



**MISSISSIPPI STATE DEPARTMENT OF HEALTH**

---

**SOLICITATION:** Invitation for Bids

**SOLICITATION NUMBER:** RFx No. 316000746

**DESCRIPTION:** WIC Infant Formula Rebate

**ISSUE DATE:** Tuesday, May 20, 2025

**BID CLOSING LOCATION:** Mississippi State Department of Health  
570 E. Woodrow Wilson  
Jackson, Mississippi 39216

**BID COORDINATOR:** Dorthy Young, PhD.,  
MHSA, CMPA or Hannah  
Wright  
Telephone: 601.576.7954  
Email: [procurement@msdh.ms.gov](mailto:procurement@msdh.ms.gov)

**OPENING DATE AND TIME:** Friday, June 13, 2025, by 1:00PM CST

## SECTION 1.

## INTRODUCTION AND OVERVIEW

### 1.1 Purpose

The Mississippi State Department of Health (hereinafter, “MSDH” “Agency”) issues this Invitation for Bids (IFB) pursuant to the WIC regulations at 7 CFR 246.2 and 246.16a, to obtain a rebate contract with one (1) responsive and responsible bidder offering the lowest total monthly net price for infant formula. MSDH will calculate the lowest net price using the lowest national wholesale cost per unit for a full truckload of infant formula on the date of the bid opening for all physical forms (liquid concentrate, powered, and ready-to feed) of a milk-based iron fortified infant formula which are suitable for routine issuance to the majority of generally healthy, full-term infants (hereinafter referred to as primary milk based infant formula). The infant formula is provided to the Special Supplemental Nutrition Program for Women, Infants, and Children (hereinafter “WIC”) participants by the MSDH WIC Program (hereafter, “MSDH WIC”), through its retail food delivery system.

MSDH seeks to enter into a firm fixed price contract for a period of three (3) years. The contract may be renewed at the discretion of MSDH for an additional two (2), one-year terms. The entire contract term, including renewals, shall not exceed five (5) years. The effective date of this contract will be **August 6, 2025**.

The awarded rebate shall not be modified nor renegotiated at the time the option to extend is exercised but shall continue in full force and effect for the entire term of this agreement and any extension periods. All term terms and conditions shall remain throughout the contract period including any additional terms. Such renewal shall be contingent upon satisfactory performances as determined by MSDH WIC. Prior to each renewal, any changes agreed upon by both parties shall be confirmed in writing.

Contract extensions must be signed prior to the contract start date.

If the rebate contract is awarded to a different contractor, MSDH will only issue the current contractor holder’s formula for the benefit participation month of August and issue the new contract holder’s formula for the benefit participation of September 2025.

Benefits are issued on a rolling month basis (i.e. First Date To Use (FDTU) 1/24/2025, Last Date To Use (LDTU) 2/23/2025) within the Management Information System (MIS). A local agency can issue monthly, bi-monthly, or tri-monthly benefits to a participant. The State Office MIS team can input the new contract holder’s formula for local agencies to be able to issue for 9/1/2025.

Due to the current contract ending on 8/31/2025, the current formula is set to expire and will not be able to be issued out of the system past 8/31/2025, unless there is a late pickup for the participation month of August. MSDH WIC will issue benefits for the current contract holder’s standard formulas for all benefits issued within the benefit participation month of August and as such will request rebates on these formulas at the current contract rate. Please note that due to the MSDH WIC Infant Formula Rebate—2025

benefit's rolling month cycle; if a participant's FDTU is in August, it is a great possibility that the formula for the current rebate contract will not be redeemed until September.

If the current contract holder is the winning bidder for this solicitation process, billing will continue as usual through August, and the new rates will apply to the September billing cycle.

This IFB and any resulting contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board (PPRB) Office of Purchasing, Travel, and Fleet Management (OPTFM)*, a copy of Mississippi Procurement Manual is available at 501 North West Street, 701 Woolfolk Building Suite A, Jackson, Mississippi 39201 for inspection or at <https://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/bureau-of-purchasing-and-contracting/procurement-manual/>. This contract shall not be binding upon the parties until it is approved by the Mississippi Public Procurement Board (PPRB).

A copy of this IFB, including all appendices and attachments, and any subsequent amendments, including the Question and Answer amendment, if issued, will be posted to the MSDH website at <https://www.msdh.ms.gov> in the lower left corner under the heading Agency and Procurements/Grants. **It is the responsibility of all interested vendors to monitor the website for updates regarding this procurement.**

Before the award of any contract, the offeror will be required to document to MSDH that it has the necessary capabilities to provide the obligations specified in this IFB. The offeror may also be required to provide additional client references, as well as related project experience detail in order to satisfy MSDH that the offeror is qualified. MSDH may make reasonable investigations, as it deems necessary and proper, to determine the ability of the offeror to perform the work, and the vendor shall be required to furnish to MSDH all information that may be requested for this purpose. MSDH reserves the right to reject any bids if the offeror fails to provide the requested information and/or fails to satisfy MSDH that the offeror is properly qualified to carry out the obligations of the contract described in this IFB. Vendors submitting bids that are rejected will be notified of the rejection and the reason. The contract award will be made to a vendor who meets the qualifications in accordance with the IFB.

## 1.2 Bid Submission Requirements

The original and one (1) copy of the Bid, two (2) copies total, shall be submitted with each section components of the IFB clearly tabbed as follows:

1. Appendix A-- Bid Cover Sheet with copy of all required license(s) or permit(s).
2. Appendix B-- WIC Electronic Rebate Bid Sheet
3. Appendix B-1-- WIC Rebate Bid Sheet Continued
4. Appendix C-- Certifications Regarding Contingencies and Gratuities
5. Appendix D-- Certifications and Disclosures Requirements Related to Lobbying
6. Appendix E-- Certifications regarding Debarment and Suspension
7. Signed Acknowledgment of Amendments (if any).

In addition, a jump drive with the documents as labeled above must be submitted with your documentation.

While, it is requested that bidders also submit a bid on-line in the State of Mississippi electronic procurement system, the State of Mississippi's Accountability System for Governmental Information and Collaboration (MAGIC), however, **it is not mandatory**. In order to submit electronic bids, bidders must be registered as a vendor in MAGIC system and have an I.D. number and password assigned at the time of registration. Registering as a supplier with the State of Mississippi allows businesses to register for upcoming RFX opportunity notifications by the products they supply, search the system for upcoming RFXs, respond to RFXs electronically, and receive purchase orders by email. In order to register, please go to the following website: <http://www.DFA.ms.gov/DFA-offices/mrms/mississippi-suppliers-vendors/supplier-self-service/>. Technical assistance may be found at <http://www.dfa.ms.gov/dfa-offices/mrms/mississippi-suppliers-vendors/>.

If submitting via MAGIC, the documents are required in electronic format *If a bidder submits both a paper bid and an on-line bid, the paper bid will take precedence if there is a discrepancy between the two.*

**Confidential Information:** If the Bid contains confidential information, a redacted copy of the Bid shall be submitted. If a redacted copy is not submitted, MSDH shall consider the entire Bid to be public record. Any redacted copies should be submitted on a CD-R in a single, searchable document in Microsoft Word or Adobe Acrobat (PDF) format. The CD-R shall be clearly labeled "REDACTED COPY". The redacted copy should also identify which section or information has been redacted and the Bidder shall provide the specific statutory authority for the exemption. Per Mississippi Code Annotated §25-61-9(7), the type of service to be provided, the price to be paid and the term of the contract cannot be deemed confidential.

The redacted copy shall be considered public record and immediately released, without notification to Bidder, pursuant to any request under the Mississippi Public Records Act, Miss. Code Ann. §§25-61-1 *et seq.* and Miss. Code Ann. §79-23-1. Redacted copies shall also be used/released for any reason deemed necessary by MSDH, including but not limited to, submission to the PPRB, posting to the Transparency Mississippi website, etc.

Modifications or additions to any portion of the procurement document may be cause for rejection of the bid. MSDH reserves the right to decide, on a case-by-case basis, whether to reject a bid with modifications or additions as non-responsive. As a precondition to bid acceptance, MSDH may request the Bidder to withdraw or modify those portions of the bid deemed non-responsive that do not affect quality, quantity, price, or delivery of the service. The IFB issued by MSDH is the official version and will supersede any conflicting IFB language subsequently submitted in bids.

All documentation submitted in response to this IFB and any subsequent requests for information pertaining to this IFB shall become the property of MSDH and will not be returned to the Bidder.

Failure to provide all requested information in the required format may result in disqualification of the bid. MSDH has no obligation to locate or acknowledge any information in the bid that is not presented under the appropriate outline and/or in the proper location according to the instructions

MSDH WIC Infant Formula Rebate—2025 Page 4 of 49

herein.

Electronic bids submitted through MAGIC shall follow the same format as specified within this section.

Bids must be submitted in writing using the attached forms to the following address:

**Mississippi State Department of Health  
Purchasing Department  
Attention: Dorothy Young, PhD.,  
MHSA, CMPA  
Central Office – 4<sup>th</sup> Floor  
Procurement Office  
570 East Woodrow Wilson  
Jackson, MS 39216**

*OR*

**P.O. Box 1700  
Jackson, MS 39215-1700**

To prevent opening by unauthorized individuals, the bid, including any and all attachments, must be sealed in one package. The outside cover of the package containing the sealed bids **shall be labeled:**

**BID – DO NOT OPEN**

**RFx # 316000746**

**Bid Due: Friday, June 13, 2025, 10:00AM CST**

**Bid Opening: Friday, June 13, 2025, 1:00PM CST**

Prior to the IFB due date and time, bids may be Hand Delivered to the agency between the hours of 8:00 A.M. and 5:00 P.M. CST. Entry may be obtained at the Visitor's entrance of the Mississippi State Department of Health, Osborne Building, 570 E. Woodrow Wilson, Jackson, Mississippi 39216. A receptionist will be on duty to receive the bids, will write the date and time of the delivery, and forward to the addressee on the envelope/package.

Each page of the bid form and all attachments shall be identified with the name of the Bidder. Failure to submit a bid on the bid form provided may be considered just cause for rejection of the bid.

The Bidder is responsible for ensuring that the sealed bid is delivered by the required time and to the required location and assumes all risks of delivery. A facsimile bid shall not be accepted. Each bid should be signed by an official authorized to bind the Bidder to the bid provisions. Bids and modifications thereof received by MSDH after the time set for receipt or any location other than that set forth above shall be considered late and shall not be considered for award.

Sealed bids are stored in a secure designated area in the office of the Chief Procurement Officer.

Online bids are not accessed until the bid opening. Electronic bids will be opened on a computer during the bid opening.

### 1.2.1 Bid Submission Period

**Sealed bids shall be submitted to MSDH no later than Friday, June 13, 2025, at 10:00AM CST. *Timely submission of the bid package is the responsibility of the Bidder.*** Any bid received after the deadline will be considered late and will be rejected and returned to the Bidder unopened and will not be considered for award. The Bidder shall be notified as soon as practicable if their bid was rejected and the reason for such rejection.

It is suggested that if a bid is mailed to MSDH, it should be posted in certified mail with a return receipt requested. A bid received at the place designated in the solicitation for receipt of bids after the exact time specified for receipt shall not be considered unless it is the only bid received, or it is received before award is made and was sent by registered mail no later than the fifth (5<sup>th</sup>) calendar day before the date specified for receipt of bids. If determined by MSDH that the late receipt was due solely to mishandling by MSDH after receipt at the specified address, the bid may be considered for award.

The only acceptable evidence to establish the date of mailing is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If the postmark does not show a legible date, the contents of the envelope or package shall be processed as if mailed late. “Postmark” means a printed, stamped, or otherwise placed impression, exclusive of a postage meter impression, that is readily identifiable without further action as having been supplied and affixed by the U.S. Postal Service on the date of mailing. Bidders should request postal clerks to place a hand cancellation postmark (often called a bull’s eye) on both the receipt and the envelope or wrapper. MSDH will not be responsible for mail delays or lost mail.

## 1.3 Public Opening

MSDH will hold a public opening of sealed bids at **Friday, June 13, 2025 at 1:00PM CST**. The bids shall be opened in a designated conference room and read aloud. Due to the COVID-19 pandemic, bidders are invited to attend via Zoom. A link for the opening will be posted on the MSDH Calendar of Events under the Information heading at the left-hand bottom of the MSDH webpage. Please check the calendar of events two days before the bid opening. If you have difficulty locating the link, please contact Dorthy Young at least 24 hours before the set date and time of the opening.

## 1.4 Schedule of Important Dates

<b>EVENT</b>	<b>DATE/ TIME (Central Standard Time</b>
<b>Publish Invitation for Bid</b>	<b>Tuesday, May 20, 2025 Tuesday, May 27, 2025</b>
<b>Deadline for Written Questions</b>	<b>Tuesday, May 27, 2025, by 10:00 AM</b>
<b>*MSDH Response Published</b>	<b>Thursday, May 30, 2025</b>
<b>Deadline for Bids</b>	<b>Friday, June 13, 2025, by 10:00am CST</b>
<b>Public Bid Opening</b>	<b>Friday, June 13, 2025, by 1:00pm CST</b>
<b>*Notice of Intent to Award Published</b>	<b>Monday, June 16, 2025</b>
<b>*Request for Reconsideration</b>	<b>Wednesday, June 25, 2025</b>
<b>*PPRB submission deadline</b>	<b>Wednesday, July 2, 2025</b>
<b>*PPRB approval meeting</b>	<b>Wednesday, August 6, 2025</b>
<b>Notice of Contract Award</b>	

***NOTE: Adjustments to the schedule may be made as deemed necessary by MSDH.***

***\* Indicates Anticipated dates. Anticipated dates are not firm. Bidders should monitor the MSDH website for information or publication of these events.***

## 1.5. Questions and Answers

MSDH reserves the right to amend this IFB at any time. Should an amendment to the IFB be issued, it will be posted on the Mississippi Contract/Procurement Opportunity Search Portal website and the agency's website at <http://www.msdh.ms.gov> under the “Procurements/Grants. Bidders must acknowledge receipt of any amendment to the IFB by signing and returning the amendment. The acknowledgment must be included in the bid submission.

Bidders must carefully review this solicitation, the contract, risk management provisions, and all attachments for defects, questionable, or objectionable material. Following review, vendors may have questions to clarify or interpret the IFB in order to submit the best bid possible. To accommodate the questions and requests for clarifications, vendors shall submit any such question via email by the deadline reflected in the Schedule of Events.

All questions and requests for clarifications must be directed by email to the bid coordinator:

Dorthy Young, PhD., MHSA, CMPA or  
 Hannah Wright  
 Procurement Coordinators  
 Telephone: 601.576.7954  
 E-mail: [procurement@msdh.ms.gov](mailto:procurement@msdh.ms.gov)

Vendors should enter “WIC Rebate IFB RFx # 316000746 - Questions” as the subject for the email. Question submittals should include a reference to the applicable IFB section and be submitted in the format shown below:

	IFB Section, Page Number	Vendor Question/Request for Clarification
1.		

**Official responses will be provided only for questions submitted as described above and only to clarify information already included in the IFB.** The identity of the organization submitting the question(s) will not be revealed. **The agency is not required to provide responses to questions or requests submitted in a format other than as described herein.**

Questions must be received no later than Tuesday, May 27, 2025, by 10:00 AM CST, to ensure a response by MSDH. Question received after this date and time may not be considered for response and there is no guarantee as to if or when a response will be provided.

All timely questions and answers will be published on the agency's website at <http://www.msdh.ms.gov> under the “Procurements/Grants as an amendment to the IFB. MSDH will not be bound by any verbal or written information that is not contained within this IFB unless formally noticed and issued by the contact person as an IFB amendment. Bidders are cautioned that any statements made by agency personnel that materially change any portion of the bid document shall not be relied upon unless subsequently ratified by a formal written amendment to the bid document.

## 1.6 Acknowledgment of Amendments

MSDH reserves the right to amend this IFB at any time. Should an amendment to the IFB be issued, it will be posted on the agency's website at <http://www.msdh.ms.gov> under “Procurements/Grants. Bidders must acknowledge receipt of any amendment to the IFB by signing and returning the acknowledgment form. The acknowledgment form must be included in the bid submission.

Please monitor the website for amendments to the IFB. MSDH responses to questions will be treated as amendments to the IFB and will require acknowledgment. ***It is the bidder’s responsibility to monitor the websites for any updates or amendments to the IFB.*** However, amendments shall be sent to all prospective bidders known to have received an Invitation for Bids by email. Amendments will be distributed within a reasonable time to allow prospective bidders to  
 MSDH WIC Infant Formula Rebate—2025 Page 8 of 49

consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, such time shall be increased, to the extent possible, either in the amendment or, if necessary, by electronic means (email), facsimile, or telephone and then confirmed in the amendment.

The IFB is comprised of the base IFB document, any attachments, any amendments issued prior to the submission deadline, and any other documents released before contract award.

### **1.7 Cost of Bid Preparation**

All costs incurred by the Bidder in preparing and delivering its bid, making presentations, and any subsequent time and travel to meet with MSDH regarding its bid shall be borne exclusively at the Bidder's expense.

### **1.8 Right to Reject, Cancel and/or Issue Another IFB**

MSDH specifically reserves the right, in the best interest of the State and in accordance with PPRB Rules and Regulation, to reject any or all bids received in response to this IFB, cancel the IFB in its entirety, and/or issue another IFB.

### **1.9 Registration with Mississippi Secretary of State**

By submitting a bid, the Bidder certifies that it is registered to do business in the State of Mississippi as prescribed by Mississippi law and the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being notified by the MSDH that it has been awarded a contract.

### **1.10 Debarment**

By submitting a bid, the Bidder certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi or Federal government and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi.

### **1.11 Right to Consider Historical Information**

MSDH reserves the right to consider historical information regarding the Bidder, whether gained from the Bidder's bid, conferences with the Bidder, references, or any other source during the evaluation process. This may include, but is not limited to, information from any state or federal regulatory entity.

## 1.12 Documentation of Award

Upon the determination of the lowest cost bid, a written Notice of Intent to Award will be issued. The notice of intended contract award shall be made by e-mail with reply confirmation to the winning Bidder. Unsuccessful Bidders shall be notified in the same manner after the award has been accepted or declined. The Notice of Intent to Award will also be posted to the MSDH website and the Mississippi Contract/Procurement Opportunity Search Portal.

## 1.13 Contract Formation

Upon award of this bid, specifications, terms and conditions, certifications, and requirements as set forth in this IFB, amendments, written clarifications and vendor bid response(s) shall become a contract binding on the successful bidder. Any documents submitted to satisfy a requirement of this bid shall become part of the agreement between MSDH and the successful bidder. MSDH shall have the right to rely upon the documents submitted by the successful bidder.

**The contract term will be for the period of August 6, 2025, through August 05, 2028. The contract may be extended for two (2) additional one (1) year terms at the discretion of MSDH.**

## 1.14 State Approval

It is understood that this contract may require approval by the PPRB. If required and if this contract is not approved, it is void and no payment shall be made hereunder. Every effort shall be made by MSDH to facilitate rapid approval and a start date consistent with the proposed schedule.

## SECTION 2. SCOPE OF BID

MSDH intends to contract with one manufacturer whose iron-fortified, milk and soy- based infant formulas will be the contract brand infant formula issued on eWIC benefits. Iron-fortified formula shall be complete; not requiring the addition of any ingredients other than water prior to being served in a liquid state. Infant formulas shall contain at least 10 milligrams of iron per liter of infant formula at standard dilution which supplies 67 kilocalories per 100 milliliters, i.e., approximately 20 kilocalories per fluid ounce of infant formula at standard dilution (except as specified in 246.10(d) when medical documentation is required or if related waivers are obtained). The formula for which the bid is submitted must be suitable for the routine issuance to the majority of generally healthy, full-term infants. MSDH will use the primary contract infant formula(s) as the first choice of issuance (by physical form), with all other infant formulas issued as an alternative. MSDH may approve for issuance some, none, or all of the winning bidder's infant formula in compliance with 7 CFR 246.16a(c)(9).

“Infant formula” is defined as any formula in the manufacturer’s product line that: 1) complies with the Infant Formula Act of 1980 as amended which defines “infant formula” as “a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk”; and 2) 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 meets the requirements for an infant formula under section 412 MSDH WIC Infant Formula Rebate—2025

of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a) and the regulations at 21 C.F.R parts 106 and 107.

MSDH has the discretion to obtain waivers, and upon notifying the contract holder, will implement these waivers immediately.

## 2.1 Manufacturer Requirements

### **The Successful Bidder will be responsible for meeting the following requirements and responsibilities:**

1. Bidder must be an infant formula manufacturer registered with the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321 et seq.), and its products are in compliance with Federal regulations issued pursuant to Public Law 100-237.
2. Manufacturer must comply with the Department of Agriculture (USDA) Food and Nutrition Service (FNS) Instruction 800-2 dated June 2, 1992, and WIC Policy [Memorandum #2009-1 dated December 31, 2008, which restricts the usage of the WIC acronym and logo.](#) The following are provisions for “use of WIC Service Marks”:
  - (a) Manufacturer acknowledges that the WIC Acronym and the WIC Logo are service marks owned by the USDA, and that all rights therein and goodwill pertaining thereto belong exclusively to USDA.
  - (b) Manufacturer shall not use these service marks in any manner on its goods or their containers or packaging or on tags or labels affixed thereto. Manufacturer also shall not use the WIC Logo in advertising or other promotional materials (collectively: “advertising”).
  - (c) Manufacturer shall not use the WIC Acronym in advertising in any manner that is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Manufacturer with the WIC Program, or as to the sponsorship or approval of Manufacturer’s goods, services, advertising, or commercial activities, including nutritional message (s), by the WIC Program, USDA, or the State agency.
3. Any manufacturer that does not produce a soy-based infant formula must sub-contract with another manufacturer to supply a soy-based infant formula. In this case, Contractor is required to pay MSDH a rebate on the soy-based formula supplied by the subcontractor per 7 C.F.R. 246.16a(c)(2)(i) .
4. Manufacturer certifies all items quoted represent the products of the manufacturer.
5. Any price increase or decrease of the manufacturer’s lowest national wholesale prices for a full truckload of infant formula after the bid is opened, will automatically adjust the rebate amounts per unit by the same amount cent for cent. The manufacturer shall agree that the rebate amount will adjust in the same amount (cent for cent) as the difference between the manufacturer’s lowest national wholesale prices per unit for a full truckload and the base wholesale price on the first day of each month covered by the contract. **The cent for cent increase will become effective on the first day of the month following the**

**effective date of the price increase for all formula purchased. The same adjustment will be made for decreases in wholesale price.** Manufacturers must provide in writing, to include a new wholesale price catalog, to MSDH WIC changes in the per unit rebate amount within thirty (30) days of the effective date of the price change. These changes will be made effective in MSDH WIC's rebate invoice for eWIC benefits issued and redeemed on or after the first day of the month following the 30-day notification period.

Price is not confidential pursuant to Mississippi Code Annotated § 25- 61-9.

6. A rebate must be paid on all formula in the manufacturer's infant formula product line (**excluding exempt infant formula**) that the State agency chooses to issue, including any existing and new infant formula introduced during the term of the contract. If a new infant formula is introduced to take the place of the primary contract brand infant formula, the manufacturer must pay a rebate that yields the same net cost per ounce as the original primary contract brand infant formula. The rebate to be paid on all other infant formula must yield the same percentage discount as the corresponding physical form of the primary contract infant formula for which bids were solicited. The rebate for infant formula added to the contract after the start date (new and existing) will be calculated using the **wholesale truckload** price of the formula at the time the formula is approved for issuance by the State agency. Rebates will be adjusted as specified in the above paragraph.

If the manufacturer discontinues production of the primary contract brand infant formula, the manufacturer must provide a rebate that yields the same net cost per ounce for the replacement primary contract brand infant formula.

7. In the event the manufacturer cannot provide the contract brand infant formula, a rebate must be paid on non-contract infant formulas from any manufacturer that meet the definition of infant formula per 7 CFR 246.2 that yields the same net cost per ounce as the formulas in any size, type, or physical form. This includes but is not limited to supply chain disruptions, recalls, or emergency periods according to the Access to Baby Formula Act (ABFA) and/or under any approved applicable waivers. In these instances, medical documentation is not required, with the exception of participants receiving Food Package III as defined in section 246.10(e)(3). Infant formula may be issued in all unit sizes that may exceed the maximum monthly allowance.

An approved waiver is required before MSDH WIC can operationalize the remedies and must be implemented within the active waiver's timeframe to remain in compliance with Program requirements.

Substitution decisions will be determined by the circumstances of the unavailability of the contract brand infant formula and the needs of participants and the MSDH WIC Program at the time of the unavailability, in order to enable MSDH WIC to meet its obligations under the federal regulations.

MSDH must be provided with an action plan within two (2) weeks of the incident to meet infant formula demand. This plan must include a timeline, supply data, and course of action for affected jurisdictions. Status updates must be provided weekly until the incident is resolved.

Rebates for contract brand infant formulas, other than the primary contract infant formula(s) for which bids were received, must be calculated by first determining the

percentage discount for each physical form (e.g., concentrated liquid, powdered, and ready-to-feed) of the primary contract infant formula(s). The percentage discount must be calculated by dividing the rebate for the primary contract infant formula by the manufacturer's lowest national wholesale price per unit, as of the date of the bid opening, for a full truckload of the primary contract infant formula. The percentage discounts must be used to determine the rebate for all other contract brand infant formulas approved for issuance by MSDH.

8. The manufacturer shall have a current retail distribution network established in the State of Mississippi and guarantee that sufficient quantities of the rebate formulas will be available to major wholesalers and approximately 298 authorized WIC vendors statewide to meet WIC's need. There are no WIC only (above 50% vendors) authorized in Mississippi.
9. The manufacturer shall provide MSDH WIC advance notification, not less than ninety (90) days, of any changes in labels, unit size, and/or reformulation of infant formula. Due to the impact on an EBT system, products that change both size and yield must change the Universal Product Code (UPC) or the manufacturer must work with MSDH WIC to reset the authorized WIC vendors' shelves and wholesalers' inventory.
10. The manufacturer will allow MSDH WIC to immediately implement approved waivers to support WIC outreach, innovation, and/or modernization.
11. The manufacturer will comply with all contract provisions required by MSDH WIC.
12. The bidder shall be in compliance with Mississippi Code Annotated §79-4-15.01, Authority to transact business.

## 2.2 MSDH WIC Requirements

**MSDH WIC will be responsible for meeting the following requirements and responsibilities:**

1. MSDH WIC will issue infant formula in accordance with §246.10(e)(1) through (e)(3) and (e)(9), of the WIC Program regulations. In addition, the State agency will, if necessary to provide the full nutritional benefit (FNB), use the methodology outlined in §246.10(h) in the WIC Program regulations when issuing infant formula
2. Pursuant to 7 C.F.R. 246.10(e)(1)(iv), MSDH WIC will issue infant formula in concentrated liquid or powder physical forms. Ready-to-feed WIC infant formulas may be authorized when the competent professional authority determines and documents that the participant's household has an unsanitary or restricted water supply or poor refrigeration; the person caring for the participant may have difficulty in correctly diluting concentrated or powder forms; or the WIC infant formula is only available in ready-to-feed. Per 7 C.F.R.246.10(b)(1)(ii) this may include making food package adjustments to better accommodate homeless participants. These optional adjustments may include, but not be limited to issuing authorized supplemental foods in individual serving-size containers to accommodate lack of food storage or preparation facilities. MSDH WIC will also employ, at the State agency discretion, the two additional conditions which may be used to issue

RTF in Food Package III: if a ready-to-feed form better accommodates the participant's condition; or if it improves the participant's compliance in consuming the prescribed WIC formula. C.F.R 246.10(e)(3)(iii) 7 C.F.R 246.10(B)(1)(ii) .

MSDH WIC will issue a monthly rebate invoice. Payment due to MSDH WIC shall be based on the number of units redeemed during the current billing period. *No partial redemption factor will be applied.*

3. The base price per unit is established upon submission of the bid to MSDH WIC. MSDH WIC will calculate the lowest monthly net price using the lowest national wholesale price per unit for a full truckload of the infant formula on the date of the bid opening. The rebate to be paid on all other contract brand infant formula, to include new formula, must yield the same percentage discount as the corresponding physical form of the primary contract brand infant formula for which bids were solicited. Meaning the discount established at the beginning of the contract (by physical form), is used to calculate the rebate for infant formula (new and existing) added to the contract subsequent to the initiation of the contract per 246.16a(c)(7)(i-iii).
4. Rebates for contract brand infant formulas, other than the primary contract infant formula(s) for which bids were received, must be calculated by first determining the percentage discount for each physical form (e.g., concentrated liquid, powered, and ready-to-feed) of the primary contract infant formula(s). The percentage discount must be calculated by dividing the rebate for the primary contract infant formula by the manufacturer's lowest national wholesale price per unit, as of the date of the bid opening, for a full truckload of the primary contract infant formula. The percentage discounts must be used to determine the rebate for all other contract brand infant formulas approved for issuance by MSDH.
5. The rebate for each type and form of all other contract brand infant formulas must be calculated by multiplying the percentage discount by the manufacturer's lowest national wholesale price per unit, as of the date of the bid opening, for a full truckload of the other contract brand infant formula. The percentage discount used for each of the other contract brand infant formulas depends on the physical form of the infant formula. For example, if the percentage discount provided for the primary contract brand powdered infant formula is 80 percent of its wholesale price, the same percentage discount must be applied to all other contract brand powdered infant formulas. The rebate for any type or forms of contract brand infant formulas that are introduced during the contract period must be calculated using the wholesale prices of these new contract brand infant formulas at the time the infant formulas are approved for issuance by MSDH.
6. Rebates resulting from the application from the percentage discount must remain the same throughout the contract period except for the cent-for-cent rebate adjustments required in 7 C.F.R. 246.16a(c)(7)(iv).
7. MSDH WIC shall notify all local and private agencies, retailers, and physicians of any change to the rebate brand of formulas and shall monitor for retail compliance.
8. MSDH WIC shall supply the manufacturer with the number of current infant participants, excluding infants that are solely breastfed and infants that are issued exempt infant

formula. The manufacturer may not have access to any records identifying participants by name and/or address.

9. MSDH WIC shall also supply the manufacturer a list of authorized grocers/vendors. The manufacturer will have access to the vendor's name, address, website, email address, and store type.
10. It is MSDH WIC policy as outlined in vendor agreements that no refunds or exchanges for items paid with eWIC are allowed unless such exchange is for an identical food which is defective, spoiled, outdated, or a federal waiver is in place.
11. MSDH will monitor vendors in accordance with 7 C.F.R.246.12(j) and will meet all documentation requirements therein.

Inventory audits are performed as part of the vendor compliance investigation process.

Infant formula is not a mandatory item for inclusion in inventory audits. However, based on monitoring visits and participant complaints, infant formula may be included in inventory audits.

If the State Agency determines that the vendor has redeemed more of the specific foods than they can provide inventory documentation for, the State Agency will provide the vendor with one opportunity to provide any additional receipts or justification for the discrepancy. If the vendor is unable to fully justify the discrepancy, the State Agency will initiate appropriate vendor sanctions and claims.

Bid solicitations and awards must be in compliance with 7 C.F.R.246.16a(c)(5) of the WIC Regulations. There are no provisions to prevent manufacturers of infant formula that meet the requirements of the bid from competing in the bid process. All bidders must register with the Mississippi Department of Finance and Administration at <http://www.dfa.ms.gov/dfa-offices/mms/mississippi-suppliers-vendors/>. All bids are sealed until the specified opening date and time.

### 2.3 Purchase of Formulas with Medical Documentation

In compliance with 7 CFR 246.10(d)(1) MSDH WIC requires medical documentation for the issuance of the following supplemental foods:

1. Any non-contract brand infant formula, except as allowed under any applicable waivers;
2. Any infant formula prescribed to an infant, child, or adult who receives Food Package III, except as allowed under any applicable waivers;
3. Any exempt infant formula, except as allowed under any applicable waivers;
4. Any WIC-eligible nutritional, except as allowed under any applicable waivers;
5. Any authorized supplemental food issued to participants who receive Food Package III, except as allowed under any applicable waivers;
6. Any contract brand infant formula that does not meet the requirements in 7 CFR 246.10(e)(12), except as allowed under any applicable waivers.

These are allowed in accordance with MSDH WIC policy requiring completion of MSDH WIC's medical formula request form.

As outlined at 7 C.F.R. 246.16a(c)(9), MSDH WIC may choose to require medical documentation before issuing any contract brand infant formula.

MSDH WIC does not allow local agencies to issue non-contract brand infant formula to meet religious eating patterns.

## 2.4 Confidentiality of Applicants, Participants and Vendors

### 1. Confidentiality of WIC Applicant and Participant Information

Confidential applicant and participant information is any information about an applicant or participant, whether it is obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation, that individually identifies an applicant or participant and/or family members(s). Applicant or participant information is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other Federal, State or local law.

Except as permitted by 7 CFR 246.26, MSDH must restrict the use and disclosure of confidential applicant and participant information to persons directly connected with the administration or enforcement of the WIC Program whom MSDH determines have a need to know the information for WIC Program purposes.

### 2. Confidentiality of Vendor Information

Confidential vendor information is any information about a vendor (whether it is obtained from the vendor or another source) that individually identifies the vendor except for vendor's name, address, telephone number, website/email address, store type, and authorization status. MSDH will restrict the use and disclosure of confidential vendor information except as otherwise permitted by 7 CFR 246.26(e).

## 2.5 Monthly of Invoice Remittance

Manufacturer will be required to pay MSDH rebate based on monthly invoices remitted to the manufacturer by MSDH WIC. MSDH WIC will be invoicing and billing rebates using actual counts of the number of units purchased by WIC participant. MSDH WIC will submit monthly invoices as follows:

1. **Electronic Benefit Issuance** MSDH WIC shall issue a monthly invoice (Appendix B) for the number of units redeemed (purchased) during the previous month.
2. MSDH WIC shall calculate monthly the rebate due in the following manner:
  - a. Multiply the units of manufacturer's formula redeemed (purchased) by the rebate amounts to arrive at the invoice amount to be remitted to the MS Department of Health/WIC Program for the billing month. All redemptions of manufacturer's

infant formula will be included (infants, children, and women).

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

- b. Contractor is expected to pay rebates on all infant formula issued in accordance with federal WIC regulations. Redeemed food benefit data will be obtained through EBT processor and SPIRIT (MIS system).
- c. MSDH WIC will provide redemption data which will include:
  1. Food Instrument Number;
  2. Food Package Identifier;
  3. Product Name
  4. Number of Units Authorized to Purchase;
  5. Effective Date of Food Instrument (FDU);
  6. Redemption Date;
  7. Redemption Amount

3. Contractor will receive only records that have direct linkage to monthly billing and which directly support the number of units on the rebate invoice.
4. No partial redemption factor will be applied.

## 2.6 Payment Procedures

On a monthly basis, MSDH WIC shall issue a formula rebate invoice by midmonth. Payment due to MSDH WIC shall be based on the number of units redeemed during the previous month.

The following steps outline the procedures for payment:

5. Contractor must pay invoice within thirty (30) days of receipt. Payment must be paid by means of an electronic funds transfer. Late payment of monthly invoice amount will result in manufacturer paying interest penalties to MSDH WIC in the amount of 1% per month prorated daily of the invoiced amount. The MSDH WIC Program will use all funds received from the invoiced billings for food costs per WIC Regulations 7 CFR 246.15.
6. Contractor must notify MSDH of any dispute or error in rebate invoice within 90 days. If contractor misses the deadline, any requirement to return funds to the manufacturer as a result of a dispute or over a billing error is waived.
7. All disputes must be settled by December 31<sup>st</sup> following the end of the Federal Fiscal Year in which the dispute occurred.
8. The manufacturer shall not withhold any rebate payments under any circumstances.

9. If an over billing error occurs, MSDH WIC must make every effort to validate.
10. Upon resolution of the dispute, the MSDH WIC will reduce future billing by the amount determined to be owed.
11. MSDH and the Contractor must meet as often as necessary, to review progress and performance of the contract. During these meetings any concerns regarding billing procedures must be addressed. The manufacturer is responsible for meeting via phone or in person on a quarterly basis with MSDH WIC to discuss products as well as any issues regarding billing procedures.
12. The Contractor will be allowed to audit records in accordance with the contract and/or in accordance with any applicable WIC regulations, state, or federal law. Public Record Requests are processed in accordance with applicable state law.

## SECTION 3. PROCUREMENT METHODOLOGY

### 3.1 Restrictions on Communications with MSDH Staff

The contact person for this IFB is Dorthy Young, Bid Coordinator. At no time shall any Bidder or its personnel contact, or attempt to contact, any MSDH staff regarding this IFB other than the Bid Coordinator. All correspondence should be sent to Procurement at [procurement@msdh.ms.gov](mailto:procurement@msdh.ms.gov) and should reference “**WIC Rebate IFB RFx 316000746**”

### 3.2 Acceptance of Bids

After receipt of the bids, MSDH reserves the right to award the contract based on the terms, conditions, and premises of the IFB and the bid of the selected company without negotiation.

All bids properly submitted will be accepted by MSDH. After review MSDH may request necessary amendments from all Bidders, reject any or all bids received, or cancel this IFB, according to the best interest of MSDH and the State of Mississippi.

#### 3.2.1 Minor Irregularities

MSDH also reserves the right to waive minor irregularities in bids providing such action is in the best interest of MSDH and the State of Mississippi. A minor irregularity is defined as a variation of the IFB which does not affect the price of the bid or give one party an advantage or benefit not enjoyed by other parties, or adversely impact the interest of MSDH.

Where MSDH may waive minor irregularities as determined by MSDH, such waiver shall in no way modify the IFB requirements or excuse the Bidder from full compliance with the IFB specifications and other contract requirements should the Bidder be awarded the contract.

MSDH reserves the right to exclude any and all non-responsive bids from any consideration for contract award. MSDH shall award a firm fixed-price contract to the Bidder whose offer is responsive to the solicitation and is most advantageous to MSDH and the State of Mississippi in price, quality, and other factors considered.

### 3.3 Disposition of Bid

The bid submitted by the successful Bidder shall be incorporated into and become part of the resulting contract. All bids received by MSDH shall upon receipt become and remain the property of MSDH. MSDH shall have the right to use all concepts contained in any bid and this right shall not affect the solicitation or rejection of the bid.

### 3.4 Modification or Withdrawal of a Bid

Prior to the bid due date, a submitted bid may be withdrawn by submitting a written request for its withdrawal to MSDH, signed by the Bidder.

A Bidder may submit an amended bid before the due date for receipt of bids. Such amended bids shall be a complete replacement for a previously submitted bid and shall be clearly identified as such. MSDH shall not merge, collate, or assemble bid materials.

Unless requested by MSDH, no other amendments, revisions, or alterations to bids shall be accepted after the bid due date.

Any submitted bid shall remain a valid bid for one hundred eighty (180) calendar days from the bid due date.

### 3.5 Rejection of Bids

A bid response that includes terms and conditions that do not conform to the terms and conditions specified within this IFB document is subject to rejection as non-responsive. Further, submission of a bid sheet that is not complete and/or signed is subject to rejection as non-responsive. MSDH staff reserves the right to permit the Bidder to withdraw nonconforming terms and conditions from its bid response prior to a determination by MSDH staff of non-responsiveness based on the submission of nonconforming terms and conditions. Any bid which is conditioned upon receiving award of both the particular contract being solicited and another Mississippi contract shall be deemed non-responsive and will be rejected.

### 3.6 Alternate Bids

Each Bidder, its subsidiaries, affiliates, or related entities shall be limited to one (1) bid which is responsive to the requirements of this IFB. Failure to submit a responsive bid may result in the rejection of the Bidder's bid. Submission of more than one (1) bid by a Bidder may, at the discretion of MSDH, result in the rejection of all bids submitted. A Bidder's bids shall not include variable or multiple pricing options.

### 3.7 Bid Opening

Bids will be opened publicly via a ZOOM or telephone conference. Conference information and link will be posted on the MSDH website under "Calendars and Public Meetings". It is the bidder's responsibility to check the bid opening date on the Calendar and Public Meetings section for more information. The opening will include opening and reading the bid sheet aloud for each bid. Bid

evaluation will continue after the bid opening. No discussions will be entered into with any Bidder as to the quality or provisions of the specifications and no award will be made, either stated or implied, at the bid opening.

### 3.8 Corrections and Clarifications

The Office of Procurement and Contracts reserves the right to request clarifications or corrections to bids. Any bid received which does not meet any of the requirements of this IFB, including clarification or correction requests, may be considered non-responsive and eliminated from further consideration.

### 3.9 Bid Submission and Evaluation

All manufacturers shall submit one typed original and two copies of the bid. Bidders may submit online bids, but it is not required. Late bids, bids received after the due date and time, and bids submitted by any means other than those expressed herein, will not be considered under any circumstances.

No facsimile (FAX) bids will be accepted. Bid shall be signed by a manufacturer representative with the authority to commit the manufacturer to the bid.

The bid response shall be submitted in writing and provide a concise description of the manufacturer's capabilities to satisfy the requirements of this Invitation for Bid. Emphasis shall be on completeness (**technical component and cost component**) and clarity of content.

There is no intent to limit the contents of this bid to prohibit the inclusion of any additional information a manufacturer deems pertinent. Each bid must be in sufficient detail to permit understandable and comprehensive evaluation of the technical and cost components.

The award will be made to the responsive and responsible Bidder offering the lowest total monthly net price for infant formula which passes the technical component and agrees to conditions set forth in the Invitation for Bid.

#### 3.9.1 Bid Submission Format

The bid submitted shall contain at least the following indicated sections. These will be used to evaluate bids received.

**A. Bid Cover Sheet Appendix A**

**B. Cost Component (Bid Sheet Appendix B):**

1. The manufacturer must provide the brand name for the milk and soy- based infant formulas, including the following physical forms: concentrated liquid, powdered, and ready-to-feed.
2. The manufacturer must provide their nationally published lowest national wholesale price per unit for iron-fortified milk and soy-based infant formulas as of the date bids must be submitted.

3. The manufacturer will also write a rebate amount for each of the products indicated. The cost component will be analyzed and based on a standardized number of ounces using the evaluation tool labeled Appendix B. Bidders should use an electronic copy to complete the analysis of Appendix B. An electronic copy of Appendix B should be requested in writing via email to [procurement@msdh.ms.gov](mailto:procurement@msdh.ms.gov). **Rebate amounts must be submitted as a specific dollar and cent amount (extend to three (3) decimal places), or the bid will be disallowed.**

**C. Technical Component:** The Technical Component requirement will be evaluated only on a pass/fail basis. The Technical Component will provide the necessary information to determine the financial and infrastructure capability to produce and distribute infant formula based on current caseload and to meet MSDH WIC's requirements for operating a retail food delivery system. This section shall contain:

1. A copy of the manufacturer's latest annual report, annual financial report and/or Dunn and Bradstreet's current rating. Other sources of "financial information" may be provided to permit MSDH WIC to be satisfied with the manufacturer's financial stability.
2. A brief narrative in which the products being quoted are described.
3. The manufacturer's plans and approach for accomplishing the tasks described in the Scope of Bid.
4. A description of the current distribution network in the State of Mississippi. Include a list of distributors who carry the manufacturer's infant formula product line as well as their addresses and phone numbers.
5. **A copy of the wholesale price list separate from the Bid Sheet.**

**D. Certifications:**

1. Appendix C - MSDH Bidder Certifications
2. Appendix D- Certifications Regarding Lobbying- Contracts, Grants, Loans, and Cooperative Agreements
3. Appendix E- Certifications Regarding Debarment and Suspension

**E. Signed Amendment Acknowledgements (If applicable)**

### 3.9.2 Bid Evaluation

The award will be made to the responsive and responsible Bidder offering the lowest total monthly net price for infant formula and agrees to adhere to all terms and conditions set forth in the Invitation for Bid.

1. Responsive Bidder

In order to be deemed responsive, Bidder must submit a bid which conforms in all material respects to this IFB as determined by the MSDH Office of Procurement and Contracts. The submitted bid must include the **Bid Cover Sheet** (Appendix A) and **Bid Sheet** with supporting documentation(Appendix B) and along with all required attachments and other

documents which conform in all material respects to this IFB, as determined by the MSDH Office of Procurement and Contracts.

## 2. Responsible Bidder

Bidder must have the capability in all respects to fully perform the contract requirements with integrity and reliability which will assure good faith performance, as determined by MSDH. Bidder shall also meet the minimum qualifications to be deemed responsible. If a Bidder does not meet the minimum qualifications, the bid will be rejected.

**Minor Informalities** As part of the bid evaluation, minor informalities, which are matters of form rather than substance evident from the bid document, or insignificant mistakes, may be waived or corrected by the Bidder at the discretion of MSDH in compliance with Section 3.106.12.4 of the *Mississippi Procurement Manual*, a copy of which may be obtained at the Department of Finance and Administration at

<https://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/bureau-of-purchasing-and-contracting/procurement-manual/>

### 3.9.3 Notice of Award

Successful manufacturer will receive a preliminary notice of award pending approval of the Mississippi Public Procurement Review Board at their monthly meeting. The award for this procurement will be posted on the agency website at <http://www.msdh.ms.gov>. Bidders will be notified via e-mail of the awards.

### 3.10 Request for Reconsideration

Any request must be submitted in accordance with *Chapter 6, Legal and Contractual Remedies, Sections 6.101.08 through 6.101.008.3 of the Mississippi Procurement Manual*. Any actual or prospective bidder who is aggrieved in connection with this solicitation or contract awarded as a result of this IFB may file a request with Dorthy Young, Chief Procurement Officer. The request shall be received in the office of the Chief Procurement Officer, in writing, within seven (7) business days after such aggrieved person or entity knows or should have known of the facts giving rise thereto. The written request for reconsideration letter shall contain an explanation of the specific basis for the request. All requests for reconsideration must be in writing, dated, signed by the bidder or an individual authorized to sign contracts on behalf of the bidder, and contain a statement of the reason(s) for the request, citing the law(s), rule(s) and regulation(s) or procedure(s) on which the request is based. The requesting bidder must provide facts and evidence to support the request for reconsideration. A request for reconsideration is deemed filed when received by Dorthy Young, Chief Procurement Officer via either U.S. mail, postage prepaid, or by personal delivery. Requests filed by any means other than as describe herein will not be considered.

## SECTION 4. MANUFACTURER CERTIFICATIONS & ASSURANCES

By completing, signing, and submitting a bid sheet in response to this IFB, Manufacturer makes

the following Certifications and Assurances:

1. That the manufacturer has read and understands all requirements and specifications of this Invitation for Bid.
2. That the manufacturer has read and agrees to all provisions, requirements, specifications, terms, and conditions of this Invitation for Bid.
3. That the manufacturer will furnish the designated item(s), specifications, rebate, and/or service(s) as quoted in their bid.
4. The bid price was arrived at independently without collusion, consultation or communication with any other bidder or competitor and will remain firm throughout the term of the contract.
5. The said bid price was not disclosed by the bidder and was not discussed prior to the submission, directly or indirectly, to any other bidder or to any competitor; and
6. No attempt was made by the bidder to induce any other person, partnership, or corporation to submit a bid restricting competition.
7. Contractor will comply with Titles IV, VI, and VII of the Civil Rights Act of 1964, the Federal Age Discrimination in Employment Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and all applicable federal and state laws, rules, and regulations.
8. The manufacturer shall obey all applicable federal and State of Mississippi licensing and certification requirements. The manufacturer shall comply with all applicable federal regulations in the performance of its duties under this contract. This shall include all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act 42 U.S.C. 1875 (h) Section 508 of the Clean Air Act (33 U.S.C. 1368), Executive Order 11738, and the Environmental Protection Agency regulations (40 CFR part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The manufacturer shall report violations to the State of Mississippi DEQ.
9. The manufacturer warrants that no part of any rebate provided herein shall be paid directly or indirectly to any officer or employee of the State of Mississippi as wages, compensation, or gifts in exchange for acting as officer, agent, employee, sub- contractor, or consultant to the manufacturer in connection with any work contemplated or performed relative to the bid.
10. The bidder hereby certifies that the company is registered under the Food, Drug and Cosmetic Act with the United States Department of Health & Human Services and its products are in compliance with Federal regulations issued pursuant to P.L. 100-237. Bids for all physical forms of formula must meet the requirements of 246.10 (e) (1)(iii) and 246.10(e)(2)(iii) and be suitable for the routine issuance to the majority of generally healthy, full-term infants.
11. Each infant formula product to be supplied under the terms of the contract complies with the Federal Food, Drug, and Cosmetic Act.
12. The Bidder certifies that the company can and will supply the quantities of infant formula offered to meet one hundred percent (100%) of the WIC Program's needs in all geographic

areas.

13. The bidder, being an independent contractor and not an employee of the State of Mississippi, agrees to carry adequate public liability and other appropriate forms of insurance, and to pay all taxes incident hereto.
  - a. If self-insured, the BIDDER shall provide to the State of Mississippi a certified statement which summarizes its self-insurance plan at the time this contract is submitted for approval and report any changes of said plan which may occur during the term of this contract period.
  - b. The State of Mississippi shall have no liability to pay the Contract Bank except as specifically provided in this contract.
14. The State of Mississippi shall have no liability except as specifically provided in this Invitation for Bid.
15. The manufacturer certifies all items quoted represent the products of the manufacturer.
16. That the company is licensed or authorized to provide the proposed services in the State of Mississippi.
17. That, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date.

## SECTION 5. USDA NONDISCRIMINATION STATEMENT

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil  
Rights 1400 Independence Avenue, SW  
Washington, D.C. 20250-9410  
fax: (202) 690-7442; or

email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

## SECTION 6. BID COVER SHEET

All requested information shall be completed on Appendix A, **Bid Cover Sheet**. Bidders may use additional pages if necessary. Failure to complete and/or sign the bid cover sheet may result in the Bidder being determined nonresponsive.

## SECTION 7. BID SHEET

All pricing should be submitted on Appendix B, **Bid Sheet**. Pricing will only be accepted on the bid form. Failure to complete and/or sign the bid form may result in the Bidder being determined nonresponsive. Bidder must submit a notarized Appendix B-1, **Bid Sheet Cont'd**, to submit a complete bid submission. Bids submitted on Appendix B without Appendix B-1 will not be considered.

## SECTION 8. CONTINGENCIES AND GRAUTITES

All pricing should be submitted on Appendix B, **Bid Sheet**. Pricing will only be accepted on the bid form. Failure to complete and/or sign the bid form may result in the Bidder being determined nonresponsive. Bidder must submit a notarized Appendix B-1, **Bid Sheet Cont'd**, to submit a complete bid submission. Bids submitted on Appendix B without Appendix B-1 will not be considered.

## SECTION 9. MSDH SAMPLE STANDARD CONTRACT

All pricing should be submitted on Appendix B, **Bid Sheet**. Pricing will only be accepted on the bid sheet. Failure to complete and/or sign the bid sheet may result in the Bidder being determined nonresponsive. Bidder must submit a notarized Appendix B-1, **Bid Sheet Cont'd**, to submit a complete bid submission. Bids submitted on an Appendix B without Appendix B-1 will not be considered.

## SECTION 10. PARTICIPATION and UNITS ISSUED PER MONTH

Following is six (6) months of the most current data available at time of the IFB announcement. The data is obtained from our MIS (SPIRIT). MSDH WIC provides no guarantee of the quantity, type, or physical form that will be used under a new contract. The participant and infant formula issuance data does not reflect the actual issuance and redemption that will occur under this contract.

## Participation by Category for July 2024 –December 2024

PARTICIPATION DATE	INFANTS	FBF INFANT	PBF INFANT	INFANT PBF <= MAX	INFANT PBF > MAX	INFANT FFF
24-Jul	18450	948	2787	693	2094	14715
24-Aug	18440	987	2718	672	2046	14735
24-Sep	17905	982	2676	651	2025	14247
24-Oct	18199	1048	2782	674	2108	14369
24-Nov	17817	1040	2709	655	2054	14068
24-Dec	17595	1022	2676	649	2027	13897

Infants – total infants  
PBF – partially breastfeeding  
FFF – fully formula feeding

## Participation by Category for July 2024 –December 2024

(excluding fully breastfed and exempt infant formula fed)

PARTICIPATION DATE	INFANTS	PBF INFANT	INFANT PBF <= MAX	INFANT PBF > MAX	INFANT FFF
24-Jul	14530	2385	608	1777	12145
24-Aug	14404	2303	578	1725	12101
24-Sep	14019	2233	556	1677	11786
24-Oct	14199	2343	585	1758	11856
24-Nov	13809	2292	569	1723	11517
24-Dec	13637	2281	561	1720	11356

**Units Issued by Month  
July 2024 –December 2024**

Formula Name	202407	202408	202409	202410	202411	202412
12.1 OZ. ALIMENTUM, POWDER	3826	3611	3427	3537	3362	3393
12.4 OZ. ENFAMIL GENTLEASE, PWD.	47797	48281	48404	48886	47459	46148
12.4 OZ. ENFAMIL REGULINE PWD.	89	708	1150	1150	1250	1379
12.5 OZ. ENFAMIL INFANT POWDER	51091	54586	53827	54067	51843	51087
12.6 OZ. NUTRAMIGEN W/ ENF LGG, POWDER	7713	8007	8001	8452	8655	8723
12.8 OZ. ENFACARE (22 CAL) POWDER	2052	2049	1746	1907	1908	1776
12.9 OZ. ENFAMIL AR, PWD	15245	13740	8906	8734	9383	9901
12.9 OZ. ENFAMIL PROSOBEE, POWDER	5143	5310	5257	5130	4716	4880
13 OZ. ENFAMIL INFANT CONCENTRATE	3078	3108	2651	2842	2444	2198
13 OZ. ENFAMIL PROSOBEE, CONCENTRATE	753	706	808	665	639	1137
13 OZ. NUTRAMIGEN, CONCENTRATE	301	228	86	117	36	34
13.1 OZ. SIMILAC NEOSURE (22 CAL), POWDER	5177	5184	5361	5782	5764	5724
14 OZ. NEOCATE JUNIOR, POWDER, UNFLAVORED	627	636	518	577	551	547
14 OZ. NEOCATE POWDER, INFANT	833	818	857	814	819	825
14.1 OZ. ALFAMINO INFANT, PWD.	139	100	70	123	128	108
14.1 OZ NEOCATE SYNEO JR. PWD	0	0	0	14	28	56
14.1 OZ PURAMINO, POWDER	626	571	599	694	722	754
14.1 OZ X 4 NEOCATE SYNEO	52	54	74	53	49	48
14.1 OZ. ALFAMINO JR., PWD.	100	135	142	180	170	184
14.1 OZ. ELECARE JR. VANILLA, POWDER	117	98	127	142	122	110
14.1 OZ. ELECARE JR., UNFLAVORED, POWDER	163	164	190	91	120	208
14.1 OZ. ELECARE, UNFLAVORED, POWDER (INFANT)	703	587	549	611	670	658
14.1 OZ. EXTENSIVE HA	9	0	24	23	20	42
14.1 OZ. PHENEX-1, POWDER	0	9	0	0	0	0
14.1 OZ. PHENEX-2, POWDER	11	11	11	0	11	11
14.1 OZ. SIMILAC PM 60/40, POWDER	50	67	49	64	56	53
2 OZ. ENFACARE (22 CAL) RTF	450	0	0	414	0	0
2 OZ. ENFAMIL, 24 CAL, LIPIL WITH IRON, RTF	1785	4291	4235	1800	1375	2031
32 OZ. ALIMENTUM, RTF	655	554	496	567	681	632
32 OZ. ENFAMIL INFANT, RTF	584	464	276	219	212	120
32 OZ. ENFAMIL PROSOBEE, RTF	103	68	127	135	91	97
32 OZ. NUTRAMIGEN, RTF	105	134	164	147	147	134
32 OZ. SIMILAC NEOSURE (22 CAL), RTF	319	318	355	236	389	311
6 - 2 OZ. PREGESTIMIL, 24 CALORIE, RTF	1242	414	0	0	0	45
8 OZ, PEDIASURE ENTERAL W/FIBER, VANILLA, RTF	221	156	108	0	0	241
8 OZ. BOOST KIDS ESSENTIALS 1.0, VAN, RTU	1802	2170	1751	1715	1598	1749
8 OZ. PEDIASURE ENTERAL, VANILLA, RTF	296	262	466	356	243	143
8 OZ. PEDIASURE PEPTIDE, 1.0, UNFLAVORED	2358	2403	2191	2429	1775	1863
8 OZ. PEDIASURE WITH FIBER, VAN, RTF	976	855	836	1155	866	943
8 OZ. PEDIASURE, VAN, RTF	22905	23892	23598	23618	23534	24709
8.45 OZ PEPTAMEN JR., UNFLAVORED, RTF	107	107	100	0	50	100
8.45 OZ. NUTREN JR 1.0, VAN,RTF	314	207	228	214	225	199
8.45 OZ. NUTREN JR. WITH FIBER, VAN, RTF	107	107	0	0	0	0
8.45 OZ. PEPTAMEN JR., 1.5, UNFLAV., RTF	767	510	321	314	314	421
8.45 OZ. PEPTAMEN JR., VAN. W/FIBER, RTF	266	107	0	0	0	0
8.45 OZ. PEPTAMEN JR., VAN., RTF	1063	670	635	1056	682	655
FORTINI 4OZ RTF	4024	4033	4255	4144	3670	3969
NEOCATE SPLASH 8 OZ.	339	113	113	57	113	173
PEDIASURE WITH FIBER ANY FLAVOR 7.4 OZ. 4 PACK	464	386	490	188	0	122
PWD. NON CONTRACT STANDARD INFANT FORMULA EMERGENCY	0	10	0	0	0	0

## Appendix A Bid Cover Sheet

The Mississippi State Department of Health is currently accepting bids for WIC Infant Formula Rebate. Bids are to be submitted as directed, on or before Date and Time TBD

<b>Name of Company</b>	
<b>Company Representative</b>	
<b>Company Representative Title</b>	
<b>Mailing Address</b>	
<b>Mailing City, State, Zip</b>	
<b>Telephone:</b>	
<b>E-Mail Address:</b>	

Are you currently registered as a Supplier in MAGIC?\_

YES  NO

If known, what is your supplier number? \_\_\_\_\_

Are you currently registered with PayMode?

YES  NO

In addition to providing the above contact information, please answer the following questions regarding your company:

- Is Bidder an infant formula manufacturer registered with the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321 et seq.) and its products are in compliance with Federal regulations issued pursuant to Public Law 100-237?
- Does Bidder have a current retail distribution network established in Mississippi and guarantees that sufficient quantities of the rebate formulas will be available to major wholesalers and approximately 263 authorized WIC grocery vendors statewide to meet MSDH WIC's needs 30 days prior to contract implementation on September 1, 2025?

By signing the Bid Sheet, Bidder represents that it has all required certifications/licenses and will maintain such throughout the contract term.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Appendix B**  
**WIC Infant Formula Electronic Rebate Bid Sheet**

Bidders should request an electronic copy of this attachment.

Dorothy Young, PhD., MHSA, CMPA, or  
Hannah Wright  
Bid Coordinators  
Email: [procurement@msdh.ms.gov](mailto:procurement@msdh.ms.gov)

# Appendix B-1

## WIC Infant Formula Electronic Rebate Bid Sheet Continued

We agree to furnish the above at the prices shown and guarantee that each item offered will meet or exceed all specifications, terms, conditions, and requirements listed herein.

We agree to the terms, conditions, specifications, **certifications and requirements** as set forth in the Invitation for Bid. We hereby affirm we have not been in any agreement or collusion among respondents or prospective respondents in restraint of freedom of competition by agreement to respond at a fixed price or to refrain from responding or otherwise.

_____ Authorized Signature (ink)	_____ Manufacturer Name
_____ Typed Authorized Name	_____ Mailing Address
_____ Title of Authorized Person	_____ City, State, Zip Code
_____ FEIN#	_____ Telephone No. (Including Area Code)
	_____ Fax No. (including Area Code)

Personally appeared before me and sworn to and subscribed before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Notary Public

## **Appendix C**

### **Certifications Regarding Contingencies and Gratuities**

1. *NON-DEBARMENT* - By submitting a bid, the Bidder certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi or federal government and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi or federal government.
2. *INDEPENDENT PRICE DETERMINATION* - The Bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the bid offered.
3. *PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES* - The prospective contractor represents as a part of such Contractor's bid or proposal that such Contractor has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.
4. *REPRESENTATION REGARDING CONTINGENT FEES* - The Contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or other contingent fee, except as disclosed in the Contractor's bid or proposal.
5. *REPRESENTATION REGARDING GRATUITIES* - The Bidder, offeror, or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 9.105 (Gratuities) of the Mississippi Procurement Manual as updated and replaced by PPRB.
6. By submitting a bid, the Bidder certifies that it is registered to do business in the State of Mississippi as prescribed by Mississippi law and the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being notified by the MSDH Office of Procurement and Contracts that it has been awarded a contract.
7. The State of Mississippi utilizes the Mississippi Accountability System for Government Information and Collaboration (MAGIC) system to manage contracts. Additionally, electronic payments are issued through an electronic portal called PayMode. In order to do business with the State of Mississippi, all Suppliers must be registered with both systems. By submitting a bid, the Bidder certifies that it is registered with both systems or if not already registered, that it will do so within seven (7) business days of being notified by the MSDH Office of Procurement and Contracts that it has been awarded a contract.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Appendix D

UNITED STATES DEPARTMENT OF AGRICULTURE

---

### NOTICE TO APPLICANTS - CERTIFICATION/DISCLOSURE REQUIREMENTS RELATED TO LOBBYING

---

Section 319 of Public Law 101-121 (31 U.S.C.), signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. Certain provisions of the law also apply to Federal commitments for loan guarantees and insurance; however, it provides exemptions for Indian tribes and tribal organizations.

Effective December 23, 1989, current and prospective recipients (and their sub tier contractors and/or subgrantees) will be prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement or loan. In addition, for each award action in excess of \$100,000 (or

\$150,000 for loans) on or after December 23, 1989, the law requires recipients and their sub tier contractors and/or subgrantees to: (1) certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their sub tier contractors or subgrantees will pay with profits or non-appropriated funds on or after December 23, 1989; and (3) file quarterly updates about the use of lobbyists if materials changes occur in their use. The law establishes civil penalties for noncompliance.

If you are a current recipient of funding or have an application, proposal, or bid pending as of December 23, 1989, the law will have the following immediate consequences for you:

- You are prohibited from using appropriated funds (other than profits from Federal contracts) on or after December 23, 1989, for lobbying Congress or any Federal agency in connection with a particular contract, grant, cooperative agreement, or loan;
- you are required to execute the attached certification at the time of submission of an application or before any action in excess of \$100,000 is awarded; and
- you will be required to complete the lobbying disclosure form if the disclosure requirements apply to you.

Regulations implementing Section 319 of Public Law 101-121 have been published as an Interim Final Rule by the Office of Management and Budget as Part III of the February 26, 1990, Federal Register (pages 6736-6746)

## Appendix D Cont'd

### UNITED STATES DEPARTMENT OF AGRICULTURE CERTIFICATION

---

#### REGARDING LOBBYING - CONTRACTS, GRANTS, LOANS AND

#### COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement;

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this

Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

---

Organization Name

Award Number or Project Name

---

Name and Title of Authorized Representative

## Appendix E

---

**Name of Organization**

### Certification Concerning Debarment and Suspension

In accordance with Debarment and Suspension Executive Order No. 12549, the Provider and the Department hereby certify as follows:

1.) The department as primary participant certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- b. Have not within a three-year period preceding this proposal been convicted of or has a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- c. Are not presently indicated for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offense enumerated in paragraph (1)(B) of this certification; and
- d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or Local) terminated for cause or default.

2.) The prospective Provider of lower tier participant certifies by signature below, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Whereas the prospective Provider or lower tier participant is unable to certify any of the statements in this certification, such prospective participants shall attain an explanation.

---

**Signature of Authorized Representative & Date**



## Appendix F

---

**Name of Organization**

### Civil Rights Assurance

The Contractor hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189) as implemented by Department of Justice regulations at (28 CFR Parts 35 and 36); Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000), all provisions required by the implementing regulations of the U.S. Department of Agriculture (7 CFR Part 15 et seq); and FNS directives and guidelines to the effect that no person shall, on the ground of race, color, national origin, age, sex (including gender identity and sexual orientation), or disability, or reprisal or retaliation for prior civil rights activity be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the Agency receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement.

By providing this assurance, the Contractor agrees to compile data, maintain records and submit records and reports as required to permit effective enforcement of the nondiscrimination laws, and to permit Department personnel during normal working hours to review and copy such records, books and accounts, access such facilities, and interview such personnel as needed to ascertain compliance with the non-discrimination laws. If there are any violations of this assurance, the Department of Agriculture shall have the right to seek judicial enforcement of this assurance.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other

MSDH WIC Infant Formula Rebate—September 2025 Page 36 of 54

financial assistance extended in reliance on the representations and agreements made in this assurance.

This assurance is binding on the Contractor, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from the Department. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the Contractor.

---

**Signature of Authorized Representative & Date**

## Appendix G

*MISSISSIPPI STATE DEPARTMENT  
OF HEALTH WIC INFANT FORMULA  
REBATE*

### GENERAL TERMS AND CONDITIONS

---

1. Assignment and Receipt of Amounts Payable. This section applies only to a Contractor which serves as a clinical or healthcare provider for the Department, as follows:
  - a. The Contractor authorizes the Department to accept assignment and receive any amounts payable under Part B of Title XVII and Title XIX of the Social Security Act and/or any monies collected for service rendered by the Contractor under the terms of this contract, including but not limited to private insurance, third-party arrangements, or such other payment or reimbursement mechanisms as may be applicable or available. The Contractor agrees that the Department shall be the payor or financial reimbursement mechanism of last resort when other sources are mandated or are available.
  - b. The Contractor agrees that no additional charges will be made to patients/clients to whom services are provided under the terms of this contract.
2. Applicable Law. The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.
3. Approval. It is understood that if this contract requires approval by the Public Procurement Review Board (“PPRB”) and/or the Department of Finance and Administration and this contract is not approved by PPRB and/or OPSCR, it is void and no payment shall be made hereunder.
4. Availability of Funds. It is expressly understood and agreed that the obligation of MSDH to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt the appropriated funds. If the funds anticipated for the continuing time fulfillment of the agreement are, at any time, not forthcoming or insufficient, regardless of the source of funding, MSDH shall have the right upon 10 business days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expense to the MSDH of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
5. Attorneys’ Fees and Expenses. Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and

attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Contractor.

6. Authority to Contract. Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.
7. Certification of Independent Price Determination. By submitting a bid the bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without any consultation, communication, or agreement with any other bidder or competitor for the purpose of restricting competition.
8. Compliance with Equal Opportunity in Employment Policy. Contractor understands that the MSDH is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services.
9. Compliance with Laws. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, state, and local laws and regulations, as now existing and as may be amended or modified.
10. Confidential Information. Confidential Information shall be defined as (1) those materials, documents, data, and other information which the Contractor has designated in writing as proprietary and confidential; and (2) all materials, documents, data and information which the Contractor acquires as a result of its contact with and efforts on behalf of MSDH, and any other information designated in writing as confidential by MSDH or the State of Mississippi.

Each party to this contract agrees to protect all Confidential Information provided by one party to the other, to treat all such Confidential Information as confidential to the extent that confidential treatment is allowed under State and/or Federal law, and, except as otherwise required by law, not to publish or disclose such information to any third party without the other party's written permission, and to do so by using those methods and procedures normally used to protect the party's own confidential information. Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor or its Subcontractors shall rest with the Contractor. Disclosure of any confidential information by the Contractor or its Subcontractors without the express written approval of MSDH shall result in the immediate termination of this contract.

11. Confidentiality. Notwithstanding any provision to the contrary contained herein, it is recognized that MSDH is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 *et seq.* If a public records request is made for any information provided to MSDH pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, MSDH shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The MSDH shall not be liable to the Contractor for disclosure of information required by court order or required by law.
12. Contract Rights. Contract rights do not vest in any party until a contract is legally executed. The MSDH is under no obligation to award a contract following issuance of this solicitation.

Disclosure of Confidential Information. In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

13. Exceptions to Confidential Information. Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“disclosing party”) which:
  - (1) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
  - (2) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer; is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
  - (3) is independently developed by the recipient without any reliance on confidential information;
  - (4) is or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or,
  - (5) is disclosed with the disclosing party’s prior written consent.

14. E-Payment. Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The Agency agrees to make payment in accordance with Mississippi "Timely Payments for Purchases by Public Bodies" laws, which generally provide for payment of undisputed amounts by the Agency within 45 calendar days of receipt of invoice. Mississippi Code Annotated § 31-7-301, *et seq.*
15. Expenses Incurred in the Procurement Process. All parties participating in the procurement process with regard to this solicitation shall bear their own costs of participation, pursuant to Section 1.4.4 of the *Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.
16. Disputes. Any dispute concerning a question of fact arising under this Contract shall be disposed of by good faith negotiation between duly authorized representative of MSDH and the Contractor. Disputes that cannot be resolved in this manner shall be determined by a court of competent jurisdiction in Hinds County, Mississippi. Pending final decision of a dispute, the Contractor shall proceed diligently with the performance of its obligation in this agreement.
17. Failure to Deliver. In the event of failure of Contractor to deliver services in accordance with the contract terms and conditions, MSDH, after due oral or written notice, may procure the services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that MSDH may have.
18. Failure to Enforce. Failure by MSDH at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of MSDH to enforce any provision at any time in accordance with its terms.
19. Force Majeure. Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("force majeure events"). When such a cause arises, Contractor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the agreement.
20. HIPAA Compliance. Contractor agrees to comply with the "Administrative Simplification" provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be

applicable to the services under this contract.

21. Indemnification.

- a. If Contractor is another agency or entity of the State of Mississippi, the following shall apply:

Contractor's tort liability, as an entity of the State of Mississippi, is determined and controlled in accordance with Mississippi Code Annotated §§ 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this agreement shall have the effect of changing or altering this liability or of eliminating any defense available to the State under statute.

- b. For all other Contractors, the following shall apply:

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney's fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonably withhold.

22. Independent Contractor Status. Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of MSDH, and MSDH shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. MSDH shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any

other amounts for benefits to Contractor. Further, MSDH shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

23. Modification or Renegotiation. This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary.
24. No Limitation of Liability. Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Contractor for harm caused by the intentional or reckless conduct of Contractor or for damages incurred through the negligent performance of duties by Contractor or the delivery of products that are defective due to negligent construction.
25. Non-Discrimination for HIV/AIDS. As a recipient of Federal funds, directly or indirectly through payments from the Department, the Contractor agrees that no person(s) who are otherwise qualified shall be denied employment, funds, education, or care in the program(s) funded in whole or in part by the Department on account of affliction with Acquired Immune Deficiency Syndrome (AIDS)-related conditions, or on the basis of their infection with the Human Immunodeficiency Virus (HIV). This non-discrimination agreement and policy shall likewise apply to those individuals or groups who may be perceived as having AIDS or the aforementioned AIDS-related conditions, or who are perceived as being infected with HIV.
26. Ownership of Documents and Work Papers. MSDH shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this agreement, except for Contractor's internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to MSDH upon termination or completion of the agreement. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from MSDH and subject to any copyright protections.

Additionally, Contractor assures that any and all information regarding clients of MSDH will be kept strictly confidential and will become the property of MSDH. Contractor assures that MSDH shall have full access to all information collected. The Contractor is prohibited from use of the above described information and/or materials without the express written approval of MSDH.

Paper documents and electronic devices and media containing Personally Identifiable Information must be returned or, if approved by MSDH, destroyed in a preapproved manner. Contractor agrees to contact MSDH for further guidance on approved methods on destroying electronic devices and related media.

27. Paymode. Payments by MSDH using the state’s accounting system shall be made and remittance information provided electronically as directed by the state and deposited into the bank account of Contractor’s choice. The MSDH may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the Agency is exempt from the payment of Mississippi taxes. All payments shall be in United States currency.
28. Personally Identifiable Information. Contractor will not disclose or release any Personally Identifiable Information (PII) to which the Contractor has access except as required to do so to authorized employees and officials within the scope of the Contractor’s duties under this contract. Furthermore, Contractor acknowledges that any unauthorized disclosure of the information provided under this contract may violate Federal and/or State laws and subject the Contractor to penalties.
29. Procurement Regulations. The contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board, Mississippi Procurement Manual*, a copy of which is available at 501 North West Street, 701 Woolfolk Building Suite A, Jackson, Mississippi 39201 for inspection, or downloadable at [www.dfa.ms.gov](http://www.dfa.ms.gov).
30. Record Retention and Access to Records. Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor’s books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. Unless mandated by federal or state law for a longer retention period, all records related to this agreement shall be retained by Contractor for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later. Unless mandated by federal or state law for a longer retention period, all records related to this agreement that contain, or are associated with, protected health information (PHI) shall be retained by Contractor for at least six (6) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the six (6) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the six (6) year period, whichever is later.
31. Recovery of Money. Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to MSDH, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and MSDH. The rights of MSDH are in addition and without prejudice to any other right MSDH may have to claim the amount of any loss or damage suffered by MSDH on account of the acts or

omissions of Contractor.

32. Representation Regarding Gratuities. Contractor represents that it has not, is not, and will not offer, give, or agree to give any employee or former employee of MSDH a gratuity or offer of employment in connection with any approval, disapproval, recommendation, development, or any other action or decision related to the solicitation and resulting contract. Contractor further represents that no employee or former employee of MSDH has or is soliciting, demanding, accepting, or agreeing to accept a gratuity or offer of employment for the reasons previously stated; any such action by an employee or former employee in the future, if any, will be rejected by Contractor further represents that it is in compliance with the Mississippi Ethics in Government laws, codified at Mississippi Code Annotated §§ 25-4-101 through 25-4-121, and has not solicited any employee or former employee to act in violation of said law.
33. Required Public Records and Transparency. Upon execution of a contract, the provisions of the contract which contain the personal or professional services provided, the unit prices, the overall price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information pursuant to Mississippi Code Annotated § 25-61-9(7). The contract shall be posted publicly on [www.transparency.ms.gov](http://www.transparency.ms.gov) and shall be available for at the Agency for examination, inspection, or reproduction by the public. The contractor acknowledges and agrees that the MSDH and this contract are subject to the *Mississippi Public Records Act of 1983* codified at Mississippi Code Annotated §§ 25-61-1, *et seq.* and its exceptions, Mississippi Code Annotated § 79-23-1, and the *Mississippi Accountability and Transparency Act of 2008*, codified at Mississippi Code Annotated §§ 27-104-151, *et seq.*
34. Right to Audit. Contractor shall maintain such financial records and other records as may be prescribed by the MSDH or by applicable federal and state laws and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by the MSDH, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the MSDH, the Mississippi State Auditor's Office, and/or other entity of the state.
35. Severability. If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.
36. Stop Work Order. The MSDH may, by written order to Contractor at any time, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a period of time specified by the MSDH. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize any further cost to the MSDH. Upon expiration of the stop work order, Contractor shall resume providing the services which were subject to the stop work order, unless the MSDH has terminated that part of the agreement or terminated the agreement in its entirety. The MSDH is not liable for payment for services which were not rendered due to the stop work order.

37. Termination for Convenience.

- a. *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.
- b. *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

38. Termination for Default.

- a. *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the Chief Procurement Officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
- c. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

*Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

- d. *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
- e. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

- 39. Termination upon Bankruptcy. This contract may be terminated in whole or in part by the Mississippi State Department of Health upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

40. Third Party Action Notification. Contractor shall give the customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.
41. Trade Secrets, Commercial and Financial Information. It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.
42. Transparency. This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.
43. Unsatisfactory Work. If, at any time during the contract term, the service performed or work done by Contractor is considered by MSDH to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by MSDH, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, MSDH shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Contractor.
44. Waiver. No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as, or require waiver of future or other defaults.

#### **ACKNOWLEDGEMENTS AND SPECIAL TERMS**

---

The following acknowledgements and conditions shall be made a part of this agreement:

CONFLICT OF INTEREST. To the best of his or her knowledge, Contractor certifies that no MSDH employee, or spouse, parent or child of an MSDH employee, serves as a member of its governing body, project staff or has an ownership or pecuniary interest in the Contractor. Contractor agrees that should this condition change during the period of this contract, Contractor shall notify MSDH within 30 days. Notification should be sent by certified mail to the following:

Mississippi State Department of Health  
Attention: MSDH Legal Department  
Post Office Box 1700  
Jackson, Mississippi 39215-1700

Furthermore, Contractor represents, to the best of his or her knowledge and belief, that this contract does not present the Contractor with a conflict of interest with respect to any past, current, or potential contract or employment such that the Contractor would be unable to perform impartially and without bias.

DEBARMENT AND SUSPENSION. Contractor certifies to the best of its knowledge and belief, that it:

1. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
2. has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
3. has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
4. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,
5. has not, within a three-year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

REPRESENTATION REGARDING CONTINGENT FEES. Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.

REPRESENTATION REGARDING GRATUITIES. Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section

6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

**STATEMENT OF WORK**

---

Contractor’s services shall be in accordance with the Infant Formula Rebate IFB, manufacturer response, and documentation submitted to MSDH as a quote or statement of work. A reasonable allowance for contingencies shall be included for market conditions at the time of the written quote and for unanticipated changes required in the work of this project.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Appendix G**  
**Draft Proposed Letter and Invoice**



MISSISSIPPI STATE DEPARTMENT OF HEALTH

February 10, 2025

WIC Administrator  
Mead Johnson Nutrition  
2400 West Lloyd Expressway  
Evansville, Indiana 47721

Dear WIC Administrator:

Attached you will find the Statement of Account, the Invoice, and Rebate Amounts by Issue Month, and Formula Category for the month of January 2025. The rebate amount for January 2025 is \$1,865,624.28.

If you have any questions, please contact me at [Dionna.Mitchell@msdh.ms.gov](mailto:Dionna.Mitchell@msdh.ms.gov) or 601.991.6000.

Sincerely,

*Dionna R. Mitchell*

Dionna R. Mitchell  
Accounting Team Lead

Attachments

# Appendix G Cont'd

## Draft Proposed Letter and Invoice

**MISSISSIPPI DEPARTMENT OF HEALTH**

805 SOUTH WHEATLEY, SUITE 400  
 RIDGELAND, MS 39157  
 Phone: (601) 991-6000

INVOICE #	DATE
MS2025-0125	2/10/2025

**BILL TO**

Mead Johnson Nutrition  
 2400 West Lloyd Expressway  
 Evansville, Indiana 47721  
 1.812.429.6033

Redemptions Month: January 2025

WIC REBATE INVOICE  
 STATE: MISSISSIPPI

FORMULA DESCRIPTION	Benefit Issued Month	Number of Cans Redeemed (EA)	Rebate per can	Total Rebate
MIL INFANT CONCENTRATE	Dec-24	491	4.86	2386.26
MIL INFANT CONCENTRATE	Jan-25	1263	4.86	6138.18
<b>INFANT CONCENTRATE TOTAL</b>		<b>1754</b>		<b>8524.44</b>
ENFAMIL INFANT PWD	Dec-24	7126	16.802	119731.05
ENFAMIL INFANT PWD	Jan-25	37903	16.802	636846.21
<b>AMIL INFANT PWD TOTAL</b>		<b>45029</b>		<b>756577.26</b>
ENFAMIL A.R. PWD	Dec-24	1483	20.172	29915.08
ENFAMIL A.R. PWD	Jan-25	8505	20.172	171562.86
<b>FAMIL A.R. PWD TOTAL</b>		<b>9988</b>		<b>201477.94</b>
ENFAMIL GENTLEASE	Dec-24	6253	18.842	117819.03
ENFAMIL GENTLEASE	Jan-25	36378	18.842	685434.28
<b>AMIL GENTLEASE TOTAL</b>		<b>42631</b>		<b>803253.31</b>
MIL PROSOBE CONCENTRATE	Dec-24	69	5.187	357.90
MIL PROSOBE CONCENTRATE	Jan-25	286	5.187	1483.48
<b>PROSOBE CONCENTRATE TOTAL</b>		<b>355</b>		<b>1841.38</b>
ENAFAMIL PROSOBEE	Dec-24	684	20.822	14242.25
ENAFAMIL PROSOBEE	Jan-25	2616	20.822	54470.35
<b>AMIL PROSOBEE TOTAL</b>		<b>3300</b>		<b>68712.60</b>
AFAMIL REGULINE PWD	Dec-24	201	19.763	3972.36
AFAMIL REGULINE PWD	Jan-25	1076	19.763	21264.99
<b>AMIL REGULINE PWD TOTAL</b>		<b>1277</b>		<b>25237.35</b>
	<b>TOTAL</b>	<b>104334</b>		<b>\$ 1,865,624.28</b>

Total Cans Issued in January 2025 Redeemed in January 2025	16307	\$ 288,423.93
Total Cans Issued in December 2024 Redeemed in January 2025	88027	\$ 1,577,200.34
<b>Total Cans Redeemed January 2025</b>	<b>104334</b>	<b>\$ 1,865,624.28</b>

If you have any questions about this invoice, please contact  
**[Dionna Mitchell, 601.991.6000, Dionna.Mitchell@msdh.ms.gov]**

## Appendix H

### Glossary of Terms

#### Infant formula:

- Must meet 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 at 21 CFR parts 106 and 107;
- Must be designed for enteral digestion via an oral or tube feeding;
- Must provide at least 10 mg iron per liter (at least 1.5mg iron/100kilocalories) at standard dilution;
- Must provide at least 67 kilocalories per 100 milliliters (approximately 20 kilocalories perfluid ounce) at standard dilution;
- Must not require the addition of any ingredients other than water prior to being served in a liquid state.

#### Exempt infant formula

- Infant formula intended for commercial or charitable distribution that is represented and labeled for use by infants who have inborn errors of metabolism or low birth weight, or who otherwise have unusual medical or dietary problems ([21 CFR 107.3](#)).
- Infant formula that meets the requirements for an exempt infant formula under section412(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;
- Must be designed for enteral digestion via an oral or tube feeding.

#### Contract brand infant formula:

- All infant formulas (except exempt infant formulas) produced by the manufacturer awarded the infant formula cost containment contract.
- If under a single solicitation the manufacturer subcontracts for soy-based infant formula, then all soy-based infant formulas covered by the subcontract are also considered contract brand infant formulas (see §246.16a(c)(2)(i)).
- If a State agency elects to solicit separate bids for milk-based and soy-based infant formulas, all infant formulas issued under each contract are considered the contract brand infant formula (see §246.16a(c)(2)(ii)).
  - For example, all milk-based infant formulas issued by a State agency that

are produced by the manufacturer that was awarded the milk-based contract are considered contract brand infant formulas. Similarly, all soy-based infant formulas issued by a State agency that are produced by the manufacturer that was awarded the soy-based contract are also considered to be contract brand infant formulas.

- Contract brand infant formulas also include all infant formulas (except exempt infant formulas) introduced after the contract is awarded.

Non-contract brand formula:

- All infant formula, including exempt infant formula, that is not covered by an infant formula cost containment contract awarded by a State agency.

Primary contract brand infant formula:

- The specific infant formula for which manufacturers submit a bid to a State agency in response to a rebate solicitation and for which a contract is awarded by the State agency as a result of that bid.