

**INVITATION FOR BID
INFANT FORMULA REBATE**

RFx 3160003372

December 23, 2019

**STATE OF MISSISSIPPI
MISSISSIPPI STATE DEPARTMENT OF
HEALTH
WIC PROGRAM**

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INVITATION FOR BID
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HEALTH
WIC PROGRAM

I. PURPOSE

This is an invitation for bid (IFB) to obtain the lowest net cost per unit, using the lowest national wholesale price for a full truckload, on infant formula provided to Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) participants by the Mississippi State Department of Health (MSDH), WIC Program, hereafter referred to as the MS WIC, through its retail food delivery system for a period of thirty-six months beginning September 1, 2020 through August 31, 2023. The contract may be renewed by mutual consent for up to two (2) one-year terms, not to exceed two years beyond the initial contract period for thirty-six months. The rebate structure of the agreement shall not be modified nor renegotiated at the time the option to extend is exercised but, will continue in full force and effect for the entire term of this agreement and any extension periods. The total contract period must not exceed 60 months. The terms and conditions of the initial contract during the two one-year extension periods, if renewed, shall remain in force. Such renewal shall be contingent upon satisfactory performances as determined by MS WIC. Prior to each renewal, any changes agreed upon by both parties shall be confirmed in writing. Contract extensions or terminations must be mutually agreed upon and signed by August 31, 2022, and August 31, 2023, if applicable. The IFB is issued pursuant to the WIC regulations at 7 CFR 246.2 and 246.16a.

The Direct Distribution food contract will be in place to end June 30, 2021.

II. 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. The formula for which the bid is submitted must be suitable for the routine issuance to the majority of generally healthy, full-term infants.

“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) complies with the definition and requirements for “infant formula” under the Federal Food, Drug, and Cosmetic Act including [Sections 201(z) and 412 of Act, 21 U.S.C. 321 (z) and 350a respectively], excluding “exempt”

infant formulas as defined by the Food and Drug Administration (FDA).

A. Manufacturer Requirements:

1. Manufacturer must be 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 100-137.
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.
 - d. Manufacturer shall include the following statement with any use of the WIC Acronym in advertising: “WIC is a registered service mark of the U.S. Department of Agriculture for USDA’s Special Supplemental Nutrition Program for Women, Infants and Children.”
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.
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. Manufacturers must provide in writing, to include a new wholesale price catalog, to MS 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 MS

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.

6. A rebate must be paid on all formula in the manufacturer's infant formula product line 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 contract 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 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 4.
7. In the event the manufacturer cannot provide the contract brand infant formula in any physical form, a rebate must be paid on a non-contract infant formula that yields the same net cost per ounce as the formula it is replacing.
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 350 authorized WIC grocery vendors statewide to meet MS WIC's needs 60 days prior to contract implementation on September 1, 2020, following the rollout schedule in Attachment C. This is to assure WIC participants can begin redeeming eWIC benefits with the WIC authorized vendors when implementation occurs in their respective county.
9. The manufacturer shall provide MS 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 MS WIC to reset the authorized WIC vendors' shelves and wholesalers' inventory.
10. The manufacturer will comply with all contract provisions required by MS WIC as specified in Section X, Contract Provisions.

B. MS WIC Requirements:

1. MS WIC operates a direct food distribution system. The WIC Food Distribution Centers will be phased out as the state rolls out and implements WIC EBT (electronic benefits transfer). At such point that the state implements EBT, the benefits will include the manufacturer's brand of rebate formulas (see attachment C), and MS WIC will be operating a retail food delivery system. The primary contract brand infant formula is that which the manufacturer submits in the bid and will be the formula of first choice. The primary contract brand infant formula will be available to major wholesalers and contracted WIC

grocery vendors statewide. Except for the issuance of the primary contract brand infant formula as formula of first choice, the State agency provides no guarantee of the quantity, type, or physical forms that will be used under a new contract.

2. MS WIC will issue only the manufacturer's brand of milk and soy-based products, with the exception of the exempt formulas or in rare cases, any non-contract milk or soy based formula with appropriate medical documentation. MS WIC may choose to issue none, some, or all of the winning bidder's other formula.
3. MS 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.
4. MS WIC will issue a monthly rebate invoice. For electronic benefit issuance, payment due to MS WIC shall be based on the number of units redeemed during the current billing period. No partial redemption factor will be applied.
5. The base price per unit is established upon submission of the bid to MS WIC. MS 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)(6)(i-iii).
6. MS 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.
7. MS 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.
8. MS WIC shall also supply the manufacturer a list of contracted grocers/vendors as we transition to a retail vendor delivery system. The manufacturer may not have access to any information about a vendor that individually identifies the vendor, except for vendor's name, address, website, email address, store type, and authorization status.
9. BID solicitations and awards must be in compliance with 7CFR246.16a(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/mmrs/mississippi-suppliers-vendors/>.

All bids are sealed until the specified opening date and time.

10. Formula benefits redeemed through the Direct Distribution delivery system will contain the formula for which MS WIC currently holds a contract. As the state implements EBT, the electronic benefits will contain the newly awarded contract formula that is in place on the day of issuance.

III. PURCHASE OF FORMULAS WITH MEDICAL DOCUMENTATION

MS WIC requires medical documentation for the issuance of any non-contract brand infant formula, any infant formula prescribed to a child or adult with a documented qualifying condition, any exempt infant formula, and any contract brand infant formula that does not meet the minimum nutrition requirements as specified in Subpart D 246.10, Table 4 of paragraph (e)(12). These are allowed only with a written prescription from a physician or health professional for specific medical indication as designated by WIC policy.

IV. METHODOLOGY OF INVOICE REMITTANCE

A. Monthly Invoice Remittance

Electronic Benefit Issuance

MS WIC shall issue a monthly invoice (Attachment B) for the number of units redeemed during the previous month.

MS WIC shall calculate monthly the rebate due in the following manner:

1. Multiply the units of manufacturer's formula redeemed 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. Redeemed food benefit data will be obtained through EBT processor and SPIRIT (MIS system).
2. MS WIC will provide redemption data which will include: food instrument number, food package identifier, product name, number of units authorized to purchase, effective date of food instrument, redemption date of food instrument, redeemed amount, pseudo vendor and participant identification number.
3. No partial redemption factor will be applied.

B. Payment Procedures:

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

The following steps outline the procedures for payment:

1. Upon receipt of MS WIC's monthly invoice the manufacturer shall pay MS WIC within thirty (30) days by means of an electronic funds transfer. Late payment of monthly invoice amount will result in manufacturer paying interest penalties to MS WIC in the amount of 1% per day of the invoiced amount. The MS WIC Program will use all funds received from the invoiced billings for food costs per WIC Regulations 7 CFR 246.15.
2. The manufacturer shall notify MS WIC of any dispute or error in the rebate invoice within ninety (90) days of receipt by manufacturer. If the manufacturer misses the deadline, any requirement to return funds to the manufacturer as a result of a dispute or over a billing error is waived.
3. All disputes must be settled by December 31st following the end of the Federal Fiscal Year in which the dispute occurred.
4. The manufacturer shall not withhold any rebate payments under any circumstances.
5. If an over billing error occurs, MS WIC must make every effort to validate.
6. Upon resolution of the dispute, the MS WIC will promptly disburse any funds due to the manufacturer.
7. The manufacturer is responsible for meeting via phone or in person on a quarterly basis with MS WIC to discuss products as well as any issues regarding billing procedures.

V. BID FORMAT AND CONTENT

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 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 bid submitted shall contain at least the following two indicated sections. These will be used to evaluate bids received. The award will be based on the manufacturer which passes the technical component and whose rebate per unit yields the lowest net monthly cost to MS WIC.

A. 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 MS 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 MS 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

B. Cost Component

1. 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 which is February 20, 2020.
2. 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 Attachment A. Bidders should use an electronic copy to complete the analysis of Attachment A. An electronic copy of Attachment A can be found on the State's transparency website at www.transparency.mississippi.gov or request an electronic copy in writing via email to Jennifer.Dotson@msdh.ms.gov.

Responses received after the due date and time or submitted by any other means than those expressly permitted by this IFB will not be considered. Responses must be complete in all respects as required by the IFB.

The MSDH reserves the right to reject any or all responses, to waive any irregularity or informality in a response, and to accept or reject any item or combination of items, when to do so would be in the best interest of the State of Mississippi. It is also within the right of MSDH to reject responses that do not contain all elements and information requested in this IFB.

The MSDH reserves the right to amend the IFB. Any revisions must be made in writing prior to the IFB submission date and time. By submitting a response, the bidder shall be deemed to have accepted all terms and agreed to all requirements of the IFB (including any revisions/additions made in writing prior to the submission date of the IFB whether or not such revision occurred prior to the time the bidder submitted its bid. Bidders are encouraged to frequently check for any additional information.

Finally, the MSDH reserves the right to cancel this IFB at any time in accordance with the *State of Mississippi Procurement Manual*, Mississippi Department of Finance and Administration Office of Purchasing, Travel and Fleet Management at <http://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/bureau-of-purchasing-and-contracting/procurement-manual/> Requests for Debriefing and Protest should also be made in accordance with the *Mississippi Procurement Manual*.

VI. ANALYSIS OF BID

Each bid will be analyzed, and award made to the manufacturer who:

1. Passes the Technical Component criteria;
2. Provides the lowest net monthly cost per unit to MS WIC on iron-fortified milk and soy based formula as provided on page 19 of the manufacturer's Bid and Certification; and
3. Agrees to other conditions as set forth in sections IV, VII, XI, and XII of the Invitation for Bid.

VII. TERMS AND CONDITIONS

The manufacturer's bid must be in the form and detail specified in this Invitation for Bid:

1. All manufacturers shall submit one typed original and two copies of the bid.
2. Late bids will not be considered under any circumstances. Late bids properly identified will be returned to the manufacturer unopened.
3. The award will be based on the manufacturer which passes the technical component, provides a rebate per unit that yields the lowest net cost to MS WIC, and agrees to conditions set forth in sections IV, VII, XI, and XIV of the Invitation for Bid.
4. No facsimile (FAX) bids will be accepted.
5. Rebate amounts must be submitted as a specific dollar and cent amount (extend to three (3) decimal places) or the bid will be disallowed.
6. Bid shall be signed by a manufacturer representative with the authority to commit the manufacturer to the bid.

Any contract resulting from this Invitation for Bid may be canceled by MS WIC giving thirty (30) days advance written notice of intent to cancel.

Manufacturers must provide twelve (12) months advance written notice of intent to cancel the contract resulting from this Invitation for Bid.

The bidder assumes sole responsibility for the complete effort required in submitting a bid in response to this IFB.

MSDH assumes no responsibility and bears no liability for costs incurred by the bidder in preparation and submittal of a bid in response to this IFB.

Prospective bidders should restrict communications with staff from the issue date of this IFB until the final award is announced, except through the issuing officer named herein. Prospective bidders are to contact Jennifer Dotson in writing via email at Jennifer.Dotson@msdh.ms.gov if there are any questions concerning this Invitation for Bid. Bidders will have until 5:00 p.m.; CT, Friday, January 17, 2020 to submit their questions.

All questions will receive a response in writing. All bidders' questions and the State Agency's responses will be posted on the State's transparency website at www.transparency.mississippi.gov for all bidders to review by Friday, February 7, 2020.

VIII. BID DUE DATE

All bids must be received, dated and time stamped **by 12:00 p.m., CT, Thursday, February 20, 2020**. Sealed bids along with any other documentation required must be hand delivered or mailed to:

**Mississippi State Department of Health
Purchasing Department
Attention: Jennifer Dotson
Underwood Building – Room 137A
570 East Woodrow Wilson
Jackson, MS 39216**

OR

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

Please mark your envelope: RFX 3160003372 Due 12:00 p.m. CST February 20, 2020

In addition, it is requested that bidders also submit a bid on-line in the State of Mississippi electronic procurement system, MAGIC, however, it is not mandatory. In order to submit 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. Technical assistance may be found at <http://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/>. 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.

IX. OPENING OF BIDS

Bids will be opened and read aloud on Thursday, February 20, 2020 at 2:00 P.M. CT in Suite 134 Conference Room, Underwood Building, 570 E. Woodrow Wilson, Jackson, MS.

X. NOTICE OF AWARD

Successful manufacturer will receive a preliminary notice of award on March 4, 2020 pending approval of the Mississippi Public Procurement Review Board at their monthly meeting held on April 1, 2020.

XI. CONTRACT PROVISIONS

The contract that MSDH expects to award as a result of this IFB will be based upon this IFB, the successful bidder's final response accepted by the MSDH and the MSDH contract terms and conditions (including MSDH general terms, and acknowledgments and special conditions). The successful bidder's final response as accepted by MSDH shall mean: the response submitted by the awarded bidder, written clarifications, and any other terms deemed necessary by MSDH, except that no objection or amendment by a bidder to the IFB requirements or the contract terms and conditions shall be incorporated by reference into the contract unless MSDH has explicitly accepted the bidder's objection or amendment in writing.

Please review the contract terms and conditions prior to submitting a response to this IFB. Bidders should plan on the contract terms and conditions contained in this IFB being included in any award as a result of this IFB. All costs associated with complying with these terms should be considered when submitting a bid response. The contract terms and conditions may be supplemented or revised before contract execution and are provided to enable bidders to better evaluate any associated costs.

Following are the terms and conditions of the contract which MS WIC will require. In addition to these terms and conditions, the manufacturer shall meet all requirements of this IFB including those as specified in Section II, Scope of Bid, Part A.

A. Return of Signed Contract:

Manufacturer's failure to return a signed contract, by certified mail, within 21 calendar days of receipt may, at the option of MS WIC, result in awarding the contract to another vendor.

B. Contract Inclusions

The contract shall include all pertinent information resulting from contract negotiations, which are to become a part of the contract. In addition, the contract document shall name and include as part of the contract by reference thereto, the documents listed below:

1. The IFB as issued, plus all addenda, amendments, and/or written clarifications.

2. All documents included by reference in the IFB.

3. The executed contract, and all documents included by reference, shall constitute the entire agreement. In case of any conflicts between the various included documents, the contract shall govern over all other documents. In case of conflicts between the IFB or the addenda/amendments and the bid, the IFB and the addenda/amendments shall govern. Those areas where the proposal exceeds the requirements of this contract, the IFB and the addenda/amendments to the IFB shall not be considered conflicts.

C. Contract Period

This contract will be for the period September 1, 2020 through August 31, 2023; with the possibility to extend the bid agreement for an additional two years. It is expressly understood this contract is conditional upon appropriations and funding from the Government of the United States; should such funding be discontinued, this contract will terminate immediately. This contract shall not be binding upon the parties until it is approved by the MS Public Procurement Review Board.

D. Clauses

LOBBYING CLAUSE. Each bidder must sign and submit the enclosed "Certification Regarding Lobbying – Contracts, Grants, Loans, and Cooperative Agreements," Attachment D. The prospective bidder's company name is to be listed at the bottom where it states, "Organization Name" and an authorized signature and title is required at the bottom of the page where it states, "Name and Title of Authorized Representative".

DEBARMENT CLAUSE. Each bidder must sign and submit the enclosed "Certification Concerning Debarment and Suspension," Attachment E. The prospective bidder's company name is to be listed at the top where it states, "Agency's Name" and an authorized signature and date is required at the bottom of the page where it states "Agency's Executive Director Signature and Date."

XII. GENERAL TERMS AND CONDITIONS FOR MSDH CONTRACTS

1. Anti-assignment/subcontracting. Contractor acknowledges that it was selected by the State to perform as required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall

be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

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 Clause. It is understood that if this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review and this contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.
4. 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.
5. 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.
6. Availability of Funds. It is expressly understood and agreed that the obligation of the Mississippi State Department of Health (MSDH) to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to MSDH, MSDH shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to MSDH of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
7. Compliance with Laws. Contractor understands that the Mississippi State Department of Health (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. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

8. 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.

9. 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.
10. 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.*

11. 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.
12. 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.
13. 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 law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 et seq.
14. E-Verification. If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 et seq. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform

services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- a. termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- b. the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- c. both.

In the event of such cancellation/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

- 15. 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.
- 16. 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.
- 17. 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.
- 18. 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.

19. 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.

20. 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.

21. 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.
22. 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.
23. 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.
24. 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.

25. Paymode. Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor's choice. The State 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 State is exempt from the payment of taxes. All payments shall be in United States currency.
26. 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.
27. Procurement Regulations. The contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at www.dfa.ms.gov.
28. 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. 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.
29. 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.
30. Reimbursement. MSDH agrees to provide reimbursement for the contract period. For contracts that include the use of Federal funds, MSDH agrees to provide reimbursement for the contract period in accordance with the requirements set forth in OMB Circular A-87. Such reimbursement will be made upon receipt of the necessary billing listing salaries, Social Security, retirement, and other items provided in this contract, including copies of payroll

requisitions and invoice copies for materials, equipment, or supplies. Any final billings shall be submitted to MSDH no later than thirty (30) days after the close of the contract. Failure to submit final billings within the stated timeframe for this contract may be grounds for MSDH to reject such reimbursements. It is agreed by both parties that the following items will be made only when approved by both parties:

- a. Reimbursement in excess of the amount budgeted for any item; or
- b. Reimbursement of items not included in the budget; or
- c. The transfer of monies between items within the budget.

It is agreed by both parties that no reimbursement will be made by MSDH until this contract has been signed by the appropriate personnel of both parties and until a budget for expenditures pursuant to the contract has been approved by MSDH.

- 31. Requirements Contract. During the period of the contract, Contractor shall provide all the service described in the contract. Contractor understands and agrees that this is a requirements contract and that MSDH shall have no obligation to Contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of MSDH for the period of the contract. The amount is only an estimate and Contractor understands and agrees that MSDH is under no obligation to Contractor to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. Contractor further understands and agrees that MSDH may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually used.
- 32. Right to Audit. Contractor shall maintain such financial records and other records as may be prescribed by MSDH or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by 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 Mississippi State Auditor's Office, its designees, or other authorized bodies.
- 33. 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.

34. State Property. Contractor will be responsible for the proper custody and care of any state-owned property furnished for Contractor's use in connection with the performance of this agreement. Contractor will reimburse the State for any loss or damage, normal wear and tear excepted.
35. Stop Work Order.
- a. *Order to Stop Work:* The Chief Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either:
 - i. cancel the stop work order; or,
 - ii. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.
 - b. *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:
 - i. the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
 - ii. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
 - c. *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
 - d. *Adjustments of Price:* If permissible, any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.
36. 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.

37. 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.
- d. *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).

- e. *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.
 - f. *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.
38. 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.
39. 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.
40. 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.

41. 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.
42. 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.
43. 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.

XIII. ACKNOWLEDGEMENTS AND SPECIAL TERMS IN MSDH CONTRACTS

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*.

XIV. BID AND CERTIFICATION

The undersigned certifies as follows:

1. That the manufacturer has read and understands all requirements and specifications of this Invitation for Bid.
2. That the manufacturer agrees to all requirements, specifications, terms, and conditions of this Invitation for Bid.
3. That the manufacturer will furnish the designated item(s) 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;
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. 100-137.

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. The manufacturer has read and will comply with the list of contract provisions and clauses which begin on page 12 of this IFB.

XV. IMPORTANT DATES

Publish Invitation for Bid	December 23, 2019
Deadline for Questions	January 17, 2020
Deadline for Responses from MSDH	February 7, 2020
Deadline for Bids	February 20, 2020 at 12:00 p.m. (CT)
Public Bid Opening	February 20, 2020 at 2:00 p.m. (CT)
Submit request to PPRB for next meeting	March 4, 2020
Present at PPRB for approval	April 1, 2020
Award Contract	April 1, 2020
Contract begins	September 1, 2020
WIC Food Centers close	April – August 2021

PPRB – MS Public Procurement Review Board

XVI. PARTICIPATION PER MONTH and UNITS REDEEMED PER MONTH

Following is six (6) months of the most current data available at time of the IFB announcement. These figures are only an estimate, as MS WIC provides no guarantee of the quantity, type, or physical form that will be used under a new contract. The participant and infant formula redemption data does not necessarily reflect the actual issuance and redemption that will occur under this contract.

Participation by Category for April, 2019 – September, 2019

PARTICIPATION DATE	Infants	Infant FBF	Infant PBF	PBF <= Max	PBF > Max	Infant FFF
19-Apr	22591	735	2458	690	1768	19398
19-May	22842	768	2473	667	1806	19601
19-Jun	22569	757	2431	657	1774	19381
19-Jul	22751	775	2451	669	1782	19525
19-Aug	22938	767	2597	721	1876	19574
19-Sep	22888	806	2635	675	1960	19447

Infants – total infants

FBF – fully breastfeeding

PBF – partially breastfeeding

FFF – fully formula feeding

Participation by Category for April, 2019 – September, 2019

(excluding fully breastfed and exempt infant formula fed)

PARTICIPATION DATE	Infants	Infant PBF	PBF <= Max	PBF > Max	Infant FFF
19-Apr	18702	2168	615	1553	16534
19-May	18810	2201	594	1607	16609
19-Jun	18553	2154	582	1572	16399
19-Jul	18535	2137	572	1565	16398
19-Aug	18710	2271	617	1653	16439
19-Sep	18685	2311	599	1711	16374

Units redeemed by month

Formula Name	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep
8 OZ. SUPLINA, RTF	180	86	180	180	180	180
14.1 OZ. PHENEX-2, POWDER	0	18	0	0	0	0
8 OZ. BOOST KIDS ESSENTIALS 1.0, VAN, RTU	2890	3090	2890	2890	2890	2890
8 OZ. PEDIASURE WITH FIBER, VAN, RTF	1909	2341	1909	1909	1909	1909
8.45 OZ. PEPTAMEN JR., 1.5, UNFLAV., RTF	818	723	818	818	818	818
8 OZ. PEDIASURE PEPTIDE, 1.0, VANILLA	0	0	0	0	0	0
14.46 OZ. PORTAGEN, POWDER	13	24	13	13	13	13
8 - 2 OZ. SIMILAC NEOSURE (22 CAL), RTF	0	136	0	0	0	0
12.9 OZ. ENFAMIL PROSOBEE, POWDER	8031	9048	8031	8031	8031	8031
14.1 OZ. ELECARE, UNFLAVORED, POWDER (INFANT)	675	911	675	675	675	675
14.1 OZ PURAMINO, POWDER	387	483	387	387	387	387
13 OZ. ENFAMIL PROSOBEE, CONCENTRATE	2345	2817	2345	2345	2345	2345
6 - 2 OZ. ENFAMIL, 24 CAL, LIPIL WITH IRON, RTF	1450	1505	1450	1450	1450	1450
11 OZ. KETOCAL, POWDER, 4.1	0	0	0	0	0	0
12.5 OZ. ENFAMIL PREMIUM, POWDER	64518	70386	64518	64518	64518	64518
8.45 OZ. NUTREN JR 1.0, VAN,RTF	1200	1491	1200	1200	1200	1200
32 OZ. NUTRAMIGEN, RTF	0	0	0	0	0	0
14.1 OZ. ALFAMINO JR., PWD.	163	185	163	163	163	163
12.9 OZ. ENFAMIL AR, PWD	18696	19971	18696	18696	18696	18696
14,1 OZ. ALFAMINO INFANT, PWD.	85	53	85	85	85	85
8.45 OZ PEPTAMEN JR., UNFLAVORED, RTF	100	207	100	100	100	100
14 OZ. NEOCATE JUNIOR, POWDER, UNFLAVORED	223	193	223	223	223	223
13 OZ. RCF LIQUID, CONCENTRATE	0	26	0	0	0	0
8 OZ. PEDIASURE PEPTIDE, 1.0, UNFLAVORED	0	0	0	0	0	0
8.45 OZ. NUTREN JR. WITH FIBER, VAN, RTF	428	321	428	428	428	428
6 - 2 OZ. ENFACARE (22 CAL) RTF	53	0	53	53	53	53
14 OZ. NEOCATE POWDER, INFANT	251	310	251	251	251	251
12.6 OZ. NUTRAMIGEN W/ ENF LGG, POWDER	7045	7706	7045	7045	7045	7045
16 OZ. PREGESTIMIL, LIPIL, POWDER	48	28	48	48	48	48
8.45 OZ. PEPTAMEN JR., VAN. W/FIBER, RTF	704	704	704	704	704	704
32 OZ. ALIMENTUM, RTF	48	104	48	48	48	48
14.1 OZ. SIMILAC PM 60/40, POWDER	61	83	61	61	61	61
6 - 2 OZ. PREGESTIMIL, 24 CALORIE, RTF	128	406	128	128	128	128
13 OZ. NUTRAMIGEN, CONCENTRATE	392	410	392	392	392	392
8.45 OZ. PEPTAMEN JR., VAN., RTF	1460	1483	1460	1460	1460	1460
12.4 OZ. ENFAMIL GENTLEASE, PWD.	46399	50114	46399	46399	46399	46399
8 OZ. PEDIASURE ENTERAL, VANILLA, RTF	410	487	410	410	410	410
12.1 OZ. ALIMENTUM, POWDER	3733	3753	3733	3733	3733	3733
6- 2 OZ. SIMILAC NEOSURE (22CAL), RTF	0	0	0	0	0	0
8 OZ. PEDIASURE, VAN, RTF	8651	10202	8651	8651	8651	8651
14.1 OZ. ELECARE JR. VANILLA, POWDER	555	608	555	555	555	555
13.1 OZ. SIMILAC NEOSURE (22 CAL), POWDER	2435	2475	2435	2435	2435	2435
4- 2 OZ SIMILAC NEOSURE (22CAL), RTF	0	0	0	0	0	0
8 OZ, PEDIASURE ENTERAL W/FIBER, VANILLA, RTF	0	0	0	0	0	0
12.8 OZ. ENFACARE (22 CAL) POWDER	4822	5064	4822	4822	4822	4822
13 OZ. ENFAMIL PREMIUM, CONCENTRATE	15013	15376	15013	15013	15013	15013

Invitation to Bid WIC Infant Formula Rebate – Bid Sheet



MS WIC IFR Bid
Sheet rev 121319.xls

Bidders should request an electronic copy of this attachment.

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, and specifications 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 _____, 2020.

Notary Public



MISSISSIPPI STATE DEPARTMENT OF HEALTH

Draft Proposed Letter and Invoice

November 15, 2020

WIC Administrator
ABC Formula Company
123 Main Street, Suite 100
Anywhere, MS 39111

Dear WIC Administrator:

Enclosed you will find the Statement of Account, the Invoice and Rebate Amounts by Issue Month and Formula Category for the month of October 2020. The rebate amount for October 2019 is \$2,063,498.79.

If you have any questions, please contact me at 601-991-6000.

Sincerely,

Dionna Mitchell

Accounts Payable Manager

Enclosure

ATTACHMENT B Continued


MISSISSIPPI STATE DEPARTMENT OF HEALTH
Rebate Month

October 2020

Invoice Date

November 15, 2020

Formula Name	Total Redeemed	Redemption Rate	Redemption Value
Formula 1, 13 oz. Concentrate	2,816	4.2538	\$ 11,978.70
Formula 2, 12.9 oz. Powder	9,304	12.9618	\$ 120,596.59
Formula 3, 13 oz. Concentrate	16,946	3.9500	\$ 66,936.70
Formula 1P, 12.9 oz. Powder	19,901	14.8600	\$ 295,728.86
Formula 2P, 12.4 oz. Powder	48,434	14.5600	\$ 705,199.04
Formula 3P, 12.5 oz. Powder	69,322	12.4500	\$ 863,058.90
Total	166,723		\$ 2,063,498.79

Proposed EBT Roll-out Schedule

Counties	Start Date	End Date
Forrest	October 12, 2020	January 4, 2021
Lauderdale	October 26, 2020	January 15, 2121
Adams, Amite, Claiborne, Clarke, Copiah, Franklin, Hinds, Issaquena, Jasper, Jefferson, Kemper, Lauderdale, Lawrence, Leake, Lincoln, Madison, Neshoba, Newton, Pike, Rankin, Scott, Sharkey, Simpson, Smith, Walthall, Warren, Wilkinson, Yazoo,	January 19, 2021	February 5, 2021
Alcorn, Benton, Coahoma, DeSoto, Grenada, Itawamba, Lafayette, Lee, Marshall, Panola, Pontotoc, Prentiss, Quitman, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Yalobusha	February 8, 2021	February 26, 2021
Attala, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Holmes, Humphreys, Leflore, Lowndes, Monroe, Montgomery, Noxubee, Oktibbeha, Sunflower, Washington, Webster, Winston	March 1, 2021	March 19, 2021
Covington, George, Greene, Hancock, Harrison, Jackson, Jefferson Davis, Jones, Lamar, Marion, Pearl River, Perry, Stone, Wayne,	March 22, 2021	April 9, 2021

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)