

**NEW MEXICO DEPARTMENT OF HEALTH (NMDOH),
ARKANSAS DEPARTMENT OF HEALTH (ADH)
AND NORTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES (NCDHHS)**

**SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN,
INFANTS AND CHILDREN (WIC)**

REQUEST FOR PROPOSALS

WIC MILK-BASED INFANT FORMULA REBATE INITIATIVE

I. INTRODUCTION

A. Background

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

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

UPDATE¹ New Mexico currently offers EBT statewide. Arkansas may implement EBT during the term of the contract period.

The average monthly participation for the New Mexico WIC Program was 65,649, of which approximately 14,666 were infants; the Arkansas WIC Program was 92,029, of which approximately 26,010 were infants; and the North Carolina WIC Program was 266,426, of which approximately 68,693 were infants for a combined total from April 2008 through September 2008 of 424,104 clients, of which approximately 109,369 were infants. (As documented by the States on their respective FNS 798 monthly reports.) The States' Programs are funded primarily by the U.S. Department of Agriculture and are administered in New Mexico by the New Mexico Department of Health WIC Program, in Arkansas by the Arkansas Department of Health WIC Program, and in North Carolina by the North Carolina Department of Health and Human Services WIC Program.

B. Statement of Purpose

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

The offer of a rebate is voluntary and is in no way a payment for concessions or services by the States, but once the offer is accepted and contracts are entered into, the offer becomes a binding contractual agreement. The laws of the States impose civil and criminal penalties for bribes, gratuities, and kickbacks in transactions involving the States.

C. Administrative Information

1. Sample Contracts

a. Included with this Request for Proposals (hereinafter "RFP") are sample contracts containing the contract provisions for the State of New Mexico, the State of Arkansas and the State of North Carolina.

(1) The terms contained in these contracts shall be binding upon any successful offeror.

(2) These contracts will not be modified for the purposes of proposal submission or proposal evaluation unless the offerors request and the States agree to all proposed changes in writing prior to the deadline for proposal submission. In no event will the States

consider any modifications to their contracts or this RFP for the purposes of proposal evaluation and contract awards unless the proposed modifications are requested by offerors in writing prior to the February 27, 2009, deadline 3:00 P.M. Mountain Standard Time (MST) for the offerors' questions.

- b. The actual contracts shall be forwarded to the successful offeror at the time of award. The successful offeror shall return the signed contracts simultaneously to the individual States' Contract Administrators identified in this RFP within 14 calendar days from the date the States mail the contracts. Failure to do so may, at the option of the States, cause the contract to be awarded to another offeror.

2. Proposal Preparation Cost

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

3. Contract Period

The contracts shall be effective from October 1, 2009 through September 30, 2012, a period of thirty-six months. The contracts will not be extended past that period.

The Contractor shall agree to pay rebates to the States on any units of primary milk-based contract brand infant formula and other milk-based contract brand infant formulas approved for issuance by any or all of the States and issued during the term of the contracts and subsequently redeemed. Rebate payment shall be made, notwithstanding that the States' contracts may have expired or otherwise terminated at the time the food instrument is redeemed or payment of the rebate is due.

4. Contract Administrators

NEW MEXICO

Deanna Torres, Director
WIC/CSF/FMN Programs
2040 S. Pacheco, Suite 152
Santa Fe, NM 87505

Telefax Number (505) 476-8900

ARKANSAS

Marcell Jones, Director
Division of WIC
5800 West Tenth Street, Suite 810
Little Rock, AR 72204-3867
Telefax Number (501) 661-2004

NORTH CAROLINA

Alice Lenihan, Head
Nutrition Services Branch
North Carolina Department of Health and Human Services
Mail Service Center 1914
Raleigh, NC 27699-1914
Telefax Number (919) 870-4818

5. Assistance for Disabled People Available

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

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

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

7. Timeline for Proposal

February 10, 2009 - Request for Proposals issued.

February 27, 2009 - Deadline for questions from offerors
3:00 P.M. Mountain Standard Time (MST).

March 19, 2009 - The States' responses to questions released in writing to all offerors.

April 3, 2009 - Proposal submission deadline-- 12:00 P.M. Mountain Daylight Time (MDT) in Santa Fe, New Mexico.

April 6, 2009 - Public proposal opening at 11:00 A.M. MDT at the New Mexico Department of Health, 2040 S. Pacheco, Suite 152, Conference Room, Santa Fe, New Mexico. The following will be read at the public proposal opening: product name, unit size and form, wholesale price per unit, and rebate per unit.

May 2009 - The States award their contracts and notify offerors of the outcome.

II. PROPOSAL SUBMISSION

- A. Offerors shall use the attached Quote Sheet (Attachment II) to submit the offer for a single milk-based infant formula in powder, concentrate and ready-to-feed physical forms and shall also complete and submit the attached Contractor Certification (Attachment III) and the attached New Mexico Campaign Disclosure Form (Attachment V).
- B. All proposals shall be submitted as a specific dollar and cent amount rounded to three places to the right of the decimal.
- C. All offerors shall submit one original and nine copies of the proposal offered. All attachments must be provided with every copy submitted. All proposals that are not submitted by hand delivery must be sent via overnight delivery with a tracking mechanism.
- D. Telefax or electronic proposals shall not be accepted.
- E. Proposals shall be signed by a company representative with authority to commit the company to this proposal.
- F. Proposals shall be received no later than 12:00 P.M. MDT, Friday, April 3, 2009 by:

Deanna Torres, Director
WIC/CSF/FMN Programs
New Mexico Department of Health
2040 S. Pacheco, Suite 152
Santa Fe, New Mexico 87505

- 1. Any proposal received after this time shall be rejected as not meeting the mandatory requirements of this RFP.
- 2. Proposals delivered to any other office shall not be considered.

- G. During the evaluation process, written correspondence may be conducted with offerors whose proposals are determined to be reasonably likely to be selected based on the requirements of this RFP.
- H. All materials submitted in response to this RFP become the property of the States. The contents of any proposal shall not be disclosed so as to be available to competing offerors during the evaluation process. The proposal shall become a public document after the contract has been executed and its contents shall be subject to disclosure, exclusive of proprietary information, including trade secrets, clearly identified upon submission. The States have the right to use any or all ideas presented in any response to the RFP. Selection or rejection of a proposal does not affect this right.
- I. All inquiries shall be received by all Contract Administrators no later than 3:00 P.M. MST, Friday February 27, 2009. All questions must be submitted electronically, using Microsoft Word 2003 (Note: documents using Microsoft VISTA are not allowed), to the following email addresses:
- deanna.torres@state.nm.us
Marcell.Jones@arkansas.gov
Alice.Lenihan@ncmail.net
- J. Any information given to a prospective offeror concerning the RFP, including the States' acceptance of any proposed modification of the RFP or any of the States' contracts, shall be given to all prospective offerors in writing prior to the proposal submission deadline and that information may, at the discretion of the States, be incorporated into the contracts.
1. Questions shall be submitted electronically. The States' responses will be sent to all organizations that received the RFP. Oral communication between representatives of the States and agents of any potential offeror regarding substantive issues relating to this RFP in the time period between the issuance of this RFP and the award of contracts shall disqualify any bid submitted by that offeror from consideration.
 2. All correspondence from prospective offerors relating to this RFP should be labeled NM/AR/NC WIC Multistate Milk-Based Infant Formula Rebate RFP.
- K. The States reserve the right to amend the RFP prior to the deadline for submission of proposals. Amendments shall be sent to all prospective offerors who received copies of the RFP.

- L. The offeror shall assure the States of its commitment to abide by all Federal and State laws, rules, regulations, and executive orders pertaining to equal opportunity. Pursuant to all such laws, rules, regulations, and executive orders, the offeror assures the States that no person shall, on the grounds of race, color, national origin, gender, sexual orientation, age, disability, or religion be excluded from employment with or participation in, be denied the benefit of, or be otherwise subjected to discrimination under any activity performed under a contract entered into pursuant to this RFP.
- M. The States reserve the right to accept or reject all or any part of any proposal, waive minor technicalities and award the contracts to best serve the interests of the States.
- N. Incomplete or unresponsive proposals shall not be considered under this RFP.
 - 1. The States shall make the final determination as to a proposal's completeness or responsiveness.
 - 2. Proposals contingent upon subsequent modification of the RFP or any State's contract shall be deemed unresponsive and shall not be eligible for consideration.
 - 3. Proposals that do not include information requested on a single milk-based infant formula in powder, concentrate and ready-to-feed physical forms shall be deemed unresponsive and shall not be eligible for consideration.
 - 4. A proposal expressed as a contingency, percentage, monetary discount or increase based on some other proposal received shall be deemed unresponsive and shall not be eligible for consideration.
 - 5. Proposals submitted without the offeror's acceptance of all requirements, specifications, terms and conditions of the RFP and the States' contracts, including any amendments made by the States prior to the deadline for the submission of proposals, shall be deemed unresponsive and shall not be eligible for consideration.

III. PROPOSAL SPECIFICATIONS

A. CONSIDERATIONS

- 1. This RFP is a single-supplier solicitation issued in accordance with 7 CFR 246.16.a, Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Infant formula cost

containment. The States intend to contract with one manufacturer whose primary milk-based contract brand infant formula will be the formula of first choice for issuance to infants with all other milk-based contract brand infant formulas issued as an alternative to the primary milk-based contract brand infant formula in the New Mexico WIC Program, the Arkansas WIC Program and the North Carolina WIC Program.

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

2. The States are soliciting sealed bids from milk-based infant formula manufacturers to supply and provide a rebate on all milk-based infant formulas, except exempt infant formulas, produced by the manufacturer and approved for issuance by any or all of the States. Rebates shall also be paid on any new milk-based infant formulas, except exempt infant formulas, that are introduced by the successful offeror after the contracts are awarded and are approved for issuance by any or all of the States. All rebates shall be calculated in accordance with Section III.A.7.
3. The successful offeror shall supply and provide a rebate on a single milk-based infant formula in the physical forms and sizes stated in Section III.A.4. of this RFP. The successful offeror shall also supply and provide a rebate on any other milk-based contract brand infant formulas in the physical forms and sizes stated in Section III.A.4. of this RFP that any or all of the States approve for issuance.
4. The offeror shall specify a rebate for a single milk-based infant formula in the following physical forms and sizes: 13 oz. concentrated liquid, 12 to 12.9 oz. powdered, and 32 oz. ready-to-feed. The milk-based infant formula shall be nutritionally complete, not requiring the addition of any ingredients other than water prior to being served in a liquid state, and suitable for routine issuance to the majority of generally healthy, full-term infants. The infant formula also shall contain at least 10 milligrams of iron per liter at standard dilution and supply 67 kilocalories per 100 milliliters (i.e., approximately 20 kilocalories per fluid ounce of infant formula) at standard dilution. The offeror shall specify the brand name of the milk-based infant formula for which the rebate is being offered. A different rebate amount may be submitted for each physical form of the milk-based infant formula. The milk-based infant formula for which rebate(s) are offered shall be the primary milk-based contract brand infant formula upon contract award.

5. At the time of contract award, each State will identify and designate in their respective contracts the milk-based contract brand infant formulas in the successful offeror's product line that each State will approve for issuance and establish the rebate to be paid on each of these infant formulas in accordance with Section III.A.7. If a new milk-based contract brand infant formula introduced into the Contractor's product line is approved for issuance by a State or a State decides to add more milk-based contract brand infant formulas to its approved list, the rebate for the additional milk-based infant formula will be calculated in accordance with Section III.A.7. The State(s) will notify the affected parties in the WIC community and bill the Contractor accordingly if and when additional milk-based infant formula(s) are issued.
6. The States shall print the successful offeror's brand(s) of milk-based contract brand infant formula on WIC food instruments or the participant's EBT Shopping List. Payment due to the States shall be based on the number of units of the successful offeror's brand(s) printed on the food instruments or added to the EBT card that were redeemed within the federally allowed time period for redemption. The States intend to bill the successful offeror only for the units of formula actually paid for by the States (see definition of "redemption" in Section III.A.14.i. of the RFP). Each State's methodology for determining partial redemption of food instruments is contained in the State's contract. Except as provided in Section III.B.2.c. of this RFP for an increase or decrease in wholesale price, the rebate amount applied to the redeemed units shall be the rebate amount as of the first day of the month of redemption.
7. Rebates for milk-based contract brand infant formulas approved for issuance by any or all of the States, other than the primary milk-based contract brand infant formula for which bids were received, shall be calculated as follows, except as provided in Section III.A.8.
 - a. The percentage discount for each physical form (i.e., concentrated liquid, powdered, and ready-to-feed) of the primary milk-based contract brand infant formula will be calculated by dividing the rebate amount per unit by the successful offeror's lowest national wholesale price per unit, as of the date of the bid opening, for a full truckload of that physical form of the primary milk-based contract brand infant formula. As described in Section III.A.7.b.,

the percentage discount for each physical form of the primary milk-based contract brand infant formula will be used to determine the rebate for each physical form of the other milk-based contract brand infant formulas approved for issuance by any or all of the States.

- b. The rebate amount per unit for the other milk-based contract brand infant formulas approved for issuance by any or all of the States will be calculated by multiplying the percentage discount established at the time of bid opening for the corresponding physical form of primary milk-based contract brand infant formula, (e.g., percentage discount for concentrated liquid), by the successful offeror's lowest national wholesale price per unit, as of the date of the bid opening, for a full truckload of the other milk-based contract brand infant formula in that physical form, (i.e., wholesale price per unit for the other milk-based contract brand infant formula in concentrated liquid). For example, if the percentage discount provided for the primary milk-based contract brand infant formula in concentrated liquid is 98 percent of its wholesale price, the same percentage discount will apply to all other milk-based contract brand infant formulas in concentrated liquid.
 - c. Rebates for any new milk-based contract brand infant formulas introduced into the Contractor's product line during the contract and rebates for any additional milk-based contract brand infant formulas a State decides to add to its approved list during the contract will be calculated in accordance with Section III.A.7.b., except that the lowest national wholesale price per unit for a full truckload at the time the milk-based infant formula is approved for issuance by the State will be used to calculate the rebate.
8. Notwithstanding any other provisions of this RFP, the successful offeror shall agree that a rebate yielding the same net price per reconstituted fluid ounce shall be paid if the primary milk-based contract brand infant formula or any other milk-based contract brand infant formula approved for issuance by any or all of the States is replaced during the term of the contract, including, but not limited to, replacement by change in formulation or unit size.
 9. The successful offeror shall give the States no fewer than 90 days advance written notice prior to any of the actions listed below in this Section III.A.9.a. through d. The 90 days advance written

notice shall not begin prior to the date of any required Food and Drug Administration approval for the action.

- a. The introduction of any new milk-based contract brand infant formula into its product line;
 - b. A change in the label of the primary milk-based contract brand infant formula or any other milk-based contract brand infant formula approved for issuance by any or all of the States;
 - c. The replacement of the primary milk-based contract brand infant formula or any other milk-based contract brand infant formula approved for issuance by any or all of the States, including, but not limited to, replacement by change in formulation or unit size; and
 - d. A change in the name of the primary milk-based contract brand infant formula or any other milk-based contract brand infant formula approved for issuance by any or all of the States.
10. The three States' WIC Programs presently receive infant formula rebates of about \$102,353,594 annually. In order to comply with the requirements of (U.S.) Treasury Circular 1075 and the Cash Management Improvement Act, as amended, the three States' WIC Programs desire to receive rebate payments in installments. The successful offeror shall remit payments as described below for each calendar month by the due dates indicated.

Each month the due date of the first installment will be the fifth day of the month immediately following the month to which the rebate pertains and shall be no less than 75% of the total payment for the preceding month. Each State will bill the successful offeror for each month's remaining rebate balance on a final invoice after receipt of data on infant formula redemptions. The balance of installment rebate payments due for that month will be paid on the 25th of the following month. In the event that any due date occurs on a Saturday, Sunday, or legal holiday, the rebate payment will be due on the last business day preceding the due date.

Payments will be made to the State by EFT or ACH wire transfer.

The successful offeror shall make advance payment, if requested by any of the States. The requested advance payment may not exceed the number of units issued, by brand, form and size, less

the number of units issued but not redeemed, for the most recent closed-out month for which data is available. A State may request a partial advance payment.

11. The successful offeror agrees to pay interest penalties to the State in the amount of 1 percent per month or any portion thereof calculated on the installment amount due or invoice total for any properly delivered invoice for which funds have not been transferred to the State by the successful offeror by the close of business on the due date for the payment.
12. The successful offeror shall guarantee that sufficient quantities of all three forms of the primary milk-based contract brand infant formula and all other milk-based contract brand infant formulas approved for issuance by any or all of the States will be available to wholesalers and all WIC-authorized retailers to meet the States' WIC needs.
 - a. The successful offeror shall make contact with all wholesalers and authorized WIC retail outlets to assure adequate knowledge on how to order quantities of its formula after the contract is awarded. The contact must be made no later than 60 calendar days prior to the start of the contract. The successful offeror shall inform all wholesalers and authorized WIC retail outlets that the successful offeror's milk-based infant formulas specified in each State's contract will be designated the only authorized brands of WIC milk-based infant formula as of October 1, 2009.
 - b. The successful offeror shall pay rebates to a State for milk-based non-contract brand infant formulas, except exempt infant formulas, when the offeror's product is not available in that State for 72 hours or more. The States shall have the right to substitute milk-based non-contract brand infant formulas and to invoice the successful offeror for the units issued during the period when the offeror's formula was not available, notwithstanding that food instruments issued during a shortage may be redeemed after a shortage is remedied. The rebate paid for the milk-based non-contract brand infant formula must yield the same net price per reconstituted fluid ounce as the rebate for the milk-based contract brand infant formula that is to be substituted with the non-contract brand. The lowest national wholesale price per unit at the time of issuance for a full truckload of the milk-based non-contract brand infant formula will be used to calculate the rebate amount.

13. The products shall comply with all applicable regulations relevant to infant formulas (21 CFR Parts 1-190) pursuant to the provisions of the Federal Food, Drug and Cosmetic Act.
14. The following definitions shall control the RFP process and subsequent contracts:
 - a. Brand: The name of a specific infant formula manufactured by a specific manufacturer.
 - b. Milk-based contract brand infant formula: All milk-based infant formulas, except exempt infant formulas, produced by the manufacturer awarded the milk-based infant formula cost containment contract. Milk-based contract brand infant formulas also include all milk-based infant formulas, except exempt infant formulas, introduced after the contract is awarded.
 - c. Exempt infant formula: An infant formula that meets the requirements for an exempt infant formula under section 412(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a(h)) and the regulations at 21 CFR Parts 106 and 107.
 - d. Infant formula: A food that meets the definition of an infant formula in section 201(z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)) and that meets the requirements for an infant formula under section 412 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a) and the regulations in 21 CFR Parts 106 and 107.
 - e. Issuance Month: The period that begins in the calendar month in which the participant may use the WIC food instruments.
 - f. Net price: The difference between an infant formula manufacturer's lowest national wholesale price per unit for a full truckload of milk-based infant formula and the rebate amount offered or provided per unit by the manufacturer under a milk-based infant formula cost containment contract.
 - g. Milk-based non-contract brand infant formula: All milk-based infant formula, including exempt infant formula, which is not covered by a milk-based infant formula cost containment contract awarded by the States under this RFP.

- h. Primary milk-based contract brand infant formula: The milk-based infant formula for which the successful offeror submits a bid to the States in response to this bid solicitation and for which a contract is awarded by the States as a result of the bid.
- i. Redemption: A unit of milk-based infant formula shall be deemed to have been redeemed when a unit issued during the term of the contract has been cleared for payment and paid for by the State's authorized contract bank, or in the case of EBT, settled by the State.
- j. Redemption Month: The calendar month in which redemption occurs as defined above.

B. PROPOSAL FORMAT AND CONTENT

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

There is no intent to limit the contents of a proposal. The States permit the inclusion of any additional information an offeror deems pertinent. The States request that the following section headings be used in the proposals submitted in response to this RFP and that it be arranged in the order listed below. The proposal must provide sufficient detail and clarity to permit comprehensive evaluation of the offer. A copy of the proposal and the manufacturer's nationally published wholesale full truckload price list(s) as of April 6, 2009, for each milk-based infant formula, except exempt infant formulas, produced by the manufacturer must be furnished.

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

- 1. Technical Proposal
 - a. All pertinent data relating to the offeror's organization, personnel, and experience that would support the offeror's qualifications and capabilities to perform the services called for in this RFP, beginning October 1, 2009.
 - b. A copy of the offeror's 2008 or latest annual financial report or similar evidence of financial stability to permit the States to be satisfied with the financial stability of the offeror. The proposal should include financial reports of the

offeror's parent corporation and any subsidiaries or divisions associated with the performance of the States' contracts.

- c. A brief narrative describing all milk-based infant formulas, except exempt infant formulas, in the offeror's product line.
- d. A description of the offeror's plans and approach for accomplishing the tasks herein described in Section III.A. Describe the distribution network to be used in the States, including a list of wholesale distributors with their addresses and phone numbers, who will carry the offeror's milk-based infant formulas.
- e. A description of the offeror's disaster response and recovery plan.
- f. Offerors who wish to supply additional information may do so, provided it is relevant to the proposal and is labeled as additional information.
- g. Technical requirements will be evaluated on a pass/fail basis.

2. Cost Proposal

- a. The proposal shall include a rebate amount on the Quote Sheet (Attachment II) for a single milk-based infant formula in concentrated liquid, powdered and ready-to-feed physical forms. A different rebate amount may be submitted for each physical form of the formula.
- b. The manufacturer's nationally published wholesale full truckload price list(s) as of April 6, 2009, shall accompany the proposal to determine the base commercial wholesale price (i.e., the lowest national wholesale price per unit for a full truckload) on the Quote Sheet (Attachment II). Any wholesale price adjustments after April 6, 2009, shall cause the rebate to be adjusted automatically by the same amount on a cent-for-cent basis.
- c. The rebate amount for the primary milk-based contract brand infant formula shall be the rebate amount stated on the Quote Sheet and in the contract, applied to the volume of purchases the States invoice the successful offeror. The successful offeror shall agree that the rebate amount shall

increase or decrease the first day of the month in which the wholesale price per unit (i.e., the lowest national wholesale price per unit for a full truckload) increases or decreases. The price per unit rebate will increase or decrease effective the first day of the month in which the wholesale price per unit increased or decreased. This increase or decrease shall be on a cent-for-cent basis.

The rebate amount for all other milk-based contract brand infant formulas shall be the rebate amount determined in accordance with Section III.A.7. of this RFP and stated in each State's contract, applied to the volume of purchases the States invoice the successful offeror. The successful offeror shall agree that the rebate amount for these milk-based contract brand infant formulas shall increase or decrease the first day of the month in which the wholesale price per unit increases or decreases. This increase or decrease shall be on a cent-for-cent basis.

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

IV. EVALUATION OF PROPOSALS

A. GENERAL CONDITIONS

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

1. The **net price** per unit for each physical form of formula will be determined by subtracting the rebate amount offered per unit from the lowest national wholesale price per unit for a full truckload of that physical form of milk-based infant formula on the date of the bid opening.
2. The **monthly net price** for each physical form of formula will be determined by multiplying the net price per unit by the number of standardized units (depicted on the Quote Sheet-Attachment II) for that physical form of formula.
3. The **total monthly net price** will be the sum of the monthly net price for each physical form of a single milk-based infant formula.

4. NOTE: The **standardized number of units** (depicted on the Quote Sheet-Attachment II) for each physical form of formula was determined by multiplying the federal maximum monthly allowable ounces established in 7 CFR § 246.10(e)(9)(Table 1) for each physical form and food package type by the average monthly number of infants using that physical form of formula by food package type for the three States combined from April 1, 2008 through September 30, 2008 (See milk-based infant formula participation and usage data in Section IV. B. of this RFP). The total number of ounces issued per month for each physical form of formula was divided by the corresponding unit size (i.e. number of fluid ounces reconstituted), to arrive at the standardized number of units for each physical form of formula.

B. MILK-BASED INFANT FORMULA PARTICIPATION AND USAGE DATA

Attachment I to the RFP (Infant Report) contains the average monthly milk-based infant formula participation and usage data by physical form for the three States combined from April 1, 2008 through September 30, 2008. The data does not include infant participants who are exclusively breastfed and those who are issued exempt infant formula.

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

V. NOTIFICATION OF OUTCOME AND DISPUTE RESOLUTION

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

Administrators shall promptly issue a decision in writing. The decision shall state the reasons for the action taken by the Contract Administrators.

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

- C. Within 15 days after the date of the written notice of the contract award, an unsuccessful offeror may file a formal written protest pursuant to the New Mexico Department of Health's Protest Procedure under the Procurement Code, 7.1.6 NMAC. Any decision rendered in New Mexico pursuant to those regulations shall be binding upon the New Mexico WIC Program, the Arkansas WIC Program and the North Carolina WIC Program by agreement of the States.