



STATE OF TENNESSEE
CENTRAL PROCUREMENT OFFICE

**INVITATION TO BID # 32110-13161
AMENDMENT # 2
SWC 437 WIC Infant Formula**

DATE: February 22, 2024

ITB # 32110-13161 AS A CONTINUATION OF RFI 32110-13069 IS AMENDED AS FOLLOWS:

1. This ITB Schedule of Events updates and confirms scheduled ITB dates. Any event, time, or date containing **revised or new text is highlighted.**

The following Schedule of Events represents the State's best estimate for this Solicitation. EVENT	TIME (central time zone)	DATE
1. RFI Solicitation Issued		December 1, 2023
2. Disability Accommodation Request Deadline		December 11, 2023
3. Pre-response Conference	9:30 am to 10:30 am CST	December 13, 2023
4. Written "Questions & Comments" Deadline	2:00 p.m.	December 18, 2023
5. Final Solicitation with State's Response to "Questions & Comments" Issued		February 22, 2024
6. Response Deadline	2:00 p.m.	March 25, 2024
7. State Opening & Scoring of Cost Proposals	2:00 p.m.	March 25, 2024
8. State Notice of Intent to Award Released and Procurement Files Opened for Public Inspection	8:00 a.m.	March 29, 2024
9. End of Open File Period	4:30 p.m.	April 5, 2024

2. State responses to questions and comments in the table below amend and clarify this ITB.

Any restatement of RFI text in the Question/Comment column shall NOT be construed as a change in the actual wording of the RFI document.

QUESTION / COMMENT	STATE RESPONSE
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<p>1. RFI Details Document, General Question -- In the RFI Details document, each question contains a notation for "Required" as well as "Mandatory Response." Many questions indicate that the question is required, but the Mandatory response is "no." For example, the document indicates that a complete Pricing Worksheet, SWC 437 is required, but the Mandatory response is listed as "No." Please define the difference between these two qualifiers to help guide appropriate completion of this document.</p>	<p>Edison signifies some bid factors as "Mandatory" or "Required" automatically, this is not entered by the Central Procurement Office. A response to all bid factors is required. For example, if an attachment is requested, please ensure the proper attachment is uploaded to your response. A response is required to every bid factor. The Central Procurement Office shall clarify any questions regarding bid factor responses with the Respondent.</p>
<p>2. RFI Details Document, Page 2 – The second part of this page details all state entities that are authorized to purchase off of statewide contracts. Reference to this is also made on Page 28, Section 8.3 of the ITB document. Please confirm this list does not pertain to the contract that will result from this ITB, since no direct purchases will be made, and this contract will only pertain to rebate payments being made to the State.</p>	<p>Correct. This bid factor has been removed.</p>
<p>3. Please indicate if the primary Infant formula brand being bid (as listed on the complete pricing worksheet) will suffice for the brand and model names to be listed in the RFI Details document.</p>	<p>Yes. Please include the proposed product name in the bid factor mentioned and the Pricing Worksheet.</p>
<p>4. Since this is an infant formula rebate bid that does not require delivery of a physical product to the State, please indicate what the bidder should specify for the question regarding days of delivery after receipt of purchase order.</p>	<p>This bid factor has been removed.</p>
<p>5. If a manufacturer does not utilize sub-contractors, how should this section of the RFI Details be addressed? Will an answer of "N/A" suffice?</p>	<p>Yes, the answer of "N/A" will be sufficient for this question.</p>

<p>6. Please verify that marking “yes” is sufficient to verify compliance with the following, and <i>no</i> additional documentation will be needed:</p> <ul style="list-style-type: none"> a. Registration with the Secretary of the United State Dept of Health and Human Services b. All federal regulations pertaining to WIC c. The Federal Food, Drug and Cosmetic Act and issued regulations d. The Tennessee Department of Health’s requirement that all infant formulas identified will carry the label of the contractor. <p>1. Please verify that marking “yes” is sufficient to verify compliance with the following, and <i>no</i> additional documentation will be needed:</p> <ul style="list-style-type: none"> e. Registration with the Secretary of the United State Dept of Health and Human Services f. All federal regulations pertaining to WIC g. The Federal Food, Drug and Cosmetic Act and issued regulations h. The Tennessee Department of Health’s requirement that all infant formulas identified will carry the label of the contractor. 	<p>Responding “Yes” is sufficient for this bid factor.</p>
<p>7. Please confirm if the RFI Details pages (1-10) should be completed and submitted with a bid that is physically printed and delivered, or if the answers and associated forms for response should also be submitted in the Edison website.</p>	<p>One complete response is required to be considered responsive. Respondents should choose only one option: submit via Edison or by mail as outlined in Terms and Conditions Section 3.8. Responses Submitted by Mail. The Event Details should be completed and signed if submitted as a hard copy.</p>
<p>8. Would the State be willing to provide a checklist of the documents required for bid submission?</p> <ul style="list-style-type: none"> a. If not provided, please confirm that the only documents required for a bidder’s response to be deemed “responsive” are: <ul style="list-style-type: none"> i) Responses to the RFI Details questions ii) SWC 437 Pricing Worksheet iii) Department of Revenue Sales and Use Tax documentation (Page 4 of RFI Details) iv) List of three comparable contracts (page 6 of RFI Details) v) Nationally published wholesale pricelist (page 7 of RFI Details) vi) Completed Page 10 from the ITB (Respondent’s Diversity Utilization Plan) 	<p>The State does not provide a checklist. Respondents must complete all required bid factors and attachments as stated in the solicitation, terms and conditions and specifications.</p>
<p>9. Please confirm if any amendments issued will be required to be signed and/or included as part of an offeror’s proposal.</p>	<p>Any amendments made will not be required to be signed or included as part of the proposal.</p>

<p>10. According to the Federal Regulation §246.16a – “Infant formula and authorized foods cost containment” section ©(1)(ii) in a single-supplier competitive bid system for infant formula rebate contracts, the State Agency must “Publicly open and read all bids aloud on the day the bids are due.”</p> <ol style="list-style-type: none"> a. Please confirm that attendees will be able to physically attend the public bid opening at the address provided in the ITB. b. Please detail any special instructions or qualifications needed for entry at the Central Procurement Tower for the public bid opening. c. Please provide a contact name and number should there be issues with the Microsoft Teams meeting link for the public opening. d. Please confirm the following items from the pricing worksheet for each respective bidder will be read aloud during the public opening – manufacturer name, product name, unit size, reconstituted ounces per unit, lowest wholesale full truckload price per unit, rebate bid per unit, net price per unit, percent rebate, net cost, and total monthly price. 	<ol style="list-style-type: none"> a. Yes. There is an option to attend the public bid opening in person or via the Teams link that is provided. b. Upon entering the building, please go to the security desk and present your government issued ID to gain a visitors pass. The conference center is located on the third floor of the Tennessee Tower. Please allow time for parking and entrance to the building. c. Please contact the Solicitation Coordinator, Sondra Parks at Sondra.Parks@tn.gov or 615-532-6357. d. At the time of the public bid opening, all responses will be opened, and all Pricing Worksheet information will be read aloud for each response received.
<p>11. Please confirm all bidders will be notified of the award via email.</p> <ol style="list-style-type: none"> a. If not confirmed, please advise how all bidders will be notified of the award. 	<p>Yes, all respondents will be notified of the award via email.</p>
<p>12. ITB Terms and Conditions, Page 5, Section 3.6</p> <ol style="list-style-type: none"> a. This section should be removed since all bids will be opened and read aloud at a public bid opening. It would be unfair to allow bidders to submit best and final pricing after being made aware of prices submitted by other bidders. b. If this section is not removed, please revise the section to confirm that cost negotiations will not be part of this ITB. 	<p>This section has been removed.</p>
<p>13. ITB Terms and Conditions, Page 5, Section 3.8</p> <p>Please confirm that bidders may communicate with employees of the State Department of Health WIC program regarding any issues that do <i>not</i> pertain to the ITB ie: direct shipment communication updates for exempt formula.</p>	<p>Potential respondents shall only communicate with the solicitation coordinator regarding RFI 32110-13069 and ITB 32110-13161. Any respondent with a current contract with the State of Tennessee may communicate with State employees regarding that contract only.</p>

<p>14. ITB Terms and Conditions, Page 6, Section 3.9</p> <ul style="list-style-type: none"> a. Please confirm that bid respondents may submit a hand-delivered copy of the bid as opposed to mailing a bid copy. b. If hand delivery is allowed: <ul style="list-style-type: none"> i. Please specify the building address and floor where delivery can be made. ii. Please provide details for the bid delivery location, as well as a point of contact. iii. Please provide the hours the delivery location will be open, and any other necessary information needed for building access. c. Please confirm that bidders are to submit <i>only</i> one original hardcopy sealed bid and not an electronic submission. <ul style="list-style-type: none"> i. If confirmed, please advise the number of originals and copies of the bid are required. d. If hand delivery is not allowed, please advise how the State will comply with Federal Regulations and “publicly open” electronic bid submissions. e. Please identify everyone who has access to bids submitted on-line, prior to the official bid submission deadline. f. Please explain the steps taken to restrict access to bids to those persons identified in response to the question above. g. What procedures do you have in place to make sure the on-line bidding system is functioning properly and accepting bid submissions? h. If a vendor has trouble submitting a bid on-line, who should they contact? 	<ul style="list-style-type: none"> a. Bid respondents may submit a hand-delivered copy by following the same instructions for Responses Delivered by Mail in Terms and Conditions Section 3.8. b. If hand-delivered, please deliver to: William R. Snodgrass TN Tower, 3rd Floor 312 Rosa L. Parks Avenue, Nashville, TN Central Procurement Office – Front Desk Attn: Sondra Parks The office is open from 8:00 am - 4:00 pm (CST) c. One complete response is required to be considered responsive. Respondents may submit via Edison or by mail as outlined in Terms and Conditions Section 3.8. Responses Submitted by Mail. d. N/A e. No one can review the content of the bid until the event closes. Procurement staff with the appropriate roles can view an overview of bidders who have accepted the bid invitation and submitted a bid. f. Not applicable. Access is restricted by the nature of the system. g. The State recommends submitting all electronic bids early in case of any technical difficulties. h. Bidder Registration can be contacted at: Bidder.Registration@tn.gov or 615-741-6875.
<p>15. ITB Terms and Conditions, Page 8, Section 3.31 -- In the event of a protest, please confirm that all bidders will be made aware via email.</p>	<p>In the event of a protest, the intended awardee shall be notified of the protest.</p>
<p>16. ITB Terms and Conditions, Pages 9-10 -- Respondent’s Diversity Utilization Plan-- Since this is a contract for infant formula rebates where the State is being paid, can you please confirm this section is not applicable to the resulting contract and a bidder can enter N/A on the form for bid submission?</p>	<p>Even respondents of a rebate contract can be GO-DBE certified. If the respondent is not Go-DBE eligible please complete the form, enter N/A in the “% of contract” field and sign the form.</p>

<p>17. ITB Terms and Conditions, Page 11, Section 4.3.b – Please revise this section to read “all infant formulas produced by the manufacturer excluding exempt formula...” which aligns with the Federal Regulation §246.16a(c)(4).</p>	<p>This change has been made.</p>
<p>18. ITB Terms and Conditions, Page 12, Section 4.3.g – This section includes a citation for 412(h) in the Federal Regulations. The actual definition for infant formula in the regulations does not include a reference to part (h). Please review and revise this regulation reference and/or indicate what section should be referenced to review part (h).</p>	<p>This change has been made. Updated reference to 412 (h) (1).</p>
<p>19. ITB Terms and Conditions, Page 13, Section 4.5.a -- Price increase timing is confidential and proprietary. Please revise this section to allow for notification at the same time as retail customers are notified.</p>	<p>These are standard terms and conditions. This term shall not be removed.</p>
<p>20. ITB Terms and Conditions, Page 13, Section 4.5.c – Please confirm that maximum monthly allowances may only be exceeded during a supply shortage <i>if</i> the appropriate government waivers have been issued to make this permissible.</p>	<p>Scope 4.5 d reflects appropriate language.</p>

<p>21. ITB Terms and Conditions, Page 13, Section 4.5.d –</p> <ul style="list-style-type: none"> i. Please confirm that the contract formula manufacturer will be consulted prior to the State issuing any non-contract formula brands to ensure that all contract manufacturer options have been utilized. j. Please confirm that alternative forms or brands of the contract infant formulas will be utilized prior to issuance of non-contract brands. k. What steps does the State take to ensure in any supply situation that the lack of supply is not some fault of the retailer (i.e. stock available but not on shelf, warehoused items not being appropriately distributed to meet demand)? l. Please confirm that the State has a plan in place with its approved formula suppliers and vendors to ensure proper precautions are being taken to limit excess formula consumption (ie: limit shelf off-take and panic buying) during any periods of general industry supply disruption. m. Does the State have a documented plan that applies in the event of an infant formula recall, supply chain disruption, emergency, or disaster? If so, please provide a copy of the documented plan. 	<ul style="list-style-type: none"> i. Scope 4.5 e reflects this evidence. j. Scope 4.5 d reflects this evidence. k. If a vendor does not meet the minimum stock requirements at the time of the monitor visit, all stock areas are checked with the store's point of contact to ensure all stock has been accounted for, including any stock rooms or inventory storage areas. l. The State does not require authorized vendors to limit quantities that can be purchased by consumers. This is a business decision that is determined by the authorized vendors' owners and/or corporate offices. m. Refer to Scope 4.5.
<p>22. ITB Terms and Conditions, Page 13, Section 4.5.e –</p> <ul style="list-style-type: none"> n. Please confirm that the Contractor will not be required to pay rebates on quantities of infant formula in excess of the federal monthly maximums. o. If rebates for quantities in excess of the federal monthly maximums are billed and rebated in error, the amounts associated with the over issuance and redemption will be reimbursed to the Contractor upon discovery. p. If any portion of above is not confirmed, please provide a detailed explanation of why such portion was not confirmed. q. Please describe the State's policy when participants return infant formula to a WIC clinic. 	<ul style="list-style-type: none"> n. Refer to Scope 4.5 d. o. Refer to Scope 4.5 d. and 4.6 c-e. p. not applicable q. Refer to Scope 4.5 f.
<p>23. ITB Terms and Conditions, Page 14, Section 4.5.f – Please adjust the language in this section to read "In the event the Contractor introduces an infant formula designed to replace the primary contract infant formula(s) referenced in the contract, the Contractor shall provide such formulas at the same percent discount as the original formula.</p>	<p>This change has been made.</p>

<p>24. ITB Terms and Conditions, Page 14, Section 4.5.g – Please revise this section to remove the contractor’s responsibility to allow substitution of another manufacturer’s brand for any State-approved formula. These substitution requirements should only apply to the primary contract milk and soy brands that are submitted at the time of the bid.</p>	<p>This change has been made and 4.5 g was removed.</p>
<p>25. ITB Terms and Conditions, Page 14, Section 4.5.h – Please revise the final sentence in this section to read, “... based on the wholesale truckload price in effect at the time the State agency approved for issuance.”</p>	<p>This change has been made.</p>
<p>26. ITB Terms and Conditions, Page 14, Section 4.6 -- Monthly data files are necessary for the Contractor to validate invoices with accuracy and integrity.</p> <ul style="list-style-type: none"> r. Please confirm that the details of all EBT transactions for which rebates are being invoiced through the monthly invoice process are provided each month through an electronic data file including EBT transaction number, pseudo participant ID (nothing that would disclose confidential participant information) , product description, number of cans redeemed, redemption dollar amount, first date to use, redemption date, infant age range at first date to use or infant date of birth, and feeding method (e.g. Fully Formula Fed, Partially Breastfed). s. If no unique identifier per participant (e.g. pseudo Participant ID) is provided and multiple EBT transactions are allowed for one month’s worth of benefits, please detail how the Contractor would be able to sum up the total number of infant formula cans redeemed by a single participant for the month to ensure that total cans issued did not exceed the federally regulated monthly maximums. <p>If no unique EBT transaction number is provided, please detail how the Contractor would be able to verify that issuance units being billed in the current month were not billed in a previous month.</p>	<p>Management Information System (MIS) only provides total number of cans issued, redeemed and rebate price per can. The report must be manually generated from Database (DB)</p>

<p>27. ITB Terms and Conditions, Page 15, Section 4.6.i.2 –</p> <p>a. Please confirm a manufacturer is not billed for rebates for infant formula issued to children or adults as these participants are not captured in the numbers provided in the pricing worksheet.</p> <p>b. A manufacturer has the ability to see growth or changes to infants participating and receiving formula based on monthly USDA participation data for production planning purposes. However, a manufacturer would have no visibility to see monthly the volume of children or adults receiving infant formula. If the State intends to bill for children and adults receiving infant formula, please confirm the State will provide monthly the average number of children and adults receiving rebated infant formula.</p>	<p>Per 4.6 i) The State agency will require medical documentation before issuing infant formula to children and adults as described in 7 C.F.R 246.10 (d) (1)</p> <p>MIS only provides total number of cans issued, redeemed and rebate price per can.</p>
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<p>28. ITB Terms and Conditions, Page 15, Section 4.7.b.2 – Please confirm that the requirement for program reports only pertains to the generation of infant formula rebate invoices and payments for purposes of this contract. If not confirmed, please provide additional details as to what reports will be required.</p>	<p>MIS only provides total number of cans issued, redeemed and rebate price per can.</p>
<p>29. ITB Terms and Conditions, Page 17, Section 5.2 -- Contracts with mutual extension options can be more attractive to potential bidders. Please consider changing this section to make the extension options subject to mutual agreement.</p>	<p>This is standard terms and conditions language for all Statewide Contracts. Renewal and extension options are at the sole option of the State.</p>
<p>30. ITB Terms and Conditions, Page 17, Section 6.3 –</p> <p>a. If a new Contractor is awarded the contract, please describe in detail the State's transition plan.</p> <p>b. Please confirm that if a participant comes to a clinic in June to receive three months of infant formula benefits, they will receive June benefits for the current contract holder's formula and July and August's infant formula benefits for the new contract holder's formula.</p> <p>c. Please indicate whether the State issues benefits on the first of the month or on a rolling month basis.</p>	<p>a. Refer to Section Payment and Terms and Conditions, Scope 6.3.</p> <p>b. TN WIC issues three (3) months of food benefits at a time. The Contractor shall remit to the Agency the rebate due in full for all units of the Contractor's infant formula issued up to 90 days following the end of the contract period.</p> <p>c. Benefits are issued on a rolling month basis.</p>

<p>31. ITB Terms and Conditions, Page 18, Section 6.7 – There is a regulation in this section referencing CFR 246. 16a(c)(5)(iv). The reference to part (iv) does not exist in the regulations. Please revise this reference or indicate what sections of the regulations part (iv) refers to.</p>	<p>This change has been made.</p>
<p>32. ITB Terms and Conditions, Page 19, Section 7.5 -- Please allow termination rights for contractors with a one (1) year notification. If not allowed, please describe all the reasons why the State is allowed to terminate the contract, but the contractor is not afforded the same rights.</p>	<p>This will remain unchanged for the best interest of the State given the time and resources involved to run a procurement.</p>
<p>33. ITB Terms and Conditions, Pages 25-26, Section 7.35.1 -- Please confirm the insurance requirements detailed here are not applicable to an infant formula rebate contract in which the contractor is paying the state.</p>	<p>The insurance coverages contained in the contract are applicable, mandatory, and cannot be removed.</p>
<p>34. WIC Infant Formula Rebate Invoices –</p> <ul style="list-style-type: none"> a. Please provide actual invoice copies issued to the contractor for the months of March 2023 – August 2023. b. Please provide the percentage of infant formula EBT benefits that were issued to participants but never redeemed in 2023. 	<p>During 2023, 11.3% of infant formula EBT benefits were not redeemed. Information is also included in the WIC Infant Formula Rebate Invoices attachment.</p>
<p>35. General Question –</p> <ul style="list-style-type: none"> t. Does the State authorize vendors doing more than 50% of their sales via the WIC program? u. If so, how many WIC-only (above 50%) vendors are currently authorized? v. Please provide a list of the top five (5) retailers utilized as WIC-approved vendors in the state. 	<p>TN only authorizes vendors with 50% of their sales in WIC if needed for participant access.</p> <p>Tennessee currently does not authorize above 50% vendors.</p> <p>The top five WIC-approved retailers are Food City, Food Lion, Kroger, Publix, and Walmart.</p>
<p>36. General Question-- Please indicate the percentage of infants that are enrolled in the WIC program with incomes higher than 185% of the Federal poverty level.</p>	<p>Less than 1% of infants enrolled in the WIC program have incomes higher than 185% of the Federal Poverty Level.</p>
<p>37. General Question – Please provide the average number of infants that are receiving an exempt formula from the program on a monthly basis.</p>	<p>On average, 4,072 infants receive exempt infant formula on a monthly basis.</p>

<p>38. General Question-- Please indicate the percentage of infants that are enrolled in the WIC program were enrolled via adjunctive eligibility (i.e., they demonstrated active participation in SNAP, TANF, Medicaid or CHIP).</p>	<p>90% of infants enrolled in the WIC program demonstrated active participation in other benefit programs.</p>
<p>39. General Question-- For infants categorized as mostly breastfeeding, please provide the AVERAGE infant formula allotment by baby age.</p>	<p>< 1 month: 1 can 1-3 months: 2 cans 4-5 months: 3 cans 6-12 months: 2 cans</p>
<p>40. General Question-- For infants categorized as some breastfeeding, please provide the AVERAGE infant formula allotment by baby age.</p>	<p>< 1 month: 5 cans 1-3 months: 5 cans 4-5 months: 5 cans 6-12 months: 4 cans</p>
<p>41. RFI Details Page 1 a. Please strike the requirement for RFI Details. b. Please confirm that only the most recent RFI Details document needs to be completed and submitted. c. Also confirm that when submitting a physical bid, completing, and submitting a printed RFI Details document is sufficient to be considered responsive and no online submissions of the same is necessary.</p>	<p>a. This requirement will remain. b. Yes, the most recent Event Details document should be completed and signed if submitted as a hard copy. c. Yes, one complete response is required to be considered responsive. Respondents may submit via Edison or by mail as outlined in Terms and Conditions Section 3.8. Responses Submitted by Mail. The Event Details should be completed and signed if submitted as a hard copy.</p>
<p>42. RFI Details Page 2-middle of page- file attachment- if we are doing paper bid, how would we submit these requirements? Are all of the RFI details pages required in a paper submission? If online, how do we complete the RFI details? Online or somehow submit separate docs to satisfy the requirement.</p>	<p>Yes, one complete response, including all of the Event details page, is required to be considered responsive. Respondents may submit via Edison or by mail as outlined in Terms and Conditions Section 3.8. Responses Submitted by Mail. The Event Details should be completed and signed if submitted as a hard copy.</p>
<p>43. General-Please provide a detailed list of bid submission requirements, documents that need to be completed and the order in which to assemble these requirements in a paper submission to be considered a responsive bid. a. Where can required forms that need completed be found to save and print to include in a paper submission?</p>	<p>The State does not provide a checklist. Respondents must complete all required bid factors and attachments as stated in the solicitation, terms and conditions and specifications.</p>
<p>44. RFI Details Page 2-bottom of page- please strike this language as this is a rebate contract and does not apply.</p>	<p>This bid factor has been removed.</p>

<p>45. RFI Details Page 3 – What is the Brand/Model you are bidding? a. Please confirm that the Product name, type and form of infant formula will be a satisfactory response to this question. b. Please confirm that submitting the bid sheet will satisfy this requirement.</p>	<p>Please include the proposed product name in the bid factor mentioned and the Pricing Worksheet.</p>
<p>46. RFI Details Page 3 (middle)-How many days after receipt of purchase order will it take to deliver item(s) a. Please strike language as it's a rebate contract and this does not apply. b. If not stricken, please confirm that answering Not Applicable is an acceptable response.</p>	<p>This bid factor has been removed.</p>
<p>47. RFI Details Page 5 (bottom)- Please confirm the information requested on the bottom of this page should be the contractor information. a. If not confirmed, please provide clarity on what information is expected here.</p>	<p>Please list the contact information for the point of contact for the Respondent's company for this ITB.</p>
<p>48. RFI Details Page 7 (top)- As stated please indicate bidder meets compliance... a. Please confirm signing the bid sheet will suffice to indicate compliance. b. If not confirmed, please provide how a bidder would confirm?</p>	<p>A response to all bid factors is required. For example, if an attachment if requested, please ensure the proper attachment is uploaded to your response.</p>
<p>49. RFI Details Page 7- As stated, a file attachment is required to satisfy this question. a. Is the entire Pediatric Wholesale Price list to be included with the IFB or are the products being bid upon sufficient? b. Please further confirm that the National Wholesale Price list will satisfy this requirement/question.</p>	<p>Respondents must submit the National Wholesale Price List for the products proposed in their bid response.</p>
<p>50. RFI Details Page 9- Bidder Information- If submitting a paper bid, please confirm this section needs to be completed and included with the bid and if so, where should it be included to be a responsive bid?</p>	<p>This section should simply be properly filled out by the respondent.</p>
<p>51. RFI Details Page 10- in #1 it states "the undersigned acknowledges"... please clarify if a bidder should the page containing Appendix B or if that statement is referring to the signature required on page 9?</p>	<p>Yes, this is referring to the signature required under "Bidder Information" on page 9.</p>
<p>52. ITB Page 1, Section 1.3 Statewide Contract- Please strike this section as this is a rebate contract and is not applicable to this bid.</p>	<p>This is standard terms and conditions language for all Statewide Contracts. For this contract, as it is a rebate contract, this section has been removed</p>

<p>53. ITB Page 2, Section 1.7 Responses Due: a. Please confirm the following elements will be read aloud at the bid opening: company name, product brand name, unit size, reconstituted ounces per unit, wholesale price per unit, rebate bid per unit, net cost per unit, percent rebate, and total monthly net cost.</p> <p>b. Please confirm that bidders are not required to attend the bid opening in person and can utilize the Microsoft Teams link to participate.</p> <p>c. Please confirm the location (full address and room number) of the public bid opening including any requirements a bidder must meet in order to attend the live opening.</p> <p>d. Please provide a detailed list of bid submission requirements, documents that need to be completed and the order in which to assemble these requirements in a paper submission to be considered a responsive bid.</p> <p>e. Please indicate which of the elements of this bid submission need to be notarized.</p> <p>f. Where can required forms that need completed be found to save and print to include in a paper submission?</p>	<p>a. At the time of the public bid opening, all responses will be opened, and all Pricing Worksheet information will be read aloud for each response received.</p> <p>b. Attending the bid opening in person is not required and attending via the Teams link is sufficient.</p> <p>c. Central Procurement Office William R. Snodgrass TN Tower, 3rd Floor 312 Rosa L. Parks Avenue, Nashville, TN 37243 Room: Conference Room A</p> <p>d. Respondents must complete all required bid factors and attachments as stated in the solicitation, terms and conditions and specifications.</p> <p>e. There is not a requirement for any of the documents of the bid response that need to be notarized.</p> <p>f. As stated above, Respondents must complete all required bid factors and attachments as stated in the solicitation, terms and conditions and specifications.</p>
<p>54. ITB page 3, Timeline- Please describe the timeline and specifics of your protest procedures:</p> <p>a. Please describe the pre-bid protest procedures and post-proposal due date protest procedures governing this RFP, including relevant time frames for submitting a protest.</p> <p>b. Please confirm all bidders will be notified if a protest is filed either prior to the bid proposal due date or after issuance of an award recommendation.</p> <p>c. Please explain when all bids received by the States will be able to be viewed by all bidders.</p> <p>d. Please confirm all bidders will be notified in the event of a protest on this bid and how they will be notified.</p> <p>e. Please provide details as to when all bids will be published and available via public records request.</p>	<p>a. Protest procedures shall be sent with the Notice of Intent to Award. A protest may only be submitted during the Open File period, which begins immediately after the NOIA is released.</p> <p>b. The awardee shall be notified of any protest filed.</p> <p>c. Please refer to Section 1.7 in the terms and conditions that states the timeline. The Open File Period is when documents can be requested by respondents for viewing.</p> <p>d. The awardee shall be notified of any protest filed.</p> <p>e. The Open File Period is when documents can be requested by respondents for viewing.</p>

<p>55. ITB page 4, Section 2.1 Single Award-Lowest Cost- please confirm the state will award the contract to the responsive and responsible bidder offering the lowest total monthly net cost.</p> <p>a. Please explain the order of precedence between Q&A responses, RFI, ITB and the State’s contract.</p>	<p>The State will award this contract to the responsive and responsible bidder who offers the lowest total cost.</p> <p>The Q&A responses will be posted with the ITB Event as “Amendment 2”. The contract shall be entered into Edison and executed as soon as possible after the open file period ends. Additionally, please see Terms and Conditions Section 7.32.</p>
<p>56. ITB Page 4, Section 3.4 Performance- please strike as this is a rebate contract and no goods or services will be provided by the winning bidder.</p>	<p>These are standard terms and conditions included in all statewide contracts.</p>
<p>57. ITB Page 5, Section 3.6 Negotiations- please strike as the award criteria for this bid is listed in section 2.1, which aligns with the federal regulations for a rebate contract award.</p>	<p>This section has been removed.</p>
<p>58. ITB Page 6, Section 3.9 Responses Submitted by Mail- Please confirm bidders can submit paper bid submissions. a. #1. States that if submitting via mail that bid prices need to be typed or written on “Attachment II-Pricing Worksheet”, please confirm this is the same as the excel file 32110-13069_Pricing_Worksheet</p> <p>b. In #3 of this section, it states “each individual response must be returned in a separate envelope package or contain...” Please provide what the requirements are for submitting a paper bid including how many originals and how many copies of the completed bid package need to be submitted in order to be deemed responsive.</p> <p>c. If a bidder chooses to submit a bid via mail, please provide detailed instruction on how the bid should be formatted, what is required to be included and if there are any specifics around compiling the bid package.</p> <p>d. If a paper bid is mailed, please provide a contact a bidder can reach out to for confirming receipt of the bid package at the State.</p> <p>e. Please explain how bid packages received via mail will be kept secure prior to the public bid opening.</p> <p>f. Please confirm that any bid received via mail will not be opened until the public bid opening so those in attendance witness the opening of the bid package.</p> <p>g. Please confirm that the bidder is not required to submit the entire ITB as part of the bid submission.</p>	<p>a. Yes, the 32110-13069 Attachment II-Pricing Worksheet needs to be completed and included in a response submitted via mail.</p> <p>b. One complete response is required to be considered responsive. Respondents may submit via Edison or by mail as outlined in Terms and Conditions Section 3. Responses Submitted by Mail. The Event Details should be completed and signed if submitted as a hard copy.</p> <p>c. Please follow the instructions outlined in Section 3. Responses Submitted by Mail.</p> <p>d. Confirmation of receipt of a mailed or hand delivered bid response can be verified with the solicitation coordinator: Sondra Parks at Sondra.parks@tn.gov or 615-532-6357.</p> <p>e-f. All responses shall be kept sealed or unopened until the public bid opening, as stated in the terms and conditions.</p> <p>g. One complete response is required to be considered responsive. Respondents may submit via Edison or by mail as outlined in Terms and Conditions Section 3.8. Responses Submitted by Mail. The Event Details should be completed and signed if submitted as a hard copy.</p>

<p>59. ITB Pages 6-8, Sections 3.10-3.31- Please confirm that ONLY the following sections (3.11,3.12,3.13,3.14,3.15,3.17,3.19,3.28,3.30 and 3.31) are applicable to this bid, as the others are not applicable to a rebate contract and should not be considered in this bid.</p>	<p>This is standard terms and conditions language for all Statewide Contracts.</p>
<p>60. ITB Page 8 Section 3.31 Protest by Respondent- Please incorporate section 3.31 and protest timing/dates into the master timeline in 1.7.</p>	<p>Please refer to Section 1.7 in the RFI that states the timeline. The Open File Period is when documents will be made available by request. Additionally, the Open File period is when solicitation protests may be submitted.</p>
<p>61. ITB Page 9, Section Governor’s Office of Diversity Business Enterprise- please strike this entire section as this is a rebate contract. The award criteria that should be used for this bid is listed in section 2.1, which aligns with the federal regulations for a rebate contract award.</p>	<p>Even respondents of a rebate contract can be Go-DBE certified. If the respondent is not Go-DBE eligible please complete the form, enter N/A in the “& of contract” field and sign the form. The award criteria as stated in the Terms and Conditions is how the responses will be evaluated. Please see Terms and Conditions, Section 2.</p>

<p>62. ITB Page 9 Section-Instructions-Please confirm that a bidder is not required to complete the provided diversity plan from the State, but submitting their own diversity plan used in their organization will fulfill this requirement.</p>	<p>The Diversity Utilization Plan is a bid factor requirement. This form must be completed. If the Respondent is not GODBE certified “0%” may be entered on the form.</p>
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<p>63. ITB Page 13, Section 4.5.C Contractor Responsibilities-</p> <p>a. In the event the successful offeror is unable to supply a specific form of a Primary Contract Infant Formula, please confirm that the State will first utilize a different form of the primary contracted infant formula, if the Primary Contract Formula form is unavailable, then the state would utilize an alternate Contract Brand Infant Formula in the winning manufacturer’s product line prior to the issuance of non-contract non-exempt formulas produced by other manufacturers.</p> <p>b. Please make “Failure to Supply” a defined term in this contract to reflect the scenario of Contractor’s failure to meet ‘minimum stocking requirements’ due to Contractor’s inability to supply.</p> <p>c. Please make “minimum stocking requirements” a defined term in this contract, share the current minimum stocking requirements of WIC authorized retail vendors and indicate whether the State anticipates the minimum stocking requirements will remain the same for the new primary contract brand infant formula.</p> <p>d. Please insert “that fall below the minimum stocking requirements for contract brand infant formulas due to Contractor’s inability to fulfill orders from WIC authorized retail vendors” in the third sentence of Section 4.5(c) after “In the event of any contract brand infant formula(s) shortages,..”</p> <p>e. Please replace “supply chain disruptions” references with “Failure to Supply.”</p> <p>f. Please insert “In the event of any contract brand infant formula shortages that are not due to Contractor’s Failure to Supply, State may seek USDA waivers for issuing above the federal maximum and issuing Non-exempt, non-contract brand infant formula, however, Contractor is not responsible for paying rebates on such competitive formulas.”</p> <p>g. Please specify exactly when and under what circumstances the state would seek the manufacturer to pay a rebate on competitive product. Please confirm this would only be required when there is a failure to supply by the manufacturer. Seeking competitive rebates on events outside of the manufacturers control could negatively impact bid responses and seem unfairly onerous to the manufacturer.</p>	<p>Refer to 4.2 CFR 246.10 (e)(1)(iii-iv) and Scope 4.5 (d)</p> <p>“Supply Chain Disruptions” aligns with the Access to Baby Formula Act.</p> <p>c. Stock List Assignments for minimum stock requirements is based on each vendor’s reported WIC sales. Minimum stock requirements for each stock list assignment are as follows: Large stock list – 20 cans milk-based powder formula and 10 cans soy-based powder formula Medium stock list – 12 cans milk-based powder formula. Soy powder formula is optional for this stock list assignment. Small stock list – 6 cans milk-based powder formula. Soy powder formula is optional for this stock list assignment. Concentrate and RTF formulas are optional for all stock list assignments. Minimum stock requirements are reviewed annually to determine if any changes will be needed. At this time, the State does not anticipate any changes to the current minimum stock requirements.</p> <p>d-g. Scope 4.5 c, d, and e language as stated aligns with Access to Baby Formula Act and Tennessee policy.</p>
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<p>64. ITB page 13 Section 4.5e Contractor Responsibilities -Please explain the State`s policy on accepting returned formula from participants.</p> <p>a. Please confirm that if the State reissues formula (in the event of a return), that the contracted manufacturer will not pay rebates exceeding the federal maximum.</p> <p>i. Example: Mom is issued 9 cans of Similac Advance powder and redeems all 9 cans. Mom returns 7 cans to the clinic and is issued a new benefit for 7 cans of Similac Sensitive powder. Is the State seeking rebates on 9 cans or 16 cans?</p> <p>b. If above is not confirmed, please detail by age of baby, form, and type how many units of formula are rebated above the federal maximum monthly.</p>	<p>Refer to Scope 4.5 (f), WIC Policy Memorandum #2020-1, and 4.3 (n)</p>
<p>65. ITB Page 14 Section 4.5g Contractor Responsibilities-Please strike this section as this is imposing a requirement on a manufacturer to always replace a discontinued contract brand infant formula when such contract brand infant formulas are not required to bid.</p> <p>Alternatively, please rephrase this section to replace “contract brand infant formulas” with “Primary Contract Infant Formula” and strike “or any other manufacturers’ brand of comparable infant formula”. If a manufacturer discontinues a primary contracted formula, it is incumbent on manufacturer to provide a comparable substitute by the same manufacturer, not to rebate another manufacturer’s formula.</p>	<p>This change has been made. Refer to Section 4.5 g.</p>
<p>66. ITB Page 14 Section 4.6.e The Tennessee Department of Health Responsibilities- Please confirm that an exception to the resolution-in-same-fiscal-year rule is if the overbilling wasn’t identified until after the passing of the federal fiscal year in which the dispute occurred.</p>	<p>Refer to Scope 6.4.</p>
<p>67. ITB Page 15, Section 4.6 i.2.- Please confirm that rebates will not be paid for children or women.</p>	<p>Refer to Scope 6.3.</p>
<p>68. ITB Page 15, Section 4.6 i- Please provide the latest 6 months issuance by brand, size, and unit for all contract, exempt, and non-contract non-exempt infant formulas.</p>	<p>Refer to Attachment: 32110-13069 WIC Infant Formula Rebate Invoices March 23-Aug 23</p>

<p>69. ITB Page 15, Section 4.7 Monitoring-</p> <p>a. Please confirm authorized vendors are responsible for maintaining adequate stock of authorized infant formulas. The manufacturer is responsible for fulfilling orders from retailers through its established distribution network.</p> <p>b. Does the state perform compliance buys to confirm that WIC authorized retailers are only allowing the purchase of the formula listed on the Food Instrument?</p> <p>c. If the state is not currently performing these compliance buys, we urge the state to begin.</p> <p>d. How many vendors have been sanctioned over the course of the current contract for allowing the purchase of a formula not specified on the Food Instrument?</p> <p>e. Does the State authorize vendors doing more than 50% of their sales via the WIC program?</p> <p>f. Please provide a list of all over 50% vendors.</p> <p>g. Please provide what percentage of contracted formula is redeemed at over 50% vendors.</p>	<p>a. Authorized vendors are responsible for meeting the minimum stock requirements, including for infant formula.</p> <p>b. The State does perform compliance investigations to ensure authorized vendors are only allowing the purchase of benefits assigned. Formula compliance investigations are conducted on an as-needed basis.</p> <p>c. The state conducts compliance investigations for infant formula on an as-needed basis.</p> <p>d. There have been zero (0) vendors sanctioned for allowing the purchase of a formula not specified on the assigned benefits.</p> <p>e. The State only authorizes Above-50% vendors if a participant access hardship exists.</p> <p>f. The State does not currently have any Above-50% vendors authorized.</p> <p>g. The State does not currently have any Above-50% vendors authorized.</p>
<p>70. ITB Page 15, section 4.7.a- Monitoring – Please confirm this section is speaking to reviewing books and records? The contractor does not produce any unique data, all data is originated by the State.</p>	<p>SWC 437 WIC Infant Formula Specs and Terms 4.7 Monitoring (a) Inspection does not speak to the question asked by this potential respondent.</p>
<p>71. ITB Page 15, section 4.7.b. Monitoring- Program Reports- Please confirm this requirement is not applicable to this contract as the State sends data to the contractor for the purpose of requesting a rebate. This is not applicable to a rebate contract.</p>	<p>Scope 4.7b. will remain.</p>
<p>72. ITB page 16 Section 4.9.1 Warranty – please strike as it conflicts with other supply terms of the agreement. If not stricken, please add that the “Contractor guarantees that no goods delivered hereunder is adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, or within the meaning of any applicable state or municipal law in which the definitions of adulteration and misbranding are substantially the same as those contained in the Federal Food, Drug and Cosmetic Act, as said Act and such laws are constituted and effective at the time of such shipment from the FOB Point, or is an article which may not, under the provisions of Sections 404 or 505 of said Act, be introduced into interstate commerce.”</p>	<p>Scope 4.9.1 will remain as is.</p>

<p>73. ITB Page 16- Section 4.10 Inspection and Acceptance- please strike this section as it is not applicable to a rebate contract.</p>	<p>This is standard terms and conditions language for all Statewide Contracts.</p>
<p>74. ITB Page 17 Section 5.2 Renewal Options- Will this State consider making the decision for contract renewals mutual?</p>	<p>Renewal options are at the State's sole option.</p>
<p>75. ITB Page 17 Section 5.3 Term Extensions- Please explain under what circumstances the State would need to extend 180 days and would these 180 days be in addition to the 60 months that cannot be exceed as stated in section 5.2?</p>	<p>A term extension is at the State's sole option. Additionally, please refer to Terms and Conditions Section 5.1. that states, In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.</p>
<p>76. ITB Page 17 Section 6.1 Payment Terms and Conditions- If the thirtieth day falls on a Sunday or a banking holiday, please confirm payment made the following business day will not constitute a late payment or a penalizing the contractor.</p>	<p>This change has been made. Refer to Scope 6.1 for the following language addition: If the thirtieth day falls on a Sunday or a banking holiday, payments made the following business day will not constitute a late payment or a penalty.</p>
<p>77. ITB Page 17 Section 6.3 Payment Terms and Conditions - Should a contract transition occur, please provide detail as to how the State will manage the transition, including: a. Will participants entering the WIC clinic on June 15, 2024, receive benefits for June, July and August that include the existing manufacturer's products? Or will the month of June only be for the current manufacturer's contracted product? b. Please explain if the State issues benefits on a rolling basis or follows the calendar month. c. Please provide any additional details regarding the transition process if a different contract brand formula will be issued under the new contract.</p>	<p>a. Yes, TN WIC Program issues three (3) months of food benefits at a time, the Contractor shall remit to the Agency the rebate due for all units of the Contractor's infant formula up to 90 days following the end of the contract period. b. Benefits are issued on a rolling calendar month. c. Refer to Section Payment Terms and Conditions, Scope 6.3</p>

<p>78. ITB Page 17 Section 6.4 Payment Terms and Conditions – Please confirm that this is reciprocal to the contractor. a. Please confirm the State will provide vendor redemption data to the Contractor when issues of fraud arise.</p> <p>b. Please confirm the State will work with the Contractor to provide such data in instances in which rebates have been paid for contracted products based on fraudulent transactions that involve infant formula.</p> <p>c. Please confirm the State agrees to discuss with the Contractor appropriate means for addressing payment issues identified through manufacturer audits and/or fraud-related issues directly affecting the manufacturer.</p> <p>d. Please confirm the State will partner with the Contractor on recovery in instances where fraud has been discovered, and it has been further determined the manufacturer was overbilled for infant formula.</p> <p>e. How many vendors have been disqualified due to fraud issues in each of the last three years?</p> <p>f. Please confirm that there is no time limit on disputes arising from fraud or other illegal activity that prevents the Contractor from being able to identify the incorrect billing earlier. If not confirmed, please explain why such a time limit is appropriate.</p> <p>g. Please explain the States’ processes to identify and curb fraud and how the State plans to secure the interests of its Contractor.</p>	<p>a. Vendor redemption data can be provided if the request does not conflict with 7 CFR 246.26(e) Confidentiality of Vendor Information.</p> <p>b. Refer to Scope 4.6 c-e.</p> <p>c. Refer to Scope 4.6 c-e.</p> <p>d. Refer to Scope 4.6 c-e.</p> <p>e. There were zero (0) vendors disqualified due to fraud issues in FFYs 2021, 2022 and 2023.</p> <p>f. Refer to Scope 6.4</p> <p>g. To identify and curb vendor-related fraud, the State conducts covert compliance investigations, conducts 2 monitor visits per regular vendor and 1 monitor visit per pharmacy each year, ensures authorized vendors purchase infant formula only from approved infant formula suppliers and monitors vendor transactions as well as redemptions.</p>
<p>79. ITB Page 17, 6.5 Payment Terms and Conditions - Please confirm that the contractor is permitted to withhold payment if an overbilling is not supported by the agreed upon invoice documentation to substantiate the invoice balance, and the amount in question significantly exceeds the average of the past 3 months of invoices submitted by the state (variance of greater than 100%).</p>	<p>Refer to Scope of The Tennessee department of Health Responsibilities Section 4.6 d.</p>
<p>80. ITB Page 18 Section 7.2 Communications and Contacts- Please advise if a bidder needs to complete the Contractor contact information in this section of the ITB and if so, does the whole ITB need to be returned as part of the bid submission? Please provide clarification or confirm the contractor can provide this information on a document they include in their submitted bid.</p>	<p>Section 7.2, Contractor contact information will be completed by the State once an award for this contract has been made.</p>
<p>81. ITB Page 19 Section 7.5 Termination for Convenience- Please confirm this is mutual for the contractor.</p>	<p>The State may terminate this Contract for convenience without cause for any reason. This is not mutual.</p>

<p>82. ITB Page 21 Section 7.11.a. Prohibition of Illegal Immigrants- Please confirm this requirement is only for the awarded contractor and is not a requirement of this bid submission?</p>	<p>Any respondent awarded a contract shall comply with Tenn. Code Ann. § 12-3-309 and submit semi-annual attestations to the State.</p>
<p>83. ITB Page 23 Section 7.21.a. Custom Reports- Please strike this requirement as the State generates all data regarding this contract, the manufacturer would not have this information.</p>	<p>This is standard terms and conditions language for all statewide contracts.</p>
<p>84. ITB General- Please confirm that by signing the bid sheet, the contractor is agreeing to the provisions listed in the ITB.</p>	<p>The Respondents signature on the bid sheet is an agreement to the provisions listed in the ITB.</p>
<p>85. ITB Page 28 Section 8.3 Authorized Users-Statewide Contract- Please strike as this is a rebate contract and is not applicable.</p>	<p>This is standard terms and conditions language for all Statewide Contracts. For this contract, as it is a rebate contract, this section has been removed.</p>
<p>86. Invoice Detail & Price Sheet - For the period of March 2023 - August 2023, please detail the number of infants participating who received exempt formulas as well as non-contract non-exempt infant formulas.</p>	<p>Attachment: 32110-13069 WIC Infant Formula Rebate Invoices March 23-Aug 23</p>
<p>87. Invoice Detail & Price Sheet -Please explain the State's policy on issuing non-contract, non-exempt formulas? Please confirm that if the State allowed non-contract non-exempt infant formulas that those infants are included in the bid sheet. a. Would the State change its policy to allow non-contract, non-exempt formulas if the winning contractor did not produce formulas other than one primary contracted milk-based and one primary contracted soy-based infant formula in powder, concentrate and ready-to-feed forms?</p>	<p>Refer to Scope 4.2, 4.3 (b), 4.5 (c-d).</p>
<p>88. Prohibited Contract Terms. The prohibited contract terms and conditions enumerated in Tenn. Code Ann. § 12-3-515, shall be a material provision of this Contract. The Contractor acknowledges, understands, and agrees that the inclusion of a term or condition prohibited by Tenn. Code Ann. § 12-3-515, shall be null and void and the Contract shall be enforceable as if the Contract did not contain such term or condition.</p>	<p>Please see Section 8.15. of the ITB. This has been added.</p>
<p>89. 3.20 Samples - Optional. The State may request samples of the products listed below for evaluation and testing: Reference Line(s): 1-3.</p>	<p>Please see Section 3.20 of the ITB. This has been updated to say lines 1-3 instead of 1-41.</p>