

Addendum to IFB# 67-007

Infant Formula Rebate

Date: May 24, 2023

Addendum Number: 2

Addendum Changes:

- 1) This addendum is to provide answers to all questions per the IFB Receivables Potential Bidder letter.

As stated in the answer to question #55a, the Department is extending the bid submission deadline from Monday, June 5, 2023 at 1:30 p.m. Eastern Time to Wednesday, June 14, 2023 at 12:30 p.m. Eastern Time. The Department will not accept any bid submitted after June 14, 2023 at 12:30 p.m. Eastern Time. The Department will then publicly open bids at 1 p.m. Eastern Time on June 14, 2023. Please follow the instructions in the Prospective Bidder Letter to submit your bid.

Additionally, the Department is accepting any follow up questions bidders may have by Tuesday, May 30, 2023 at 9:00 a.m. Eastern Time. The Department will make best efforts to post written answers to these follow up questions by Friday, June 2, 2023. The Department will not answer any follow up questions that are submitted after May 30, 2023 at 9:00 a.m. Eastern Time. Please submit any follow up questions to Krista Dressler at kdressler@pa.gov.

- 1. Section A.1.1. Purpose of this IFB (page 3) -** Please specify that exempt infant formulas are excluded from the rebate contract.

Answer #1: Confirmed. Please refer to page 1, Section A.1.1. Purpose of the IFB. Confirmed.

- 2. Section A.1.1. Purpose of this IFB (page 3) -** Please confirm that by signing the bid sheet the bidder certifies that it is registered with the U.S. Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), and the bidder's products comply with the Federal Food, Drug, and Cosmetic Act.

Answer #2: Confirmed. Please refer to page 1, Section A.1.1 Purpose of this IFB.

- 3. Section A.1.3. WIC Program Description (page 2) -** Please use the most recent 6 months of data.

Answer #3: The Department will provide this data when it posts written answers.

Below is participation numbers for infants for the last 6 months.

	November 2022	December 2022	January 2023	February 2023	March 2023	April 2023
Fully Breastfed	4909	4830	4989	5118	5339	5352
Partially Breastfed	4546	4560	4680	4819	5018	4877
Fully Formula Fed	28465	28232	28654	29117	29746	29756
Total	37920	37622	38323	39054	40103	39985

- 4. Section A.1.3. WIC Program Description (page 2) -** In the data provided in section A.1.3 WIC Program Description, the sum of the infants listed under the fourth table "Number of Infants Receiving Formula" section (41,794 for April 2021) do not tie to the sum of the Partially Breastfed and Fully Formula Fed infants listed in the first table, "Pennsylvania WIC Infant Participation in Food Package Categories" (36,223 for April 2021). What is the difference?

Answer #4: The numbers do not match due to participants being on different formulas throughout the month due to reissuances.

- 5. Section A.1.5.b. Contract Period (page 4) -** Will the State please consider making the 3-month extension mutual and by *written* consent?

Answer #5: No. The Department will provide written notice if exercising this 3-month extension, but the right to exercise is that of the Department alone.

- 6. Section A.1.5.b. Contract Period (page 4) -** Please confirm that the date should read August 1, 2028.

Answer #6: The August 1, 2023 date referenced in Section A.1.5.b. of the IFB is the date in which the Department will make best efforts to notify the successful Bidder of whether the Department is exercising its right to establish a performance start date no later than 120 days from October 1, 2023. In other words, the Department will make best efforts to notify the successful bidder by August 1, 2023 whether or not the performance start date for the contract resulting from the IFB will be later than October 1, 2023.

7. **Section A.1.6. Rejection of Bids (page 4)** - Please explain the criteria under which a bid will be rejected.

Answer #7: Please refer to the IFB Prospective Bidder Letter, which states, in part:

Your bid MUST include the following items. Failure to include these items will result in an automatic rejection of your bid.

1. *IFB Bid Sheet (Appendix A1) that is completed, signed, and notarized*
2. *Completed, signed, and notarized Non-Collusion Affidavit (Appendix C)*

Your bid must also include the following items. Failure to include these items may result in rejection of your bid.

1. *Completed and signed Worker Protection and Investment Certification Form BOP-2201 (Appendix F)*
2. *Bidder's return policy for formula from a retail store, including recalled formula*

Your bid should also include appropriate documentation demonstrating that the individual signing the bid on behalf of the bidder has the legal authority to do so.

8. **Section A.1.7. Pre-bid Conference Date and Time (page 4)** - Does the State anticipate answering questions from the pre-bid conference at the same time as they post answers to written questions?

Answer #8: All answers remain unofficial until posted in writing to the DGS eMarketplace site. Answers will be posted after the pre-bid conference.

9. **Section A.1.8. Bids (page 4)** - Please advise how the State will comply with Federal Regulations and “publicly open” an email.

Answer #9: Bids will be publicly opened via Microsoft Teams, as stated in the IFB.

10. **Section A.1.8. Bids (page 4)** - Do multiple people have access to the RA-DHHEALTH_DEPT@pa.gov email inbox, and how can the State assure no one will open this email or the attachments in the email prior to the deadline?

Answer #10: Access to this resource account is limited to a small number of individuals. They are trained on the integrity of this process and have signed confidentiality forms to that effect. Bids will not be opened until the date and time specified in the IFB.

11. **Section A.1.8. Bids (page 4)** - What procedures do you have in place to make sure the email submission is secure, and no one opens the bid submissions prior to the bid opening.

Answer #11: Please refer to question 10.

12. Section A.1.8. Bids (page 4) - We urge the State to allow bidders to submit a hard copy of their bid.

Answer #12: The Department will only accept electronic bids as stated in the IFB.

13. Section A.1.9. Bid Submission Date (page 5) - Please confirm the following elements will be read aloud at the bid opening: company name, product brand name, unit size, reconstituted ounces per unit, wholesale price per unit, rebate bid per unit, net cost per unit, percent rebate, and total monthly net cost.

Answer #13: Refer to page 5, Section A.1.9 Bid Submission Date. Only the name of each bidder and the total net cost of each bid will be recorded.

14. Section A.1.9. Bid Submission Date (page 5) - Please confirm if there will also be an in-person option for the bid opening. If so, please confirm the date, time, location and room number of the bid opening.

Answer #14: Refer to page 5, Section A.1.9 Bid Submission Date. All bids will be virtually opened to the public at 2:00 P.M. Eastern Time on the date the bids are due via Microsoft Teams.

15. Section A.1.9. Bid Submission Date (page 5) - Will the State please provide a specific contact (name and phone number) that will provide written confirmation of bid receipt?

Answer #15: The Department will provide confirmation of receipt of a bid by email stating the email address from which the bid was sent, the date such bid was sent, and subject line of the email. Please also refer to page 5, Section A.1.9 Bid Submission Date. All Bidders may contact the Pennsylvania Department of Health, Office of Procurement, via email to RA-DHHealth_DEPT_DOC@pa.gov, to confirm their bid was received.

16. Section A.1.9. Bid Submission Date (page 5) - If changes need to be made to a bid submission or a bid needs to be withdrawn post submission, but prior to bid opening/due date, what is the process?

Answer #16: In accordance with 62 Pa.C.S. § 512(f), a bidder may modify or withdraw its bid prior to the bid submission deadline by notifying the Department by e-mail that it is modifying or withdrawing its bid. To do so, please send the Department an e-mail to RA-DHHEALTH_DEPT_DOC@pa.gov with the subject line of, as appropriate, “[BID WITHDRAW/BID MODIFICATION] IFB #67007, Vendor Name”.

17. Section A.1.9. Bid Submission Date (page 5) - Please explain when all bids received by the State will be able to be viewed by all bidders and the process to receive this information.

Answer #17: Defer. The Department will provide additional information on this question by addendum.

18. Section A.1.9. Bid Submission Date (page 5) - In the event of a tie, please detail how the winner will be determined.

Answer #18: Please refer to Part I, Chapter 06, Section A., 6 (Resolving Tie Bids) of the Pennsylvania Procurement Handbook.

19. Section A.1.9. Bid Submission Date (page 5) - Does the State intend to publish an intent to award? Please provide the exact link to where the Intent to Award will be posted.

Answer #19: No.

20. Section A.1.9. Bid Submission Date (page 5) - In case of a protest, what is the procedure and the appropriate timeframe for submitting a protest? Please confirm all bidders will be notified in the event of a protest and how will they be notified.

Answer #20: Please refer to Part I, Chapter 58 (Bid Protests) of the Pennsylvania Procurement Handbook.

21. Section A.1.9. Bid Submission Date (page 5) - Currently the bids are due 6/5/2023 at 1:30 pm ET and the bid opening time is listed as 6/5/2023 at 2:00 pm ET. Please explain why the State has a gap between the due time and the opening time. We urge the State to make the due date and opening times identical.

Answer #21: This is to allow time for confirmation of receipt to be sent, per the IFB.

22. Section B.1.2. Formula Section (ii) (page 8) - Please confirm that full truckload means 40,000 – 44,000-pound pricing as outlined by Federal Regulations and that for the purposes of the submission, pricing that is listed as 40,000 – 44,000 pounds and the definition of “truckload” are synonymous. If agreed, please add “truckload” to DEFINITIONS section.

Answer #22: The question cannot be answered as asked. Therefore, the Department needs additional information from the questioner. Please resubmit the question with additional context.

23. Section B.1.4. Wholesale Price Increases/Decreases (page 9) - Please confirm the bidder only needs to submit the wholesale prices for the items being bid.

Answer #23: The Bidder shall include with its bid the Bidder’s national wholesale prices per unit, in effect for the primary contract infant formula(s), on the date of the bid opening.

24. Section B.1.4. Wholesale Price Increases/Decreases (page 9) – “Cent-for-cent increases or decreases take effect on the effective date of the Contractor’s wholesale price increase or decrease.” Will the State please change this to the cent for cent increase/decrease shall take effect on the 1st day of the month following the date of a wholesale price increase/decrease, as product is sold to retailers several weeks prior to the product appearing on retailer’s shelves.

Answer #24: Page 9, Section B.1.4. Wholesale Price Increases/Decreases, last sentence will be amended to read as follows: “Cent-for-cent increases or decreases will take effect on the first day of the month following the date of the Contractor’s wholesale price increase or decrease.”

25. Section B.1.5. Supply of Formula (page 9) - Does the State authorize vendors doing more than 50% of their sales via the WIC program?

Answer #25: The Department does not authorize any WIC – only Stores.

26. Section B.1.5. Supply of Formula (page 9) - Please provide what percentage of contracted formula is redeemed at over 50% vendors.

Answer #26: Zero. Please refer to question 25.

27. Section B.1.5. Supply of Formula (page 9) - Please provide the percentage of dollars reimbursed for the most recent four quarters to over 50% vendors (for rebate infant formula).

Answer #27: Zero. Please refer to question 25.

28. Section B.1.5. Supply of Formula (page 9) - Please provide a list of all 50% vendors.

Answer #28: There are none. Please refer to question 25.

29. Section B.1.5. Supply of Formula (page 9) - In the event of a recall or shortage, please confirm that the State will first utilize a different physical form and then an alternate rebate eligible brand of the winning manufacturer’s product line prior to the issuance of non-contract non-exempt formulas produced by other manufacturers.

Answer #29: Every attempt will be made to utilize a different physical form of the winning manufacturer’s product line prior to the issuance of a non-contact non-exempt formula produced by other manufacturers, providing there is immediate and sufficient availability for formula fed WIC participants.

30. Section B.1.5. Supply of Formula (page 9) - Please confirm this is the State's contingency plan.

Answer #30: The language in this section speaks for itself.

31. B.1.6. Payment Provisions (page 10) - Please confirm that there is no time limit on disputes which arise from fraud or other illegal activity that prevent the contractor from being able to identify and incorrect billing. If not confirmed, please explain why such a time limit is appropriate.

Answer #31: Refer to page 10, Section B.1.6. Payment Provisions. The Contractor shall notify the Department, in accordance with Paragraph 42 (Notice) of the Standard Contract Terms and Conditions – Paper Contract (Rev. 1/2/23), of any dispute or error in a rebate invoice within 60 calendar days of receipt of the invoice. Failure of Contractor to notify the Department of any dispute or error in a rebate invoice within 60 calendar days of receipt of the invoice waives the Contractor's right to any repayment by the Department regardless of the merits of the dispute or the nature of the error.

32. B.1.6. Payment Provisions (page 10) - Please confirm the State will provide vendor redemption data to the Contractor when issues of fraud arise.

Answer #32: Please refer to page 5, Section A.1.10. Record Accessibility and page 10, Paragraph 4 of Section B.1.6 Payment Provisions.

33. B.1.6. Payment Provisions (page 10) - Please confirm the State will work with the Contractor to provide such data in instances in which rebates have been paid for contracted products based on fraudulent transactions that involve infant formula.

Answer #33: Please refer to question #32.

34. B.1.6. Payment Provisions (page 10) - Please confirm the State agree to discuss with the Contractor appropriate means for addressing payment issues identified through manufacturer audits and/or fraud-related issues directly affecting the manufacturer.

Answer #34: This section speaks for itself.

35. B.1.6. Payment Provisions (page 10) - Please confirm the State will partner with the Contractor on recovery in instances where fraud has been discovered, and it has been further determined the manufacturer was overbilled for infant formula.

Answer #35: Please refer to question #32.

36. B.1.6. Payment Provisions (page 10) - How many vendors have been disqualified due to fraud issues in the last five years?

Answer #36: This is outside the scope of this IFB.

37. B.1.6. Payment Provisions (page 10) - Please confirm that the 60 calendar days is reciprocal to the manufacturer.

Answer #37: This section speaks for itself.

38. B.1.6. Payment Provisions (page 10) - Please confirm that the contractor is permitted to withhold payment if the overbilling is not supported by the agreed upon invoice documentation to substantiate the invoice balance, and the amount in question significantly exceeds the average of the past 3 months of invoices submitted by the state (variance of greater than 100%).

Answer #38: This section speaks for itself.

39. C.1.1. Appendix A1 Bid Sheet – Bid Requirements - The infants listed in the bid sheet (26,868) are materially lower than the rebate eligible formula feeding infants listed in the fourth table on Part A.1.3 WIC Program Description (average 33,851 over the six-months provided). Could the State please comment on this difference and amend any attachments tables as appropriate?

Answer #39: The bid sheet shows current number of infants. As specified in A.1.3, those numbers were from Federal Fiscal Year 2021 (FFY21) due to supply chain and formula recall issues that occurred during Federal Fiscal Year 2022 (FFY22), the former of which better reflects expected future participation and issuance.

40. Part D. Format and Submission - Please confirm all documents that require a notarization for the bid submission.

Answer #40: Please refer to page 17, D. Format and Submission. IFB Bid Sheet (Appendix A1), which includes Tab 1 and Tab 2 and the Non-Collusion Affidavit (Appendix C).

41. Appendix D: I. Standard Contract Terms and Conditions – Paper Contract (Rev. 1/2/23) - Is the State willing to add “pandemic” as a listed “Cause beyond a party’s control” in Section 24?

Answer #41: No.

42. Appendix D: I. Standard Contract Terms and Conditions – Paper Contract (Rev. 1/2/23) - Is the State open to deleting the force majeure notification requirements set forth in Section 24, second paragraph, last 2 sentences, of the Standard Contract Terms and Conditions – Paper 1-2-2023 as they negate the notion of no liability within the first sentence of Section 24 and the stipulated lists of “Causes”.

Answer #42: No.

43. Appendix D: I. Standard Contract Terms and Conditions – Paper Contract (Rev. 1/2/23) - Can the State add “To the best of Contractor’s ability” to the beginning of every provision in Section 30.2.?

Answer #43: No.

44. Appendix D: I. Standard Contract Terms and Conditions – Paper Contract (Rev. 1/2/23) - Can the State add “To its knowledge, Contractor...” to all of the certifications in Section 31.

Answer #44: No.

45. Appendix D: III. Assurance of Civil Rights Compliance - Can the State modify the first sentence to state “The Contractor hereby agrees that it will materially comply...”

Answer #45: No.

46. Appendix F: Worker Protection and Investment Certification Form - Can the State allow for Contractor to insert a knowledge qualifier to the certification paragraph of Appendix F: “...certify that the contractor/grantee identified below is compliant to the best of Contractor’s knowledge with applicable Pennsylvania state labor and workplace safety laws, including...”

Answer #46: No.

47. Part A. General Information, A.1.1, page 1 - Please confirm that a signature on the bid sheet is sufficient to provide assurance for this section. If not confirmed, please identify where this assurance should be provided within an offeror’s proposal.

Answer #47: Please refer to question #2.

48. Part A. General Information, A.1.1, page 1 – The last paragraph in this section speaks to formula of the selected manufacturer becoming the “primary infant formula as the for [sic] choice of issuance.”

- a. Please revise the first sentence of this paragraph to read, “The formula of the selected manufacturer *submitted on the bid sheet* will be the “primary contract infant formula as the first choice of issuance...”
- b. If not revised, please list all the reasons why this change will not be made.

Answer #48: Page 1, Section A.1.1, first sentence in last paragraph will be amended to read as follows: “The formula of the selected manufacturer submitted on the bid sheet will be the “primary contract infant formula(s) as the first choice of issuance”

49. Part A. General Information, A.1.3, page 2 - Per Federal regulations, please provide updated infant participant totals for the most recent 6 months of data available.

Answer #49: Please refer to question #3.

50. Part A. General Information, A.1.3, page 2 - For infants categorized as mostly breastfeeding, please provide the AVERAGE infant formula allotment issued to a participant by baby age for the last 12 months for which data is available.

Answer #50: The Department will provide this data when it posts written answers.

Below is the average number of cans for mostly breastfeeding infants for the last 12 months, as of May 23, 2023.

age in month	Average number of cans
0	2.5 cans
1	4.2 cans
2	6.4 cans
3	6.8 cans
4	6.8 cans
5	6.8 cans
6	6.5 cans
7	5.1 cans
8	5.2 cans
9	5.1 cans
10	5.2 cans
11	5.5 cans

51. Part A. General Information, A.1.3, page 2 - Please provide the percentage of contract brand infant formula EBT benefits that were issued to participants but never redeemed in 2022 or the most recent year for which the data is available.

Answer #51: Defer. The Department will make best efforts to provide this information by May 26, 2023.

52. Part A. General Information, A.1.3, page 3 - Please describe how the State issues infant formula benefits.

- a. Does the State issue benefits on a calendar month benefit (1st to last day of month) issuance schedule OR a rolling 30 days based on when the participant comes in for benefits.

Answer #52a: Participants are issued benefits on a calendar month.

- b. If a calendar benefit period will be used and benefits are prorated during the participant’s initial benefit period, please explain how the initial proration affects the total number of cans to be rebated for the participant for the length of time the participant is receiving infant formula benefits. For example, if a participant receives a prorated amount during the first benefit period (i.e. 5 cans powder - 90 oz reconstituted) will that participant then receive full monthly allotments for the next 12 calendar months?

Answer #52b: The system does prorate benefits depending on the date of initial certification. Infants would then receive a full benefit for the next 11 - 12 months depending on the date of birth.

53. Part A. General Information, A.1.3, page 3 - Please provide the percentage of infants that are issued benefits 3 months at a time, 2 months at a time and 1 month at a time.

Answer #53: The Department will provide this data when it posts written answers.

The table below represents the percentage of infants that are issued benefits 3 months at a time, monthly, bi-monthly and no food benefits as of May 22, 2023.

Fl issuance	Issuance	Total Infants	Percentage
3 - 3 months	38024	43098	88.226831871540000
Monthly - 1 month	1412	43098	3.276254118520000
Bi-Monthly - 2 months	3345	43098	7.761381038560000
No Food Benefits - none	317	43098	0.735532971360000

54. Part A. General Information, A.1.5.a., page 3 –

- a. Please provide the average monthly % of off contract routine formula usage under normal circumstances (i.e. No recall/Formula Shortage).

Answer #54a: That information is not currently available because the Department has only recently permitted non-contract formula for documented medical reasons in accordance with 7 CFR 246.10(d)(1)(ii) and WIC Policy Memorandum #2014-1A, Clarification on Medical Documentation for Infant Formula Issued in Food Packages I and II. Please refer to page 3, Section A.1.5.a.

- b. Please provide the average monthly % of off contract routine formula usage for religious reasons.

Answer #54b: Currently zero, because all of the contract products are Kosher or halal milk-based. In the event that a future infant formula rebate contract did not have contract products, such as Kosher or halal milk-based products, or for other religious eating patterns in accordance with 7 CFR 246.10(d)(2)(i), the Department would permit non-contract formula. Please refer to page 3, Section A.1.5.a.

- c. Please confirm a manufacturer is not billed for rebates for infant formula issued to children.

Answer #54c: No. Rebates are on the products not the WIC types (i.e. Infants, Children, Pregnant Women, etc.).

- d. If not confirmed, please provide the monthly average number of children receiving infant formula.

Answer #54d: Average number of children receiving standard products is 2,366 per month.

55. Part A. General Information, A.1.7., page 4 – We appreciate the State’s willingness to respond to the bidders’ written questions and inquiries. Timing between answers and bid submission is important and necessary to allow bidders enough time to prepare a bid proposal that is responsive and reflective of the responses provided by the State.

a. Because of the amount of analysis and approvals required for a contract of this size, please confirm the State will allow 10 business days between the day responses to questions are published and the bid due/opening date.

Answer 55a: The Department will extend the bid submission deadline from June 5, 2023 at 1:30 pm Eastern Time to June 14, 2023 at 12:30 p.m. Eastern Time. The Prospective Bidder Letter will be amended to read that: “Bid responses must be received no later than 12:30 p.m. Eastern Time on June 14, 2023.” Page 5, Section A.1.9. will also be amended. The second paragraph will be amended to read “All bids will be virtually open to the public on 1:00 p.m. Eastern Time on the date that bids are due via Microsoft Teams.” Additionally, RSVP deadline in the third paragraph of this section will be amended to read: “To attend the virtual bid opening, RSVP to RA-DHHEALTH_DEPT_DOC@pa.gov by June 8, 2023 2:00 P.M. Eastern Time.”

b. If answers are not provided 10 business days prior to the scheduled bid due date, please revise the bid due date to be 10 business days after answers are posted.

Answer #55b: Please refer to question #55a.

56. Part A. General Information, A.1.8., page 4 – Please confirm if any amendments issued will be required to be signed and/or included as part of an offeror’s proposal.

Answer #56: The question is unclear. If the reference to an amendment refers to modifying a bid after its submission before the bid submission deadline, then please refer to question #16. If referring to something different, please clarify by submitting a new question.

57. Part A. General Information, A.1.9., page 5 – Please confirm if the bid opening can be attended in person. If so, please provide location for bid opening.

Answer #57: Please refer to question #14.

58. Part A. General Information, A.1.9., page 5 – Please confirm that company name, product name being bid, unit size, reconstituted ounces per unit, lowest wholesale full truckload price per unit, rebate bid per unit, net cost, percent rebate from Tab 1 and total net cost and total net cost per month from Tab 2 will be read aloud for each respective bidder during the public opening.

Answer #58: Please refer to question #13.

59. Part A. General Information, A.1.9., page 5 – Please confirm that an alternate call-in number will be provided for the bid opening in the event that the public meeting link or call-in number does not work.

Answer #59: Please refer to page 5, Section A.1.9. Bid Submission Date.

60. Part A. General Information, A.2.1., page 6 – Certain forms such as concentrate are not widely used as the preferred choice for participants and may not be stocked at every retailer.

a. Please revise the minimum stocking requirements for concentrate to remain flexibly driven by issuance demand, to help prevent formula obsolescence and waste.

b. If not revised, please list all the reasons why this change will not be made.

Answer #60: The PA WIC Program revised Vendor Minimum Stocking Requirements effective January 1, 2023. Minimum inventory requirements of concentrate formula were reduced or eliminated. The current minimum inventory requirements can be found on the Vendor Assistant website:

<https://wic.health.pa.gov/VendorAssistant/Resource/BecomeaWICVendor>.

61. Part A. General Information, A.2.2., page 6 – Please confirm the 60 day time limit on disputes does not apply to disputes arising from fraud or other illegal activity that prevents the Contractor from being able to identify the incorrect billing earlier and the time limit begins when the fraud or illegal activity is detected.

Answer #61: Please refer to page 10, Paragraph 3 of Section B.1.6 Payment Provisions.

62. Part A. General Information, A.2.2., page 6 – Please provide or describe the State's policy when participants return infant formula to a WIC clinic.

Answer #62: Please refer to Page 10, final paragraph of Section B.1.5 for the Department's policy on returned infant formula.

63. Part B. Technical Requirements, B.1.2., page 7 – This section seems to require that a manufacturer must provide and pay rebates on any milk and/or soy-based infant formula in its product line (excluding Exempt Infant Formula) and in any size can that the state chooses to issue. To require any size can in powder products is overly burdensome to any manufacturer. The volumes for WIC are significant and manufacturers are contractually required to guarantee supply of those items. Multiple brands and sizes of powders currently exist in the marketplace, some of which are not stocked at all retail outlets. Manufacturers will also sacrifice production of alternate brands and/or sizes of powders to ensure the optimal WIC-sized powders are available should any production issues/shortages occur. Manufacturers have been willing to offer additional brands and/or sizes when shortages occur, but it should not be required for manufacturers to bid on any size. To do so would require a guarantee of supply on virtually any size of powder which is not feasible. Please amend this section to require rebates on powders within the range of 12-16 ounces on the contracted brands.

Answer #63: Page 7, Section B.1.2, will be amended to add a second sentence after the first, to read as follows: “Contractor shall supply and provide a rebate to the Department on all infant formula, except exempt infant formula, Contractor produces, or makes available through sub-contract, that the Department chooses to issue for the WIC Program. For powdered form infant formula, Contractor shall supply and provide a rebate to the Department just for 12-16 oz. size cans.”

64. Part B. Technical Requirements, B.1.3., page 8 – Changes detailed in this section can be confidential and might be considered trade secrets. It would be a disadvantage to the contractor to provide this information 120 calendar days prior to a change.

- a. Please revise the time period for notification of new products and discontinuation from 120 days to 90 days, or the same time that notification is provided to the Contractor's customers.

Answer 64a: Page 8, Section B.1.3., will be amended by adding a sentence at the end of the first paragraph of that section that reads: “These notification provisions apply only to primary contract WIC infant formula or an alternative formula of Contractor’s that the Department chooses to issue.” The Department will not revise the notification requirement for product discontinuances from 120 to 90 days. The notification requirement for “any change in product labels, unit sizes, SKU/UPC, [etc.]” is “as soon as that information is available[,]” not 120 days.

- b. If not revised, please describe the procedure the State(s) will follow to ensure they keep trade secrets confidential.

Answer #64b: Please refer to Paragraph 41 (Confidentiality) of the Standard Contract Terms and Conditions – Paper Contract (Rev. 1/2/23) on, under sub-paragraph a., how a party may claim and designate information as “confidential” and, under sub-paragraph b., exceptions to confidentiality obligations. Please refer to Paragraph 43 (Right To Know Law) of the Standard Contract Terms and Conditions – Paper Contract (Rev. 1/2/23), on, under sub-paragraph d., how the contractor may notify the Department that a Right To Know Law (“RTKL”) request includes a request for a “Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL.”

- c. If not revised, please confirm that the notification pertains to the primary infant formula brand only.

Answer #64c: Please refer to question #64a.

- d. If not confirmed, please confirm that notifications are only required for contract brands as these are the only products that will be covered by this contract.

Answer #64d: Please refer to question #64a.

65. Part B. Technical Requirements, B.1.3., page 8 – Please revise all verbiage in this section to state that rebate calculations will be made to yield the same *percent discount* as the previous primary product for both discontinued products, and any contract products with a new unit size.

Answer #65: This section speaks for itself.

66. Part B. Technical Requirements, B.1.4., page 9 – Please revise the effective date of a price increase or decrease to be the first day of the month after the price increase or decrease takes effect to be consistent with when the price change would be reflected at retail shelves.

Answer #66: Please refer to question #24.

67. Part B. Technical Requirements, B.1.5., page 9 –

a. Does the State authorize vendors doing more than 50% of their sales via the WIC program?

Answer #67a: Please refer to question #25.

b. If so, how many WIC-only (above 50% vendors) are currently authorized?

Answer #67b: Please refer to question #25.

68. Part B. Technical Requirements, B.1.5., page 9 – Please confirm the following:

a. The State will not issue quantities of infant formula in excess of the monthly maximums prescribed by federal law for each WIC participant.

Answer #68a: Yes, the State will not issue quantities of infant formula in excess of the monthly maximum allowance unless there is a USDA-FNS waiver in place.

b. The Contractor will not be required to pay rebates on quantities of infant formula in excess of the federal monthly maximums.

Answer #68b: Correct, unless there is a USDA-FNS waiver in place.

c. If rebates for quantities in excess of the federal monthly maximums are billed and rebated in error, the amounts associated with the over issuance and redemption will be reimbursed to the Contractor upon discovery.

Answer #68c: Please refer to page 10, Paragraph 4 of Section B.1.6. Payment Provisions.

d. If any of above statements are not confirmed, please provide a detailed explanation of why such portion was not confirmed.

Answer #68d: Please refer to questions 68a, 68b and 68c.

69. Part B. Technical Requirements, B1.5., page 9 –

a. Please revise this section to clarify that the Force Majeure provision could still apply to recalls or shortages by adding the bolded word in the following section: The below provisions related to these circumstances, infant formula recalls or shortages, **that** are not force majeure causes under Paragraph 24 (Force Majeure) of the Standard Contract Terms and Conditions – Paper Contract (Rev. 1/2/23). This would still allow for the contractor to provide the proper notice and actions under the Force Majeure clause in the event that a recall or shortage was caused by something outside of the contractor’s control and not caused by the fault or negligence of the contractor.

Answer #69a: No.

b. If not revised, please state all of the reasons the Department believes it is proper to hold the contractor liable for events beyond its control, fault, or negligence.

Answer #69b: This is outside the scope of this IFB.

70. Part B. Technical Requirements, B.1.5., page 9 – Please revise all verbiage in this section to state that rebate calculations will be made to yield the same *percent discount*.

Answer #70: No.

71. Part B. Technical Requirements, B.1.5., page 9 – Please confirm that in the event of a recall that the Department would first issue an alternative brand or form of the contract formula and if that is unavailable then would only issue a non-contract brand that is comparable to the recalled product.

Answer #71: Please refer to question #29.

72. Part B. Technical Requirements, B.1.5., page 10 –

a. Please amend this section to indicate that a mutual agreement between the Contractor and the State will be necessary to determine the appropriate course of action in the event of a shortage.

Answer #72a: No. Please refer to question #29.

b. If not amended, please list all the reasons why this change will not be made.

Answer #72b: This is outside the scope of the IFB.

73. Part B. Technical Requirements, B.1.6., page 10 – Please consider changing the notification timing for disputes or errors to 90 days in order to allow for appropriate review.

Answer #73: No.

74. Part D. Format and Submission, page 12 : Multiple sections throughout the IFB reference confirmation or additional documents required for bid submission but are not included in the “Format and Submission” section.

Those sections include:

1. Page 9 - National Wholesale Price List
2. Page 15 of 25 in the Standard Contract Terms and Conditions – Last Pararagraph
3. Page 17 of 25 in the Standard Contract Terms and Conditions, # 31, a & b

Please provide a comprehensive checklist of documents/confirmations that are required for bid submission to be considered complete.

Answer #74: Below is a comprehensive checklist of documents/confirmations that are required for bid submissions:

- 1. Completed, signed, and notarized IFB Bid Sheet (Appendix A1), which includes Tab 1 and Tab 2.**
- 2. Completed, signed, and notarized Non-Collusion Affidavit (Appendix C).**
- 3. Completed and signed Worker Protection and Investment Certification Form BOP-2201 (Appendix F).**
- 4. Bidder’s return policy for formula from a retail store, including recalled formula.**

Bidders should also include appropriate documentation demonstrating that the individual signing the bid on behalf of the bidder has the legal authority to do so.

75. Appendix A1 – Bid Sheet - Please confirm if both the signed PDF version of the bid sheet and the original completed excel document are required for bid submission.

Answer #75: Only the PDF of a completed, signed, and notarized IFB Bid Sheet is required.

76. Appendix A1 – Bid Sheet – Please indicate which months are being used for the monthly averages of fully formula fed and partially breastfed infants.

Answer #76: October 2022 through March 2023.

77. Appendix B1 - Invoices - Please provide actual invoice data that includes 3 months of invoices prior to February 2022, as well as the most recent 3 months of available invoices. This is something the existing contractor would have access to and should be provided to potential bidders.

Answer #77: The Department has added an Appendix to the IFB to provide this information. IFB 67007 Appendix G – Rebate Invoices.

78. Appendix B1 - Invoices - Monthly data files are necessary in order for the Contractor to validate invoices with accuracy and integrity.

a. Please confirm that the details of all EBT transactions for which rebates are being invoiced through the monthly invoice process are provided each month through an electronic data file including EBT transaction number, pseudo participant ID (nothing that would disclose confidential participant information) , product description, number of cans redeemed, redemption dollar amount, first date to use, redemption date, infant age range at first date to use or infant date of birth, and feeding method (e.g. Fully Formula Fed, Partially Breastfed).

Answer #78a: On a monthly basis the State will provide the Contractor with a packet via email. That packet includes the following: a letter that includes the total amount of rebate being requested and participation data; a copy of the PENN invoice showing the number of units redeemed, the rebate amount per unit, and the total invoice amount for each product, as well as the overall total rebate amount; and a copy of the participation report.

b. If no unique identifier per participant (e.g. pseudo Participant ID) is provided and multiple EBT transactions are allowed for one month's worth of benefits, please detail how the Contractor would be able to sum up the total number of infant formula cans redeemed by a single participant for the month to ensure that total cans issued did not exceed the federally regulated monthly maximums.

Answer #78b: Refer to question #78a.

79. Standard Contract – Terms and Conditions – Paper Contract, pages 7 & 8, #22:

a. Please confirm that the Contractor will be allowed to audit the records and policies and procedures relevant to the infant formula rebate process.

Answer #79a: Please refer to question #32.

b. Please confirm that documents and/or information regarding policies, procedures and operations of each State's WIC Program and infant formula monthly issuance allotments by brand and can size, infant age category and feeding method will be provided based on the State's open records law.

Answer #79b: Please refer to question #32.

- c. **Answer #79b:** If not confirmed, please describe what process is in place for the Contractor to validate issuance/redemption and program compliance.

Answer #79c: Please refer to question #32.

- d. Please confirm that redacted food instruments including infant age in months and feeding method type will be made available to the Contractor upon request for the purpose of verifying that appropriate issuance is maintained.

Answer #79d: Please refer to question #32.

- e. If not confirmed, please describe what process is in place for the Contractor to validate issuance/redemption and program compliance.

Answer #79e: Please refer to question #32.

80. Additional Contract Terms and Conditions (REV. 3/23), Page 1 –

- a. Please confirm the insurance requirements detailed here are not applicable to an infant formula rebate contract in which the contractor is paying the state.

Answer #80a: No. Paragraph 2 of the Additional Contract Terms and Conditions are incorporated and part of the IFB.

- b. If not confirmed, please detail why the State would require insurance for an infant formula rebate contract.

Answer #80b: This is outside the scope of the IFB.

81. What are the top five (5) WIC retailers measured by the percentage of WIC food volume (i.e., redeemed food instruments) for the State.

Answer #81: Individual WIC retailer redemption information is confidential pursuant to 7 CFR 246.26(e).

- 82. In the event of a protest, please confirm that all bidders will be made aware via email.**

Answer #82: Please refer to question #20.

*Except as clarified and amended by this Addendum, the terms, conditions, specifications, and instructions of the IFB and any previous addenda, remain as originally written.