor will make Rebate payments directly to each Participating State Agency.
- 5.11.2. The Rebate will be calculated using the Rebate per unit in effect on the first day of the month the FI was paid.
- 5.11.3. Rebate payments are due thirty (30) calendar days from the invoice date.

5.12. LATE PAYMENT

The Contractor will be assessed a penalty for late payments. The penalty will be two (2) percent of the invoiced amount.

5.13. REQUESTS FOR ADVANCE PAYMENT

- 5.13.1. The Contractor agrees to make advance payments if requested by a Participating State Agency.
- 5.13.2. The number of requests for advance payment by any one Participating State Agency will be no more than two (2) time per year and will be made no sooner than thirty (30) calendar days prior to the beginning of the month for which the advance payment is requested.
- 5.13.3. The amount of the requested advance payment will be based on the prior month's number of units that qualified for a Rebate adjusted for changes in the number of infants served or other factors mutually agreed upon.
- 5.13.4. A one (1) percent discount will be offered to the Contractor for advance payments.
- 5.13.5. Any amount paid in advance that is subsequently determined by the Participating State Agency to be in excess of the actual Rebate due will be promptly refunded to the Contractor.

5.14. INVOICE DISPUTES OR ERRORS

- 5.14.1. All invoice disputes will be resolved on a state-by-state basis by the Contractor contacting the Participating State Agency.
- 5.14.2. All invoice disputes must be settled by closeout of the federal fiscal year in which the dispute occurs.
- 5.14.3. The Contractor will notify the Participating State Agency of any dispute or believed error within thirty (30) calendar days of receiving the invoice. The notice will be in writing and will describe the specific nature of the dispute or believed error. Failure by the Contractor to notify the Participating State Agency within the thirty-day period will constitute a waiver and release of any dispute or error.
- 5.14.4. The Participating State Agency will notify the Contractor of any invoice error in the rebate calculation within sixty (60) calendar days of issuing the invoice. The notice will be in writing and will describe the specific error. Participating State Agencies agree to resolve errors promptly.
- 5.14.5. The Contractor cannot withhold or offset (payment reduction from invoiced amount) rebate payments under any circumstances.
- 5.14.6. Participating State Agencies agree to make every effort to validate billings. The Participating State Agency will work with the Contractor to determine the best method of repayment if a refund is due the Contractor.
- 5.14.7. If an invoice dispute occurs about which the Participating State Agency and Contractor cannot reach agreement, the Participating State Agency or Contractor may request an independent review.

5.15. RECORD RETENTION AND AUDITS

- 5.15.1. The Contractor and the Participating State Agencies will maintain documentation relevant to Rebate invoices and payments for five (5) years after the termination of the Contract.
- 5.15.2. The Contractor's records relevant to rebate invoices and payments will be subject to review or audit, at any reasonable time and upon reasonable notice, by OSP, Participating State Agencies, USDA, Office of the Inspector General, Comptroller General of the United States, or their representatives.
- 5.15.3. Participating State Agency FI data used in the calculation of units that qualify for a rebate and working documents and reports used in the preparation of monthly invoices will be subject to review or audit, at any reasonable time and upon reasonable notice, by the Contractor or their representatives.

5.15.4. Participating State Agency data that is confidential under federal, tribal or state law is not subject to review or audit by the Contractor or their representatives.

5.16. DEVIATIONS FROM THE SCOPE OF THE CONTRACT

The Contractor will not approach a Participating State Agency with any offer that deviates in any manner from the scope of the Contract.

5.17. DISASTER/SUPPLY INTERRUPTION CONTINGENCY PLANS

5.17.1. The Contractor will provide OSP with a supply source interruption contingency plan within thirty (30) calendar days of the Contract award. The plan will include a description of how the Contractor will ensure Contract Infant Formula will be available to WIC authorized retail vendors in the event of a supply source interruption or other circumstance that affects the Contractor's ability to provide the Contract Infant Formula through its normal wholesale delivery system.

5.17.2. Within forty eight (48) hours of a disaster, when retail food delivery systems may be or are interrupted, state agencies will notify the contractor of the disaster if it is in the geographic areas served by the state agency. Within twenty-four (24) hours of being notified of the disaster and the interruption of the retail food delivery system, the contractor will notify the state agency whether it is supplying milk-based or soy-based Primary Contract Infant Formula to any public or private disaster relief organizations in the geographic area of the disaster and the name of the organizations and their primary contact.

5.18. INFANT FORMULA SAMPLE

The Contractor will NOT be required to provide infant formula samples to any of the Participating State Agencies. This provision is a change from the previous contract and is made in accordance with USDA, FNS Guidelines.

5.19. ROUNDING UP TO THE NEXT WHOLE CAN

To allow all WIC participants to receive the full-authorized nutritional benefits specified by regulation, Participating State Agencies have the discretion to round up to the next whole unit of infant formula in their food packages. The following tables provide information on the status of each participating state agency's decision:

| State Agency | Rounding Up |
|--|-------------|
| Alaska | Undecided |
| Commonwealth Of The Northern Mariana Islands | Undecided |
| Guam | Yes |
| Inter Tribal Council Of Arizona | Yes |
| Maryland | Undecided |
| Oregon | Undecided |
| Washington | Yes |

| State Agency | Rounding Up |
|--------------------------------|-------------|
| American Samoa | Undecided |
| Delaware | Undecided |
| Hawaii | Undecided |
| Inter Tribal Council Of Nevada | Undecided |
| Montana | Yes |
| Utah | Yes |
| West Virginia | Yes |

| State Agency | Rounding Up |
|----------------------|-------------|
| Arizona | Undecided |
| District Of Columbia | Yes |
| Idaho | Undecided |
| Kansas | Yes |
| Navajo Nation | Yes |
| Virgin Islands | Yes |
| Wyoming | Yes |

5.20. TRANSITION COMMUNICATION PLAN

- 5.20.1. The Contractor will provide OSP with a transition communication plan within thirty (30) calendar days of the Contract award. The plan will include a description of how the Contractor will assist Participating State Agencies to communicate information about the new Contract Infant Formula including, if applicable, the availability of Contractor-provided printed materials.
- 5.20.2. The Contractor will make available advertising art/graphics in suitable electronic format to Participating State Agencies to be used in the development of materials used by the Participating State Agencies to communicate information on the Primary Contract Infant Formula.

5.21. COMMUNICATION AND ADVERTISING

- 5.21.1. The Contractor will not distribute any written communication connecting the WIC Program and the milk-based or soy-based Contract Infant Formula without prior review and written consent by the Participating State Agency (ies) in the planned distribution area.
- 5.21.2. The Contractor will not advertise or publish information concerning this Contract in any form or media without prior review and written consent from OSP.
- 5.21.3. The use of the "WIC" acronym and logo is reserved for the official use of the WIC Program for purposes consistent with WIC Program regulations, USDA Food and Nutrition Services (FNS) instructions and policies. Infant formula manufacturers, regardless of whether they provide formula to the States are not permitted to use the "WIC" acronym or logo for promoting their products or for any other reason unless the infant formula manufacturer first obtains the written permission of the State Agency WIC Program.
- 5.21.4. The contractor(s) is not permitted to display the acronym "WIC" or the WIC logo. This includes, but is not limited to, close facsimiles thereof, in total or in part, on product labels, or packages, or any proprietary materials it might produce, including pamphlets and brochures, or prescription pads produced as information items for the public or the medical community.
- 5.21.5. The Contractor will provide advertising art/graphics in suitable electronic format to Participating State Agencies upon request..

5.22. GIFTS AND GRATUITIES

- 5.22.1. In accordance with Revised Code of Washington (RCW) 43.19.1937 and 1939 and RCW 42.52.150 and 160, it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business practices to another to refrain from submitting a proposal.
- 5.22.2. In accordance with RCW 43.19.1937 and the Ethics in Public Service Law, Chapter 42.52 RCW, state officers and employees are prohibited from receiving, accepting, taking or seeking gifts.

5.23. PERSONAL LIABILITY

- 5.23.1. In no event will any official, officer, employee or agent of the State of Washington be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement of representation made herein or in any connection with the IFB or Contract.

5.23.2. In no event will any official, officer, employee or agent of the Participating State Agencies be in any way liable or responsible for any act or omission in conjunction with this IFB or Contract.

5.24. INDEMNIFICATION

The Contractor will defend, indemnify and hold harmless the Participating State Agencies and their officers and employees from any claim, demand, suit, liability, judgment and expense (including attorney fees and other costs of litigation) resulting from the negligent performance of this Contract by the Contractor, its agents, employees and subcontractors or any one for whom the Contractor may be responsible. The obligations, indemnities and liabilities assumed by the Contractor under this paragraph will not extend to any liability caused by the negligence of the Participating State Agency or its officers or employees.

5.25. INSURANCE

5.25.1. The State of Washington and the Participating State Agencies assume no liability with respect to bodily injury, illness, accident, death or any other type of loss or claim arising out of the Contractor's operations, products, contracts, or vehicles.

5.25.2. The Contractor will maintain commercial general liability insurance with a minimum per occurrence limit of \$1,000,000.00 and a minimum Products/Completed Operations aggregate limit of \$2,000,000.00 and provide evidence of such insurance for the duration of this Contract. The commercial general liability insurance will name the State of Washington and each Participating State Agency, its appointed and elected officials, employees, volunteers, and representatives as additional insured's.

5.25.3. Awarded Contractor(s) are to provide one Certification of Insurance to the OSP. The Certificate is required fifteen (15) calendar days following the award of the Contract.

5.26. CONFIDENTIALITY

Manufacturer(s) may not share or disclose any records identifying WIC participants by name and/or address. Manufacturer(s) may not have access to any information about a vendor that individually identifies the vendor, except for vendor's name, address and authorization status.

5.27. BREACH, DEFAULT AND TERMINATION

This clause had been approved by the state of Washington attorney general's office. It was written to protect the interests of the state of Washington and as such is not reciprocal to any awarded contractor. This does not mean that the contractor is without recourse as provided in contract law in the event there is a breach or default and subsequent termination.

5.27.1. Any violations of the provisions of the Contract by the Contractor will be a material breach of the Contract for which the Contractor may be subject to a requirement of specific performance, or damages and sanctions provided by Contract, by RCW 39.19.090 or by other applicable laws.

5.27.2. A breach of a term or condition of the Contract will mean any one or more of the following events:

- The Contractor fails to perform the services by the date required or by a later date as may be agreed to in a written amendment to the Contract signed by OSP.
- The Contractor breaches any warranty or fails to perform or comply with any term or agreement in the Contract.
- The Contractor makes any general assignment for the benefit of creditors.

- In the sole opinion of OSP, the Contractor becomes insolvent or in an unsound financial condition so as to endanger performance under the Contract.
- The Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors.
- The Contractor becomes the subject of any proceeding under any law relating to a receiver, trustee, or similar official being appointed for the Contractor or any of the Contractor's property.
- The Contractor is determined to be in violation of federal, tribal, state or local laws, statutes, regulations or ordinances and that such determination, in the sole opinion of OSP, renders the Contractor unable to perform any aspect of the Contract.

5.27.3. The Contractor may be declared in default for failing to perform a contractual requirement or for a material breach of any term or condition.

5.27.4. Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of the Contractor or of the Contractor's suppliers or subcontractors, OSP will be entitled, by written or oral notice, to immediately cancel and/or terminate this Contract in its entirety or in part for breach and/or for default of any of the terms herein and to have all other rights against the Contractor by reason of the Contractor's breach as provided by law.

5.27.5. The Contractor will pay the contracted Rebate amount for Contract Infant Formula or an alternate FDA approved infant formula substituted by the Participating State Agencies in the event of a breach and/or default of the terms herein until such issues are resolved or a new Contract is awarded.

5.27.6. OSP may terminate for convenience the Contract at any time and for any reason by giving thirty (30) calendar days written termination notice to the Contractor. Charges for termination will not apply unless they are subsequently agreed upon by both parties. Where termination charges are applicable, OSP and the Contractor agree to negotiate in good faith and to limit the extent of negotiations to valid documented expenses incurred by the Contractor prior to date of termination. Should the parties not agree to a satisfactory settlement, the matter may be subjected to mediation and/or legal proceedings.

5.27.7. OSP or the Contractor may terminate this Contract with thirty (30) calendar days written notice from one party to the other, subject to mutual agreement by OSP and the Contractor.

5.28. OPPORTUNITY TO CURE DEFAULT

5.28.1. In the event the Contractor fails to perform a contractual requirement or materially breaches any term or condition, OSP may issue a written or oral notice of default and provide a period of time in which the Contractor will have the opportunity to cure. Time allowed for cure will not diminish or eliminate the Contractor's liability for liquidated or other damages. OSP is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely by OSP. OSP may terminate the Contract for nonperformance, breach or default without allowing the opportunity to cure by the Contractor.

5.28.2. If the nonperformance, breach or default remains after the Contractor has been provided the opportunity to cure, OSP may elect one or more of the following remedies:

- Exercise any remedy provided by law.
- Terminate the Contract and any related contracts or portions thereof.

- Impose liquidated damages in the amount of actual damages incurred by the Participating State Agencies as the result of the Contractor's failure to perform.
- Suspend the Contractor from receiving future Invitations For Bid.

5.29. SOVEREIGN IMMUNITY

A Participating State Agency does not waive its sovereign immunity by entering into the Contract and fully retains all immunities and defenses provided by law with respect to any action based on the Contract.

The intent of this section is to indicate that a "participating state agency" does not waive any sovereign immunity it may otherwise retain, *merely* by virtue of its participation in this contract. This contract does not otherwise attempt to describe or explain what sovereign immunity, if any, may have been retained by any specific "participating state agency".

5.28. PROPRIETARY DATA

Any document(s) or information which the bidder believes is exempt from public disclosure (RCW 42.17.310) shall be clearly identified by bidder and placed in a separate envelope marked with bid number, bidder's name, and the words "Proprietary Data" along with a statement of the basis for such claim of exemption. The state's sole responsibility shall be limited to maintaining the above data in a secure area and to notify bidder of any request(s) for disclosure within a period of five (5) years from date of award. Failure to so label such materials or failure to provide a timely response after notice of request for public disclosure has been given shall be deemed a waiver by the bidder of any claim that such materials are, in fact, so exempt

5.29. REPORTS

A quarterly Rebate Report shall be submitted in the format provided by the Office of State Procurement. Total Rebate for each Participating State Agency, is to be shown separately.

Reports are due thirty (30) days after the end of the calendar quarter, i.e., April 30th, July 31st, October 31st and January 31st.

6. ATTACHMENTS

ATTACHMENT 1, BIDDER CONTACT AND TAX INFORMATION

Instruction: Bidder will complete the following information and include with Bid.

AUTHORIZED REPRESENTATIVES

Primary Representative:

| |
|------------------|
| Name: _____ |
| Title: _____ |
| Telephone: _____ |
| Fax: _____ |
| Email: _____ |

Alternate Representative:

| |
|------------------|
| Name: _____ |
| Title: _____ |
| Telephone: _____ |
| Fax: _____ |
| Email: _____ |

CORPORATE FEDERAL TAX IDENTIFICATION NUMBER: _____

UNIFORM BUSINESS IDENTIFIER: _____
(Washington Revenue Registration Tax Number)

MAILING ADDRESS FOR INVOICES:

Bidder's Company Name: _____

ATTACHMENT 2, BID SHEET INFORMATION AND INSTRUCTIONS

(Instructions for Attachment 3A, Attachment 3B, and Attachment 4)

INFORMATION

- 6.2.1. The evaluation methodology and collection of Bid information are consistent with those required by USDA in 7 CFR 246.
- 6.2.2. The values listed on the Infant Formula Bid Sheets and data sources for those values are explained as follows:
 - Column A: The unit size and physical form of infant formula for which Bids are being requested
 - Column B: The maximum amount of infant formula allowed per infant per month for each formula type and physical form.
 - Column C: The monthly average number of infants in the Participating State Agencies by formula type and physical form, excluding exclusively breastfed infants and infants using Exempt Infant Formula*. Attachments 7A and 7B list the 6-month average number of infants using each formula type and physical form. The months averaged are January 2006 through June 2006.
 - Column D: Values in column B multiplied by the values in column C to establish a standardized number of ounces for evaluation purposes.
 - Column E: Values in column D divided by the unit size listed in column A. The resulting value is the standardized number of units for the evaluation.
 - Column F: Bidder's nationally published best full truckload wholesale price per unit, at the time of bid opening, for each unit size and physical form of the infant formula for which a rebate is being offered.
 - Column G: Rebate offered for the formula type and physical form that applies.
 - Column H: Values in column F less the values in column G.
 - Column I: Values in column H multiplied by the values in column E for each formula type and physical form that applies. The column is totaled to determine the total monthly net price for evaluation.
 - Column J: Value in column G divided by the value in column F for each formula type and physical form that apply to determine the Percent Discount.

Participating State Agency average monthly infant participation by formula type and physical form, and total ounces for bid evaluation are provided as information to the bidders and for evaluation purposes only. These numbers do not reflect actual usage that will occur throughout the term of the Contract. Participating State Agencies do not guarantee the quantity, unit size and/or physical form purchased under the contract.

Bidder must submit the most favorable and complete Bid for evaluation purposes by the Bid response deadline. OSP is not obligated to ask for or accept, after the closing date, data that are essential for a complete and thorough evaluation.

- 6.2.3. OSP will verify calculations and correct mathematical errors found on the Infant Formula Bid Sheets.
- 6.2.4. OSP will award the contract to a Responsive and Responsible Bidder based on lowest total monthly net price.
- 6.2.5. Bids are public documents after the award of the contract and will be available for public inspection.

INSTRUCTIONS

- 6.2.6. Fill in the bidder's company name, the Primary Infant Formula for which the rebate is being offered, and the dollar values as requested in columns F, G, H, I and J on the Infant Formula Bid Sheets.
- 6.2.7. For powdered infant formula, fill in columns F, G, H, I and J on the line that represents the unit size of the Primary Infant Formula for which the rebate is offered. The remaining two unit size lines for powdered formula should be left blank.
- 6.2.8. The prices entered in column F must be taken from the bidder's nationally published best full truckload wholesale price list in effect at the time of Bid opening. A dated copy of this price list must be provided with the Bid.
- 6.2.9. Values entered in columns F, G, H, J, and I are to be carried out four places past the decimal.
- 6.2.10. Fill in the sum of column I in the box labeled Total Monthly Net Price.
- 6.2.11. Sign in ink and date the bid sheet. The signature must be that of a representative of the bidder's company authorized to make the Rebate offer.
- 6.2.12. Fill in all information requested on the Exempt Infant Formula Bid Sheet (Attachment 4) if offering a Rebate on Exempt Infant Formula as a "value-added" item. This is not a requirement of the solicitation and will not be included in the evaluation.

ATTACHMENT 3A, PRIMARY MILK-BASED INFANT FORMULA BID SHEET

Bidder Name: _____ Product Name: _____

Instructions: Bidder will complete columns F, G, H, I & J.

| A Unit Size and Physical Form | B Maximum Issuance per Infant in Ounces | C Average Monthly Infant Participation | D Total Ounces for Bid Evaluation | E Standardized Number of Units | F Wholesale Price per Unit | G Rebate Per Unit | H Net Cost Per Unit | I Net Price | J Percent Discount |
|---|---|--|---|---|-------------------------------------|-------------------------|---------------------------|-------------------------|--------------------------|
| 13 ounce liquid concentrate | 403 | 16,623 | 6,699,069 | 515,313 | | | | | |
| The bidder will select the unit size that corresponds to its powdered formula | | | | | | | | | |
| 14.3 ounce powder | 128 | 152,040 | 19,461,120 | 1,360,917 | | | | | |
| 12.9 ounce powder | 128 | 152,040 | 19,461,120 | 1,508,614 | | | | | |
| 12 ounce powder | 128 | 152,040 | 19,461,120 | 1,621,760 | | | | | |
| 32 ounce RTU | 806 | 1,075 | 866,450 | 27,077 | | | | | |
| | | | | | | | | Total Net Price: | |

Authorized Signature: _____ Typed or Printed Name: _____

Title: _____ Date: _____

ATTACHMENT 3B, PRIMARY SOY-BASED INFANT FORMULA BID SHEET

Bidder Name: _____ Product Name: _____

Instructions: Bidder will complete columns F, G, H, I & J.

| A Unit Size and Physical Form | B Maximum Issuance per Infant in Ounces | C Average Monthly Infant Participation | D Total Ounces for Bid Evaluation | E Standardized Number of Units | F Wholesale Price per Unit | G Rebate Per Unit | H Net Cost Per Unit | I Net Price | J Percent Discount |
|--|---|--|---|---|-------------------------------------|-------------------------|---------------------------|----------------|--------------------------|
| 13 ounce liquid concentrate | 403 | 4,015 | 1,618,045 | 124,465 | | | | | |
| The bidder will select the unit size that corresponds to its powdered formula | | | | | | | | | |
| 14.3 ounce powder | 128 | 18,228 | 2,333,184 | 163,160 | | | | | |
| 12.9 ounce powder | 128 | 18,228 | 2,333,184 | 180,867 | | | | | |
| 12 ounce powder | 128 | 18,228 | 2,333,184 | 194,432 | | | | | |
| 32 ounce RTU | 806 | 198 | 159,588 | 4,987 | | | | | |
| Total Net Price: | | | | | | | | | |

Authorized Signature: _____ Typed or Printed Name: _____

Title: _____ Date: _____

ATTACHMENT 4, EXEMPT INFANT FORMULA AND CHILD NUTRITIONAL BID SHEET

Instructions: Complete this form only if offering a Rebate on Exempt Infant Formula and or a child nutritional product as a "value-added" item. This is not a requirement of the solicitation and will not be included in the evaluation.

Bidder Name: _____

| |
|---------------------------------------|
| Product Name: _____ |
| Physical Form: _____ Unit Size: _____ |
| Wholesale Price per Unit: _____ |
| Rebate per unit: _____ |

| |
|---------------------------------------|
| Product Name: _____ |
| Physical Form: _____ Unit Size: _____ |
| Wholesale Price per Unit: _____ |
| Rebate per unit: _____ |

| |
|---------------------------------------|
| Product Name: _____ |
| Physical Form: _____ Unit Size: _____ |
| Wholesale Price per Unit: _____ |
| Rebate per unit: _____ |

(Authorized Signature)

(Typed or Printed Name)

Title

Date

ATTACHMENT 5, BIDDER CERTIFICATION

BIDDER CERTIFICATIONS

The bidder hereby certifies that its company and all infant formula products for which a Rebate is being offered under this IFB and Contract, meet the registration and certification requirements stated in 7 CFR 246.10(f).

7 CFR 246.10(f) states the Contractor must certify that the company is registered with the Secretary of Health and Human Services under the federal Food, Drug and Cosmetic Act and that its Primary Contract Infant Formula satisfy FDA requirements, and are in compliance with the Infant Formula Act of 1980 and all amendments including all federal regulations issued pursuant to the Act.

By way of my signature and on behalf of _____, I certify the above statement is true.
(Company Name)

(Authorized Signature) (Typed or Printed Name)

(Title) (Date)

ATTACHMENT 6, OFFER & AWARD

OFFER AND AWARD

Bidders are required to read and understand all standard and special terms and conditions, instructions to bidders, definitions, and all other information contained within this IFB and its attachments. Some of these documents may not print if accessing an electronic version of the IFB. Specifically, Attachment 8 is not available electronically. All documents are available by contacting the Procurement Coordinator listed on the face sheet of the IFB.

Bidder further offers to furnish materials, equipment or services in compliance with all terms, conditions and specifications herein.

Submitting this document with an authorized signature constitutes complete understanding and compliance with the terms, conditions and specifications, and certifies that all necessary facilities or personnel are available and established at the time of Bid submittal.

| | | | | |
|-----------------------------|------------------|----------------|--|--|
| _____ (Company Name) | | | _____ (Typed or Printed Name) | |
| _____ (Address) | | | _____ (Title) | |
| _____ (City) | _____ (State) | _____ (Zip) | _____ (Federal Tax Identification Number) | |
| _____ (Telephone Number) | | | _____ (Authorized Signature of Bidder) | |
| | | | _____ (Date) | |

**CONTRACT AWARD
(For WSCA Use Only)**

A contract is hereby awarded between the above company and the Western States Contracting Alliance, The State of Washington acting as Lead and Procurement Coordinator, to be effective October 1, 2007. This is a total award for Rebates on Contract Infant Formula to the Participating State Agency WIC Programs.

Authorized Signatures

| | | | |
|------------------------------------|-----------------|--|-----------------|
| _____ (Procurement Coordinator) | _____ (Date) | _____ (Director, Office of State Procurement) | _____ (Date) |
|------------------------------------|-----------------|--|-----------------|

ATTACHMENT 7A, INFANTS USING MILK-BASED INFANT FORMULA BY PHYSICAL FORM AND EXCLUSIVELY BREASTFED INFANTS

| STATE/AGENCY ¹ | Infants exclusively breastfed | Infants using milk-based 13-oz conc. | Infants using milk-based powder | Infants using milk-based RTU | Total |
|---------------------------|-------------------------------|--------------------------------------|---------------------------------|------------------------------|----------------|
| ALASKA* | 1,922 | 125 | 2,485 | 11 | 4,543 |
| AMERICAN SAMOA* | 14 | 0 | 694 | 2 | 710 |
| ARIZONA | 2,092 | 287 | 32,612 | 61 | 35,052 |
| CNMI* (estimates) | 74 | 19 | 563 | 0 | 656 |
| DELAWARE | 95 | 1,318 | 3,054 | 186 | 4,653 |
| DC | 131 | 1,749 | 958 | 17 | 2,855 |
| GUAM | 131 | 39 | 1,000 | 0 | 1,170 |
| HAWAII | 1,071 | 274 | 5,535 | 3 | 6,883 |
| IDAHO | 3,629 | 95 | 5,765 | 6 | 9,495 |
| ITCA | 41 | 58 | 1,670 | 9 | 1,778 |
| ITCN | 66 | 15 | 216 | 0 | 297 |
| KANSAS | 1,396 | 612 | 12,608 | 16 | 14,632 |
| MARYLAND | 1,731 | 7,767 | 13,903 | 68 | 23,469 |
| MONTANA | 1,817 | 111 | 5,952 | 12 | 7,892 |
| NAVAJO NATION* | 228 | 90 | 1,643 | 150 | 2,111 |
| NEVADA | 1,109 | 384 | 8,985 | 28 | 10,506 |
| OREGON | 4,773 | 508 | 14,685 | 24 | 19,990 |
| UTAH | 1,481 | 184 | 9,409 | 31 | 11,105 |
| VIRGIN ISLANDS | 25 | 172 | 440 | 0 | 637 |
| WASHINGTON | 6,916 | 821 | 21,753 | 32 | 29,522 |
| WEST VIRGINIA | 466 | 1,971 | 6,974 | 412 | 9,823 |
| WYOMING | 758 | 24 | 1,136 | 7 | 1,925 |
| Totals | 29,966 | 16,623 | 152,040 | 1,075 | 199,705 |

The Participating State Agencies provided data that represent the most current average 6-month usage of infant formula by physical form. The data exclude Exempt Infant Formula.

ATTACHMENT 7B, INFANTS USING SOY-BASED INFANT FORMULA BY PHYSICAL FORM

| STATE/AGENCY ¹ | Infants using soy-based 13-oz conc. | Infants using soy-based powder | Infants using soy-based RTU | Total |
|---------------------------|-------------------------------------|--------------------------------|-----------------------------|---------------|
| ALASKA* | 17 | 290 | 3 | 310 |
| AMERICAN SAMOA* | 0 | 1 | 1 | 2 |
| ARIZONA | 53 | 3,313 | 3 | 3,369 |
| CNMI* (estimates) | 6 | 44 | 0 | 50 |
| DELAWARE | 310 | 452 | 1 | 763 |
| DC | 354 | 89 | 2 | 445 |
| GUAM* | 8 | 76 | 0 | 84 |
| HAWAII | 32 | 531 | 1 | 564 |
| IDAHO | 21 | 607 | 1 | 629 |
| ITCA | 5 | 176 | 2 | 183 |
| ITCN | 32 | 27 | 0 | 59 |
| KANSAS | 134 | 1,574 | 4 | 1,712 |
| MARYLAND | 1,887 | 2,230 | 20 | 4,137 |
| MONTANA | 25 | 995 | 2 | 1022 |
| NAVAJO NATION | 120 | 87 | 11 | 218 |
| NEVADA | 84 | 875 | 32 | 991 |
| OREGON | 85 | 1,450 | 3 | 1,538 |
| UTAH | 27 | 1,003 | 3 | 1,033 |
| VIRGIN ISLANDS | 156 | 219 | 0 | 375 |
| WASHINGTON | 148 | 2,842 | 0 | 2,990 |
| WEST VIRGINIA | 500 | 1,138 | 107 | 1,745 |
| WYOMING | 11 | 209 | 2 | 222 |
| Totals | 4,015 | 18,228 | 198 | 22,441 |

The Participating State Agencies provided data that represent the most current average 6-month usage of infant formula by physical form. The data exclude Exempt Infant Formula.

ATTACHMENT 8, INDIVIDUAL PARTICIPATING STATE AGENCIES INFORMATION.

THIS INFORMATION IS NOT AVAILABLE ELECTRONICALLY. THE ENTIRE DOCUMENT WILL BE SENT VIA CD.

(Contract the Procurement Coordinator for CD)

ATTACHMENT 9, CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017.510, Participant's responsibilities. The regulations were published as Part IV of the January 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON THE NEXT PAGE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for Debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

ATTACHMENT 10, INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or Debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it know that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or Debarment.

ATTACHMENT 11A, MILK-BASED INFANT FORMULA ESTIMATES OF UNITS PURCHASED BY PARTICIPATING STATE AGENCY

| Milk-based Formula Purchases | 12 month average* No. of Infants FFY 2006 | Infants exclusively breast feeding | Units MB Liquid Conc. Jan-June 2006 | Average units MB Liquid Conc. monthly | Estimated units MB Liquid Conc. contract 36 mo. term | Units MB Powder Jan-June 2006 | Average units Powder Jan-June 2006 | Estimated Units MB Powder contract 36 mo. term | Units MB RTU Jan- June 2006 | Average units MB RTU monthly | Estimated units MB RTU contract 36 mo. term |
|------------------------------|---|---|--|--|--|--|--|---|--|--|--|
| State Agency | # Infants | # BF Infants | | | | | | | | | |
| Alaska | 5,969 | 1,922 | 23,310 | 3,885 | 139,860 | 134,158 | 22,360 | 804,948 | 1,568 | 261 | 9 |
| American Samoa | 1,278 | 14 | 0 | 0 | 0 | 33,295 | 5,549 | 199,770 | 1,160 | 193 | 6,960 |
| Arizona | 41,690 | 2,092 | 50,882 | 8,480 | 305,292 | 1,714,092 | 285,682 | 10,284,552 | 65,410 | 10,902 | 392,460 |
| CNMI** (estimates) | 900 | 74 | 0 | 588 | 21,168 | 0 | 5,063 | 182,268 | 0 | 0 | 0 |
| Delaware | 5,602 | 95 | 209,015 | 34,836 | 1,254,090 | 154,446 | 25,741 | 926,676 | 12,323 | 2,054 | 73,938 |
| DC | 4,472 | 131 | 325,304 | 54,217 | 1,951,824 | 50,117 | 8,353 | 300,702 | 2,557 | 426 | 15,342 |
| Guam | 1,599 | 131 | 7,045 | 1,174 | 42,270 | 53,924 | 8,987 | 323,544 | 0 | 0 | 0 |
| Hawaii | 7,700 | 1,071 | 51,047 | 8,508 | 306,282 | 247,967 | 41,328 | 1,487,802 | 1,307 | 218 | 7,842 |
| Idaho | 9,181 | 3,629 | 16,682 | 2,780 | 100,092 | 287,426 | 47,904 | 1,724,556 | 854 | 142 | 5,124 |
| ITCA | 2,680 | 41 | 10,754 | 1,792 | 64,524 | 103,051 | 17,175 | 618,306 | 2,782 | 464 | 16,692 |
| ITCN | 377 | 66 | 2,748 | 458 | 16,488 | 11,699 | 1,950 | 70,194 | 0 | 0 | 0 |
| Kansas | 17,794 | 1,396 | 107,986 | 17,998 | 647,916 | 596,988 | 99,498 | 3,581,928 | 2,038 | 340 | 12,228 |
| Maryland | 31,643 | 1,731 | 1,440,285 | 240,048 | 8,641,710 | 693,090 | 115,515 | 4,158,540 | 10,858 | 1,810 | 65,148 |
| Montana | 4,423 | 1,817 | 2,117 | 353 | 12,702 | 158,405 | 26,401 | 950,430 | 544 | 91 | 3,264 |
| Navajo Nation | 2,889 | 228 | 16,766 | 2,794 | FALSE | 88,097 | 14,683 | 528,582 | 83,134 | 13,856 | 498 |
| Nevada | 14,374 | 1,109 | 71,495 | 11,916 | 428,970 | 485,178 | 80,863 | 2,911,068 | 3,677 | 613 | 22,062 |
| Oregon | 21,245 | 4,773 | 76,095 | 12,683 | 456,570 | 640,213 | 106,702 | 3,841,278 | 2,362 | 394 | 14,172 |
| Utah | 17,986 | 1,481 | 34,281 | 5,714 | 205,686 | 568,347 | 94,725 | 3,410,082 | 4,647 | 775 | 27,882 |
| Virgin Islands | 1,057 | 25 | 27,268 | 4,545 | 163,608 | 19,225 | 3,204 | 115,350 | 0 | 0 | 0 |
| Washington | 36,740 | 6,916 | 140,331 | 23,389 | 841,986 | 999,917 | 166,653 | 5,999,502 | 3,867 | 645 | 23,202 |
| West Virginia | 11,833 | 466 | 305,127 | 50,855 | 1,830,762 | 320,107 | 53,351 | 1,920,642 | 53,524 | 8,921 | 321,144 |
| Wyoming | 2,681 | 758 | 5,998 | 1,000 | 35,988 | 78,361 | 13,060 | 470,160 | 933 | 156 | 5,598 |
| TOTALS | 244,113 | 29,966 | | 488,011 | | | 1,244,747 | | | 42,258 | |

Notes: (1) *Average # infants taken from the Program State Participation and Expenditure Report April 2006

(2) **CNMI WIC Program is just getting started. The numbers provided are based on FNS study for potential participation.

(3) There are small variances in the data due to rounding. These calculations are done in Excel automatically calculating to the fourth decimal place.

ATTACHMENT 11B, SOY-BASED INFANT FORMULA ESTIMATES OF UNITS PURCHASED BY PARTICIPATING STATE AGENCY.

| Soy Formula Purchases | Units SB Liquid Conc. Jan-June 2006 | Average units SB Liquid Conc. monthly | Estimated units SB Liquid Conc. contract 36 mo. term | Units SB Powder Jan-June 2006 | Average units SB Powder Jan-June 2006 | Estimated units SB Powder contract 36 mo. term | Units SB RTU Jan-June 2006 | Average units SB RTU monthly | Estimated units SB RTU contract 36 mo. term |
|-----------------------|-------------------------------------|---------------------------------------|--|-------------------------------|---------------------------------------|--|----------------------------|------------------------------|---|
| | State Agency | | | | | | | | |
| Alaska | 3,215 | 536 | 19,290 | 13,923 | 2,321 | 83,538 | 368 | 61 | 2,208 |
| American Samoa | 0 | 0 | 0 | 64 | 11 | 384 | 100 | 17 | 600 |
| Arizona | 9,784 | 1,631 | 58,704 | 172,760 | 28,793 | 1,036,560 | 424 | 71 | 2,544 |
| CNMI** | 0 | 196 | 7,056 | 0 | 398 | 14,328 | 0 | 0 | 0 |
| Delaware | 52,311 | 8,719 | 313,866 | 22,431 | 3,739 | 134,586 | 65 | 11 | 390 |
| DC | 65,783 | 10,964 | 394,698 | 4,058 | 676 | 24,348 | 134 | 22 | 804 |
| Guam | 1,329 | 222 | 7,974 | 4,058 | 676 | 24,348 | 0 | 0 | 0 |
| Hawaii | 5,798 | 966 | 34,788 | 23,025 | 3,838 | 138,150 | 0 | 0 | 0 |
| Idaho | 3,458 | 576 | 20,748 | 31,097 | 5,183 | 186,582 | 0 | 0 | 0 |
| ITCA | 945 | 158 | 5,670 | 10,667 | 1,778 | 64,002 | 740 | 123 | 4,440 |
| ITCN | 190 | 32 | 1,140 | 1,398 | 233 | 8,388 | 0 | 0 | 0 |
| Kansas | 25,906 | 4,318 | 155,436 | 77,402 | 12,900 | 464,412 | 533 | 89 | 3,198 |
| Maryland | 345,092 | 57,515 | 2,070,552 | 113,596 | 18,933 | 681,576 | 3,140 | 523 | 18,840 |
| Montana | 2,012 | 335 | 12,072 | 24,923 | 4,154 | 149,538 | 24 | 12 | 432 |
| Navajo Nation | 718 | 120 | 4,308 | 4,593 | 766 | 27,558 | 5,442 | 907 | 32,652 |
| Nevada | 15,566 | 2,594 | 93,396 | 47,785 | 7,964 | 286,710 | 4,645 | 774 | 27,870 |
| Oregon | 11,073 | 1,846 | 66,438 | 58,796 | 9,799 | 352,776 | 311 | 52 | 1,866 |
| Utah | 5,155 | 859 | 30,930 | 53,340 | 8,890 | 320,040 | 443 | 74 | 2,658 |
| Virgin Islands | 25,466 | 4,244 | 152,796 | 19,225 | 3,204 | 115,350 | 0 | 0 | 0 |
| Washington | 23,627 | 3,938 | 141,762 | 131,528 | 21,921 | 789,168 | 0 | 0 | 0 |
| West Virginia | 78,151 | 13,025 | 468,906 | 50,422 | 8,404 | 302,532 | 13,548 | 2,258 | 81,288 |
| Wyoming | 2,344 | 391 | 14,064 | 14,914 | 2,486 | 89,484 | 295 | 49 | 1,770 |
| TOTALS | | 113,183 | | | 147,066 | | | 5,043 | |