



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
 WIC90120

PAGE
 1

ADDRESS CORRESPONDENCE TO ATTENTION OF
 ROBERTA WAGNER
 304-558-0067

VENDOR

RFQ COPY
 TYPE NAME/ADDRESS HERE

SHIP TO

HEALTH AND HUMAN RESOURCES
 BPH - NUTRITION SERVICES
 350 CAPITOL STREET, ROOM 519
 CHARLESTON, WV
 25301-3717 304-558-0030

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
02/19/2009				

BID OPENING DATE: 03/19/2009 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	JB	952-43	OPEN-END BLANKET CONTRACT INFANT FOODS REBATE FOR NINE (9) STATES REQUEST FOR QUOTATION TO PROVIDE AN INFANT FOODS REBATE FOR NINE (9) STATES PER THE ATTACHED SPECIFICATIONS. A PRE-BID CONFERENCE WILL BE HELD ON MARCH 2, 2009, AT 11:00 AM AT 350 CAPITOL STREET, ROOM 507, CHARLESTON, WEST VIRGINIA 25301-3717. ATTENDANCE IS NOT MANDATORY. EXHIBIT 3 LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE ON 10/1/2009 AND EXTENDS FOR A PERIOD OF THIRTY-ONE (31) MONTHS OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS IS NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS		

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

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GENERAL TERMS & CONDITIONS
REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. All quotations are governed by the *West Virginia Code* and the *Legislative Rules* of the Purchasing Division.
4. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
5. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
6. Payment may only be made after the delivery and acceptance of goods or services.
7. Interest may be paid for late payment in accordance with the *West Virginia Code*.
8. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
9. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
10. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
11. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
12. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this Contract may be deemed null and void, and terminated without further order.
14. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
15. **WEST VIRGINIA ALCOHOL & DRUG-FREE WORKPLACE ACT:** If this Contract constitutes a public improvement construction contract as set forth in Article 1D, Chapter 21 of the West Virginia Code ("The West Virginia Alcohol and Drug-Free Workplace Act"), then the following language shall hereby become part of this Contract: "The contractor and its subcontractors shall implement and maintain a written drug-free workplace policy in compliance with the West Virginia Alcohol and Drug-Free Workplace Act, as set forth in Article 1D, Chapter 21 of the West Virginia Code. The contractor and its subcontractors shall provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free work place policy in compliance with the West Virginia and Drug-Free Workplace Act. It is understood and agreed that this Contract shall be cancelled by the awarding authority if the Contractor: 1) Fails to implement its drug-free workplace policy; 2) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or 3) Provides to the public authority false information regarding the contractor's drug-free workplace policy."

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division.
2. **SPECIFICATIONS:** Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Complete all sections of the quotation form.
4. Unit prices shall prevail in case of discrepancy.
5. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
6. **BID SUBMISSION:** All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications: Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130



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DATE PRINTED 02/19/2009	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
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BID OPENING DATE: 03/19/2009 BID OPENING TIME 01:30PM

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<p>WRITTEN NOTICE.</p> <p>UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS AND PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE CONTRACT.</p> <p>RENEWAL: THIS CONTRACT MAY BE RENEWED UPON THE MUTUAL WRITTEN CONSENT OF THE SPENDING UNIT AND VENDOR, SUBMITTED TO THE DIRECTOR OF PURCHASING THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE. SUCH RENEWAL SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND SHALL BE LIMITED TO TWO (2) ONE (1) YEAR PERIODS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICE SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>OPEN MARKET CLAUSE: THE DIRECTOR OF PURCHASING MAY AUTHORIZE A SPENDING UNIT TO PURCHASE ON THE OPEN MARKET, WITHOUT THE FILING OF A REQUISITION OR COST ESTIMATE, ITEMS SPECIFIED ON THIS CONTRACT FOR IMMEDIATE DELIVERY IN EMERGENCIES DUE TO UNFORESEEN CAUSES (INCLUDING BUT NOT LIMITED TO DELAYS IN TRANSPORTATION OR AN UNANTICIPATED INCREASE IN THE VOLUME OF WORK.)</p> <p>QUANTITIES: QUANTITIES LISTED IN THE REQUISITION ARE APPROXIMATIONS ONLY, BASED ON ESTIMATES SUPPLIED BY THE STATE SPENDING UNIT. IT IS UNDERSTOOD AND AGREED THAT THE CONTRACT SHALL COVER THE QUANTITIES ACTUALLY ORDERED FOR DELIVERY DURING THE TERM OF THE CONTRACT, WHETHER MORE OR LESS THAN THE QUANTITIES SHOWN.</p>						

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<p>ORDERING PROCEDURE: SPENDING UNIT(S) SHALL ISSUE A WRITTEN STATE CONTRACT ORDER (FORM NUMBER WV-39) TO THE VENDOR FOR COMMODITIES COVERED BY THIS CONTRACT. THE ORIGINAL COPY OF THE WV-39 SHALL BE MAILED TO THE VENDOR AS AUTHORIZATION FOR SHIPMENT, A SECOND COPY MAILED TO THE PURCHASING DIVISION, AND A THIRD COPY RETAINED BY THE SPENDING UNIT.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THIS CONTRACT IS AUTOMATICALLY NULL AND VOID, AND IS TERMINATED WITHOUT FURTHER ORDER.</p> <p>THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT SHALL SUPERSEDE ANY AND ALL SUBSEQUENT TERMS AND CONDITIONS WHICH MAY APPEAR ON ANY ATTACHED PRINTED DOCUMENTS SUCH AS PRICE LISTS, ORDER FORMS, SALES AGREEMENTS OR MAINTENANCE AGREEMENTS, INCLUDING ANY ELECTRONIC MEDIUM SUCH AS CD-ROM.</p> <p>REV. 04/11/2001</p> <p>INQUIRIES: WRITTEN QUESTIONS SHALL BE ACCEPTED THROUGH CLOSE OF BUSINESS ON 3/4/2009. QUESTIONS MAY BE SENT VIA USPS, FAX, COURIER OR E-MAIL. IN ORDER TO ASSURE NO VENDOR RECEIVES AN UNFAIR ADVANTAGE, NO SUBSTANTIVE QUESTIONS WILL BE ANSWERED ORALLY. IF POSSIBLE, E-MAIL QUESTIONS ARE PREFERRED. ADDRESS INQUIRIES TO:</p> <p>ROBERTA WAGNER DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25311</p>						

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LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
FAX: 304-558-4115 E-MAIL: ROBERTA.A.WAGNER@WV.GOV EXHIBIT 4 LOCAL GOVERNMENT BODIES: UNLESS THE VENDOR INDICATES IN THE BID HIS REFUSAL TO EXTEND THE PRICES, TERMS, AND CONDITIONS OF THE BID TO COUNTY, SCHOOL, MUNICIPAL AND OTHER LOCAL GOVERNMENT BODIES, THE BID SHALL EXTEND TO POLITICAL SUBDIVISIONS OF THE STATE OF WEST VIRGINIA. IF THE VENDOR DOES NOT WISH TO EXTEND THE PRICES, TERMS, AND CONDITIONS OF THE BID TO ALL POLITICAL SUBDIVISIONS OF THE STATE, THE VENDOR MUST CLEARLY INDICATE SUCH REFUSAL IN HIS BID. SUCH REFUSAL SHALL NOT PREJUDICE THE AWARD OF THIS CONTRACT IN ANY MANNER. REV. 3/88 NOTICE A SIGNED BID MUST BE SUBMITTED TO: DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION BUILDING 15 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305-0130 PLEASE NOTE: WE NEED ELEVEN (11) CONVENIENCE COPIES.						

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<p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p> <p>BUYER: -----RW/FILE 22-----</p> <p>RFQ. NO.: -----WIC90120-----</p> <p>BID OPENING DATE: ---3/19/2009-----</p> <p>BID OPENING TIME: ---1:30 PM-----</p> <p>PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:</p> <p>-----</p> <p>CONTACT PERSON (PLEASE PRINT CLEARLY):</p> <p>-----</p> <p>***** THIS IS THE END OF RFQ WIC90120 ***** TOTAL: _____</p>						

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Infant Foods Rebate System for the States of Delaware, Maryland, New Jersey, and West Virginia and the Commonwealths of Pennsylvania, Puerto Rico, Virginia, the US Virgin Islands and the District of Columbia

I. PURPOSE

The Special Supplemental Nutrition Programs for Women, Infants and Children (WIC) of the States of Delaware, Maryland, New Jersey, and West Virginia, the Commonwealths of Pennsylvania, Puerto Rico, Virginia, US Virgin Islands and the District of Columbia (referred to herein as the States) are seeking a way to comply with 7 C.F.R. § 246.16a (g) and to contain the cost of infant foods in order to increase the number of women, infants, and children served by the States' WIC Programs. The States have joined together to solicit bids for an infant foods rebate and are requesting proposals for rebates from a single source for these products.

The States will act as a single entity, accepting and implementing the rebate system. The rebate system will be initiated simultaneously in all nine (9) State Agencies beginning October 1, 2009.

The States' WIC Programs served, in total, approximately 249,260 infants monthly as of September 30, 2008 (6,072 in Delaware, 36,388 in Maryland, 41,704 in New Jersey, 64,000 in Pennsylvania, 40,689 in Puerto Rico, 40,909 in Virginia, 12,542 in West Virginia, 1,256 in Virgin Islands, 5,700 in the District of Columbia). The following chart provides the estimates of the Monthly Average Infants ages 6 to 11 months that are fully formula fed and partially breastfed, and eligible to receive 128 oz. of Infant Fruits and vegetables.

Avg. No. of Fully Formula/Partially Breastfed Infants Per Month	
Participating States	
Delaware	5,851
District of Columbia	5,385
Maryland	17,278
New Jersey	41,704
Pennsylvania	28,081
Puerto Rico	20,166
Virginia	19,528
Virgin Islands	1,233
West Virginia	6,265
Total Monthly Averages	145,491

The following chart details the average number of fully breastfed infants that will be eligible for 256 oz. of infant fruits and vegetables as well as 77.5 oz. of infant meat.

Infant Foods Rebate System for the States of Delaware, Maryland, New Jersey, and West Virginia and the Commonwealths of Pennsylvania, Puerto Rico, Virginia, the US Virgin Islands and the District of Columbia

Avg. No. of Fully Breastfed Infants Per Month	
Participating States	
Delaware	223
District of Columbia	315
Maryland	684
New Jersey	3,910
Pennsylvania	1,482
Puerto Rico	539
Virginia	1,205
Virgin Islands	23
West Virginia	315
Total Monthly Averages	8696

II. SERVICES TO BE PERFORMED

The bidder awarded a Contract shall:

- A. Provide at the retail level a variety of container sizes which may include a combination of 2.5, 3.5, 4 and 6 oz containers of infant fruits and vegetables and 2.5 oz and 4 oz containers of infant meats meeting the following specifications:
 1. Infant Fruits – Any variety of single ingredient commercial infant food fruit without added sugars, starches, or salt. Textures may range from strained through diced. Mixtures with cereal or infant food desserts (e.g. peach cobbler) are not authorized; however, combinations of single ingredients (e.g., apple-banana) are allowed. As diced varieties are recommended for children ages 12 months and up, the bidder must provide at least four single ingredient varieties/types of fruits that do not include diced. All varieties must meet United States Department of Agriculture (USDA) regulatory requirements for use in the WIC Program. If the winning bidder cannot supply such a product, then it shall allow the states to issue to participants, drafts/checks for another manufacturer's comparable product(s) with no state agency breach of Contract occurring. Some special cases may require fruits with further restrictions, e.g. kosher foods, for documented dietary or religious reasons.
 2. Infant Vegetables: Any variety of single ingredient commercial infant food vegetables without added sugars, starches, or salt. Texture may range from strained through diced. Combinations of single ingredients (e.g., peas and carrots) are allowed. As diced varieties are

recommended for children ages 12 months and up, the bidder must provide at least five varieties/types of single ingredient vegetables that do not include diced. All varieties must meet USDA regulatory requirements for use in the WIC Program. If the winning bidder cannot supply such a product, then it shall allow the states to issue to participants, drafts/checks for another manufacturer's comparable product(s) with no state agency breach of Contract occurring. Some special cases may require vegetables with further restrictions, e.g. kosher foods, for documented dietary or religious reasons.

3. **Infant Meats:** Any variety of commercial infant food meat or poultry, as a single major ingredient, with added broth or gravy. Added sugars or salt (i.e. sodium) are not allowed. Texture may range from pureed through diced. As diced varieties are recommended for children ages 12 months and up, the bidder must provide at least three varieties/types of meats that do not include diced. No infant food combinations (eg meat and vegetables) or dinners (eg. Spaghetti and meatballs), graduate or toddler foods are allowed. All varieties must meet USDA regulatory requirements for use in the WIC Program. If the winning bidder cannot supply such a product, then it shall allow the states to issue to participants, drafts/checks for another manufacturer's comparable product(s) with no state agency breach of Contract occurring. Some special cases may require meats with further restrictions, e.g. kosher foods, for documented dietary or religious reasons.
4. Current federal program regulations allow a maximum of 256 oz of infant food fruits and vegetables and 77.5 oz of infant food meat for a fully breastfed infant and 128 oz of infant food fruits and vegetables to be prescribed for each infant that is partially breastfed or fully formula fed each month. This is a maximum amount and it is not guaranteed this quantity will be purchased. Each participating state reserves the right to determine their authorized package sizing and product variety.

B. Scope of Work:

Task 1

Guarantee provision of said infant foods meeting the specifications in II.A to all of the States' authorized WIC retailers through currently utilized or proposed marketing channels and practices.

Task 2

Contact major wholesalers in the area served by the States and a sufficient number of authorized WIC retail outlets (chains and independent grocers) to assure adequate on-shelf supplies to ensure that

there will be sufficient quantities of infant foods to supply the number of infants requiring these foods as outlined in Section I of the RFQ of the selected brand of infant foods at implementation of this Contract.

Task 3

Remit to the States' WIC Programs the rebate per ounce as submitted on the attached Bid Sheet, Section II, Rebate Amount. A price increase in the successful bidder's wholesale price of any rebated product shall result in an automatic rebate increase on a cent-for-cent basis for that product as set forth in the Sample Contract, Section III.C.2. The per ounce rebate will increase effective the first day of the month in which the price was increased. Any decrease in the wholesale price shall result in a cent-for-cent decrease in the rebate amount.

Task 4

Remit to each of the States' WIC Programs the rebate amount in the manner prescribed in the Sample Contract, Section I.C.

III. TERMS AND CONDITIONS

Term of Contract and Renewals: This Contract shall be effective for thirty-one (31) months effective October 1, 2009, with a unilateral option of the States, either individually or together, to continue the Contract for two additional periods of twelve (12) months each. Due to the administrative burden necessary to rebid this Contract, the States will notify the manufacturer six months prior to the end of the initial Contract, or any renewals, if the extension option will be exercised. Such notification shall have no effect on the remainder of the Contract or extension in effect at that time. The States also reserve the unilateral right to order changes and/or to delay initiation of the Contract if necessary and if such changes or delays do not alter the scope of the Contract.

IV. THE MANUFACTURER AGREES TO THE FOLLOWING PROVISIONS:

A. PROVISION OF INFANT FOODS

The Manufacturer agrees to provide infant foods in sufficient supply through retail outlets to serve 100% of the WIC eligible caseload in the States and remit to the States' WIC Programs a rebate per ounce of infant foods purchased as specified on their bid sheet.

B. METHOD OF PAYMENT

The Manufacturer shall submit a separate check each month to each of the State WIC Programs for the total amount of each States' invoice for rebates due from the amount of infant foods authorized to purchase with WIC funds during

the one-month period. States should have the option of an automated funds transfer from the Manufacturer each month should the State so choose. Checks shall be payable to each State, as follows:

Delaware WIC Program
Ms. Joanne White
State WIC Director
Delaware State Division of Public Health
655 Bay Road
Blue Hen Corp Center, Suite 4-B
Dover, Delaware 19001

Maryland WIC Program
201 W. Preston St. - Room 103
Baltimore, Maryland 21201

New Jersey WIC Program
Ms. Jean Malloy
State WIC Director
P. O. Box 364
Trenton, NJ 08625-0364

Pennsylvania WIC Program
PHHS Comptroller's Office
Accounting Control Division
P.O. Box 2675
Harrisburg, Pennsylvania 17120

Puerto Rico WIC Program
Puerto Rico Department of Health
PO Box 25220
San Juan, Puerto Rico 00928-5220

Virginia WIC Program
Ms. Donna Seward
State WIC Director
Division of WIC & Community Nutrition Services
109 Governor Street, 9th Floor
Richmond, VA 23219

Virgin Islands WIC Program
Department of Health
28-29 Norre Gade
St. Thomas, VI 00802

West Virginia WIC Program
Ms. Denise Ferris
State WIC Director
350 Capitol Street, Room 519
Charleston, West Virginia 25301-3717

District of Columbia Treasurer
Ms. Gloria Clark, Director
Department of Health
2100 Martin Luther King Jr. Ave., S. E.
Suite 409
Washington, D. C. 20020

C. PAYMENT AND INTEREST PENALTIES

The Manufacturer shall submit payment to the States within thirty (30) days of the date of the receipt of the States' invoices which will either be transmitted to the Manufacturer by FAX or E-Mail, with the time and date of the transmission documented on the invoice, or by express or certified mail, return receipt requested. If the Manufacturer does not mail, as evidenced by a postmark or receipt, or authorize a funds transfer payment within 30 days of the receipt as evidenced by receipt or transmission data, of the invoice, the Manufacturer will pay the State submitting the invoice, in addition to the amount due, interest at a rate of 0.8 percent per month or portion thereof on the unpaid balance from the expiration of such 30 day period until such time as the check is mailed to the State.

D. DISPUTE RESOLUTION

1. The parties agree that each State shall be responsible for implementation of The Infant Foods Rebate Contract within the State. Disputes between a State and the Manufacturer arising out of this Contract shall be resolved between the State and the Manufacturer in accordance with terms of this paragraph.
2. Each State agrees to resolve promptly any billing errors that the State identifies.
3. The Manufacturer shall notify the State(s) of any dispute concerning a rebate invoice within 90 days of receipt of the invoice. Each State shall respond to the Manufacturer within 90 days of receipt of the billing dispute. All billing disputes must be raised no later than December 31 following the fiscal year to which the dispute applies. Failure to notify a State of a billing dispute by December 31, shall result in waiver of the dispute.

4. Manufacturer shall have no right of offset against future invoices for billing errors without advance approval from the State(s).
5. Manufacturer shall not withhold any rebate payments under any circumstances.

See also Attachment 1, A – Pennsylvania Mandatory Provisions

E. COVENANT AGAINST CONTINGENT FEES

The Manufacturer warrants that no commissions, percentages, brokerage, gratuities, kickback, or contingency fees were paid in connection with the Contract, nor exchanged for substantial consideration by the Manufacturer for the purpose of securing this Contract.

F. AUDITS AND RECORDS

1. The Manufacturer shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices.
2. The Manufacturer assures that these records created solely for this Contract shall be subject, during normal business hours, to inspection, review, or audit by States' personnel and other personnel duly authorized by the States, as well as by Federal personnel also duly authorized.
3. The Manufacturer shall maintain and file with the States the progress, fiscal, inventory, and other reports as the States may require within the period of this Contract.
4. The Manufacturer shall allow public access to all documents, papers, letters, or other material made, or received by the Manufacturer in conjunction with this Contract. It is expressly understood that receipt of substantial evidence of the Manufacturer's refusal to comply with this provision shall constitute a breach of this Contract. In addition to termination of this Contract, the Manufacturer shall be barred from bidding in the solicitation to replace the Contract.

G. RETENTION OF RECORDS

1. The Manufacturer shall retain all financial records, supporting documents, statistical records, and any other documents created solely for this Contract for a period of four (4) years after termination of this Contract including any option year. If an audit or litigation has been initiated and has not been resolved at the end of the four (4) years including any option year, the

records shall be retained until resolution of the audit or litigation.

2. The Manufacturer shall allow persons duly authorized by state or federal WIC Program personnel to have full access to, and the right to examine any of the records and documents in G.1 above, during the retention period.

H. MONITORING

1. The Manufacturer shall provide to the States access to or furnish to the States whatever information is necessary to effect monitoring of this Contract.
2. The Manufacturer shall permit the States to monitor the Contract according to applicable regulations of state and federal governments.

I. NONDISCRIMINATION

The Manufacturer shall operate under this Contract so that no person, otherwise qualified, is denied employment or other benefits on the grounds of race, color, sex, creed, national origin, age, marital status, religion, ancestry, or physical or mental handicap which would not reasonably preclude the required performance.

Except in subcontracts for standard commercial supplies or raw materials, the Manufacturer shall include a clause similar to this clause in all subcontracts. The Manufacturer and each subcontractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

See also Attachment 1, B – Pennsylvania Mandatory Provisions

J. FEDERAL LOBBYING PROHIBITION

1. In accordance with Section 1352 of Title 31 of the United States Code, the States and all subgrantees, subcontractors, etc. of the States are prohibited from using any federal funds for the purpose of lobbying Congress or any federal agency in connection with the awarding of a particular contract, grant, cooperative agreement or loan.
2. Further, any recipient of such federal funds including subgrantees, subcontractors, etc., which receives over \$100,000 in federal monies must also file a Disclosure of Lobbying Activities form (Federal Form SF LLL), which requires the disclosure of any and all such lobbying activities, even those funded with non-federal monies.
3. By entering into this Contract with the States the Manufacturer hereby specifically agrees to abide by all applicable requirements of 31 United States Code, Section 1352.

K. NON-HIRING OF EMPLOYEES

1. The Manufacturer warrants that it has not paid, directly or indirectly, any officer or employee of the States any wages, compensation, or gifts in exchange for acting as officer, agency, employee, subcontractor, or consultant to the Manufacturer in connection with this Contract.
2. The Manufacturer further agrees that no employee of the States, whose duties as such employee include matters relating to or affecting the subject matter of this Contract shall while such employee, become or be an employee of the Manufacturer.

L. DRUG-FREE WORKPLACE

The Manufacturer agrees to abide by the requirements for a drug and alcohol free work place as promulgated by U.S.D.A. and each of the States.

M. DEBARMENT AND SUSPENSION

The Manufacturer certifies by execution of this Contract that it is eligible for participation in federal-sponsored programs under Executive Order 12549, Debarment and Suspension. A false statement regarding the Manufacturer's status will be treated as a material breach of this Contract and may be grounds for termination at the option of the States. The manufacturer also certifies that it is in compliance with 7 C.F.R. Part 3017 regarding debarment and suspension.

N. OFFICIAL USE

Use of the acronym "WIC" and the WIC logo, including close facsimiles thereof, in total or in part, is reserved for the official use of the WIC Program. Such official use is restricted to purposes consistent with the WIC Program regulations, FNS Instructions, and policies. Materials which display WIC identifies will be used primarily for identification, public notification, and outreach purposes.

O. NOTIFICATIONS

The manufacturer will provide advance notification to the States at the same time retailers/wholesalers/customers are notified of any changes in the label, unit size, UPC Code and product reformulation of the infant foods. The manufacturer will provide within 48 hours such notice of any product recall to each state named in this Contract.

See also Attachment 2, A-C - Maryland Mandatory Provisions

V. THE STATES AGREE TO THE FOLLOWING PROVISIONS:

A. REPORTS

Each of the States' WIC Programs shall provide to the Manufacturer an invoice that indicates the total number of ounces of infant foods authorized on all drafts redeemed by the State's WIC Program participants in a calendar month. The invoices will be transmitted to the Manufacturer by FAX or E-MAIL system, documenting time and dates on the invoice, or by express or certified mail, return receipt requested, by each State's WIC Program and shall specify the total products authorized on redeemed drafts for a one-month period. Invoices for each month will be sent by FAX or e-mailed within 45 days after the last day of the month. The WIC Program recognizes that we cannot guarantee that all authorized product has been purchased nor that we can provide an accurate estimate of percentage not purchased. Bidders are expected to take this into consideration when submitting their bids.

B. AUDITS AND RECORDS

The States' WIC Programs upon request will each provide to the Manufacturer, upon request, a monthly report specifying the number of ounces of infant foods authorized on all drafts redeemed during the month. Supporting documentation to verify the accuracy of the monthly invoice will be provided to manufacturer upon request. Only those records which are directly related to monthly billing and which are for current federal fiscal year at the time of the request shall be provided.

C. LIST OF VENDORS

If requested, the States will supply the Manufacturer with a list of approved retail vendors in each state prior to the effective date of the Contract.

D. DESIGNATION OF SOLE SOURCE

The States will designate the Manufacturer's infant foods as the only infant foods that can be purchased with WIC food instruments by WIC participants in the States. With the exceptions for documented availability, dietary or religious reasons stated in II. A. 1-3, of the RFQ.

E. MONITORING OF RETAIL VENDORS

The States shall monitor all authorized WIC retail vendors for compliance with the designation of the Manufacturer's product as being the only such products

that can be purchased with WIC food instruments.

VI. THE MANUFACTURER AND THE STATES MUTUALLY AGREE:

A. TERMINATION

1. Termination for Breach

Unless the Manufacturer's breach of a material provision of this Contract is waived by the States in writing, the States may individually or as a group, by written notice to the Manufacturer specifying Manufacturer's breach, terminate its Contract upon no less than a 30 day notice unless the Manufacturer has cured the breach within time frames agreed upon by both parties. This notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The provisions herein do not limit the States' right to remedies at law or to damages.

2. Termination due to Non-Availability of Funds

If the Congress of the United States or the U. S. Department of Agriculture fails to make funds available for continued performance for any fiscal period of this Contract, this Contract shall be cancelled automatically as of the beginning of the fiscal period for which funds are not available; provided, however, that this will not affect either the States' rights or the Manufacturer's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Manufacturer and the States from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The States shall notify the Manufacturer as soon as they have knowledge that funds may not be available for the continuation of this Contract.

VII. FORMAT OF BID RESPONSE

A. Vendor's Bid Response Format:

1. How to Submit a Bid:

- a. All interested parties must submit a bid for infant fruits, vegetables and meats. Due to current cost differences, organic or foods with DHA added cannot be bid. The bid must represent only products manufactured by the bidder or products manufactured to the specification of the bidder. The States will not entertain bids from brokers or representatives who have no part in, or control over, the manufacturing process. Contract packers will

be considered part of the bidder if the packing is done to the bidder's specifications and under the bidder's supervision. Specification for the products bid shall be the same for all contract packers of those products. The bidder shall assure the States that the specifications for the product and the packing are equal for all contract packers and that those specifications are at least equal to those used in the bidder's own plants. The bidder must assure that the products proposed for sale in the States are not inferior to the products sold in non-contracting states. Any bidder that does not manufacture all types of these infant foods may either form a joint venture with another manufacturer or subcontract with any other manufacturer in order to provide all types. In either event, a complete description of the joint manufacturer or subcontracting arrangement must be provided with the bid in order for the States to determine if such bidder is both responsive and responsible.

- b. Rebate amounts bid must be expressed in dollars and cents per ounce of product and carried to three decimal places as stated on the bid sheet. A bid expressed as a percentage of the retail or wholesale price of the container or as a percentage based on some other bid received will not be considered.
- c. The bidder shall submit a bid per ounce of the infant food. This bid shall not be based on the container size of the product being purchased.
- d. All bidders shall submit a wholesale price list for infant foods products effective 3/19/2009. (This date will be the date the RFQ response is due)
- e. The Bid Sheet must contain the applicable information in the same format as requested. Bidders who have a separate wholesale price structure for Puerto Rico and Virgin Islands will enter those amounts separately on the Bid Sheet.
- f. Bids shall include a concise description of the bidder's capabilities to satisfy the requirements of this Request for Quote. Emphasis shall be on completeness and clarity of content. Bidder must provide a written response to Section II, Services to be Provided, Section A, 1-4 and Scope of Work, Tasks 1-4 that demonstrates vendor's ability and capability of performing. (Please respond in the order of the requirements.) Emphasis shall be on completeness and clarity of content.

The proposal submitted shall contain at least the following sections in the order indicated with each section divided by labeled tabs.

- (i.) Information relating to the bidder's organization, personnel, and experience that would substantiate the bidder's **qualification** to perform the services requested beginning October 1, 2009.
 - (ii.) A copy of the bidder's latest annual **financial report** or other information to show the financial stability of the bidder.
 - (iii.) A brief description of the **products** bid.
 - (iv.) A brief description of the **distribution network** in place or proposed to carry out the tasks requested in this RFQ.
 - (v.) Any other **additional information** that the bidder thinks is relevant to the proposal.
 - (vi.) The completed **Bid Sheet**.
- g. Bidder must provide a written statement that all general requirements and tasks shall be performed.
 - h. All bidders shall submit one original and 11 copies of each bid offered via mail or FAX; telegraphic, or e-mail responses are not acceptable.
 - i. A signed bid must be submitted to:
 - Department of Administration
 - Purchasing Division
 - Building 15
 - 2019 Washington Street, East
 - Charleston, WV 25305-0130
 - j. The sealed bid should contain this information on the face of the envelope or the bid may not be considered:
 - Buyer Roberta Wagner/ File 22
 - RFQ No.: WIC90120
 - Bid Opening Date: 3/19/2009
 - Bid Opening time: 1:30 PM
 - k. Bids shall be signed by a representative with authority to commit the bidder to the bid.
 - l. Bid opening: The bid opening will be on 3/19/2009, at 1:30 P.M. EST in Charleston, West Virginia 25301. Representatives of the

States, United States Department of Agriculture (USDA), Food and Nutrition Services (FNS), and other interested parties may be present at the opening.

- m. Bids must be received by the West Virginia State Department of Administration Purchasing Division, 2019 Washington St East, Post Office Box 50130, Charleston, West Virginia 25305-0130 by 1:30 P.M., EST on 3/19/2009. Late bids will not be accepted.
 - n. Bids may not be altered, amended or withdrawn after 1:30 P.M., EST, 3/19/2009. Any request to alter, amend or withdraw a bid must be in writing and received before 1:30 P.M. EST, 3/19/2009.
 - o. Terms used in Equation for Evaluating Bids
 - (i.) Wholesale Price is the price contained in the price list submitted by the vendor for the container size which reflects the highest cost per ounce. This will be expressed as a cost per ounce of product.
 - (ii.) Net cost is the cost to the States for an ounce of product. This is found by subtracting the rebate amount per ounce bid from the wholesale price.
2. Pre-Bid Conference: A pre-bid conference will be held on March 2, 2009 in Room 507, 350 Capitol Street, Charleston, West Virginia 25301-3717 starting at 11:00 AM EST. Attendance is not mandatory, however, useful information is often presented at the conference. The purpose of this conference is to clarify any points in the RFQ which have not been understood. The pre-bid conference is for information purposes only. Official responses to questions received at this pre-bid conference will be furnished to all potential bidders who received the RFQ. Written questions shall be accepted through close of business on 3/4/2009. Questions may be sent via USPS, FAX Courier or E-Mail. In order to assure no vendor receives an advantage, no substantive questions will be answered orally. If possible, E-Mail questions are preferred. Please note that all times in the RFQ are Eastern Standard Times. Address all inquiries to:

Roberta Wagner, Senior Buyer
 Purchasing Division
 2019 Washington St. East
 P. O. Box 50130
 Charleston, WV 25305-0130
 FAX: 304-5-4115
 E-Mail: roberta.a.wagner@wv.gov

3. Notice of Contract Award: Notice to the successful bidder will be provided by DOA Purchasing. The West Virginia WIC Program will send a written notification to all bidders announcing the award after receipt of the signed contract from the successful bidder. After the successful bidder is selected, a formal Contract document will be executed between the States and the Manufacturer. In addition, the RFQ and the successful bidder's response will be included as part of the Contract by reference. The order of precedence is the Contract, the RFQ and the Manufacturer's proposal in response to the RFQ.
4. Contract Award: The Contract will not be sent to the apparent successful bidder until all of the documents have been signed and received which will include the proof of insurance as outlined in III. Section I. The signed apparent successful bidder's contract must be received by the WV Purchasing Division prior to an award being made.
5. Contract Period: The agreement shall be effective for thirty-one (31) months beginning October 1, 2009 and ending April 30, 2012, with a unilateral option of the States, either individually or together, to continue the Contract for two additional periods of twelve (12) months each. This shortened contract period for the Infant Foods rebate contract will allow both this contract and the current Infant Juice and Cereal rebate contract to have the same beginning and end dates beginning in 2012. These two contracts are the result of two different solicitations and the selected bidder may or may not be the selected bidder for the other contract. Due to the administrative burden necessary to rebid this Contract, the States will notify the manufacturer six months prior to the end of the initial Contract, or any renewals, if the extension option will be exercised. Such notification shall have no effect on the remainder of the contract extension in effect at that time. The States also reserve the unilateral right to order changes and/or to delay initiation of the Contract if necessary and if such changes or delays do not alter the scope of the Contract.
6. Contact Person: Assistant Director, Office of Nutrition Services, Bureau for Public Health, Department of Health and Human Resources, State of West Virginia, at (304)-5-0030.

B. Provision of Bidding

1. The States reserve the right to accept or reject all or any bids, waive minor technicalities, and award the Contract to best serve the interest of the States' WIC Programs. The States will reject bids if implementation costs exceed the benefits received.

2. The offering of a rebate is voluntary and is in no way a payment for concessions or services by the States, but once a contract is entered into, the offer becomes a binding contract.
3. All bids submitted shall remain valid for a period of 90 days from the date of bid opening. Any increase in the wholesale price after 6/19/2009 (date will be the date 90 days past the bid opening), shall result in a cent-for-cent increase in the rebate price bid. Any decrease in the wholesale price after 6/19/2009 shall result in a cent for cent decrease.

The States recognize that there may be a variance between amounts authorized on redeemed drafts and actual amounts purchased. However, the States have no way of accurately calculating the purchased quantities. Potential bidders are expected to recognize this discrepancy and adjust their bids to reflect the anticipated variance between authorized and purchased quantities.

C. Evaluation Process

Method of Evaluation:

The bid providing the lowest net cost per ounce (in dollars and cents) to the States will become the successful bidder and thus the selected provider, providing that the accompanying materials satisfy the requirements in Section II.A.2.e & f. The calculation in C.2 below will not be made at bid opening. Only the actual rebate bid will be announced. The calculation will be made at a later date.

In order to determine the lowest net cost, the following calculation will occur:
Highest Wholesale Price List cost per ounce - rebate per ounce = net cost per ounce.

(THE REMAINDER OF THIS PAGE IS BLANK)

Attachment 1

THE MANUFACTURERS AGREES TO THE FOLLOWING PROVISIONS THAT ARE MANDATORY FOR COMPANIES DOING BUSINESS IN PENNSYLVANIA

A. Dispute Resolution

Any controversy or claim arising out of or relating to this Contract, or the breach thereof, that remains unresolved after three (3) months shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The obligation to arbitrate any disputes under the Contract shall be specifically enforceable under applicable law in any court having jurisdiction. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it, in accordance with applicable law in any court having jurisdiction.

B. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

During the term of the Contract, the Contractor agrees as follows:

1. The Contractor and any subcontractors shall comply with any federal, state, or local law, as applicable, pertaining to nondiscrimination and equal opportunity in regard to its employees, applicants for employment, independent contractors, or any other person.
2. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, color, religion, age, sexual preference, handicap or national origin discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
3. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, color, religion, age, sexual preference, handicap or national origin.
4. The Contractor shall not discriminate by reason of gender, race, creed, color, religion, age, sexual preference, handicap or national origin against any

subcontractor or supplier who is qualified to perform the work to which the contract relates.

5. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
6. The Contractor and any subcontractors ensure that any services or benefits available to the public or other third parties by way of this Contract shall not be denied or restricted for such persons due to race, creed, color, religion, sex, sexual preference, age, handicap, or national origin (national origin protections include persons who are limited English proficient) consistent with the provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act and The Age Discrimination Act of 1975 as well as applicable provisions of the Omnibus Reconciliation Act of 1981.
7. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services' Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.
8. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every Subcontract so that such provisions will be binding upon each subcontractor.
9. The Commonwealth may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

Attachment 2

THE MANUFACTURERS AGREES TO THE FOLLOWING PROVISIONS THAT ARE MANDATORY FOR COMPANIES DOING BUSINESS IN MARYLAND**A. MANDATORY FINANCIAL DISCLOSURE**

The Manufacturer agrees to comply with the Maryland State Finance and Procurement Article, Section 13-221 of the Annotated Code of Maryland which requires that every business that enters into contracts, leases or other agreements with the State file with the Secretary of State a list containing the names and addresses of its resident agent, each of its officers, and any individual who is beneficial owner, as that term is defined in Section 13-221 of the State Finance and Procurement Article.

B. AFFIDAVITS

It is understood that this Contract may not become effective until the Manufacturer has signed and returned to the Maryland Contract Monitor the Contract and Bid/Proposal Affidavits.

C. ANTI-BRIBERY

The Manufacturer should be aware of the State Finance and Procurement Article, Section 16-203 of the Annotated Code of Maryland which requires that any person convicted of bribery, attempted bribery, or conspiracy to bribe based upon acts committed after June 30, 1977, in the obtaining of a contract from the State or any of its subdivisions, shall be subject to disqualification pursuant to State Finance and Procurement Article, Section 16-203, Annotated Code of Maryland from entering into a contract with the State, or any county or other subdivision of the State, for the supply of materials, supplies, equipment, or services by the person.

Bid Sheet
Due 3/19/2009 1:30 PM EST
Infant Foods Rebate System

Bidder's Name: _____

Address: _____

Contact Person and Telephone Number: _____

SECTION I CERTIFICATION

This certifies that this company or companies is (are) able to supply the infant foods as required by this Request for Quotes. That the person signing this document is authorized to bind the company or companies to the bid. And that all requirements and conditions of the Contract and amendment are acceptable.

SECTION II REBATE AMOUNT (carried to three decimal places)

A. Infant Foods - Fruits, Vegetables & Meats – Seven Mainland States

1. The highest wholesale cost of the offered infant fruits/vegetables/meats for the seven (7) mainland States participating is \$_____ per ounce.
2. The rebate amount for infant fruits/vegetables/meats for these states is \$_____ per ounce authorized

B. Infant Foods – Fruits, Vegetables & Meats – Puerto Rico & Virgin Islands

1. The highest wholesale cost of the offered infant fruits/vegetables/meats, for Puerto Rico and Virgin Islands, is \$_____ per ounce.
2. The rebate amount for infant fruits/vegetables/meats for Puerto Rico & Virgin Islands is \$_____ per ounce authorized

Bidder's Representative	Name and Title	Date
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2/18/2009

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM
FOR WOMEN, INFANTS AND CHILDREN
OF THE STATES OF DELAWARE, MARYLAND, NEW JERSEY, AND WEST
VIRGINIA,
THE COMMONWEALTHS OF PENNSYLVANIA, PUERTO RICO, VIRGINIA, THE US
VIRGIN ISLANDS AND THE DISTRICT OF COLUMBIA

SAMPLE INFANT FOODS REBATE CONTRACT

This Infant Foods Rebate Contract (hereinafter referred to as the "Contract") is entered into between the States of Delaware, Maryland, New Jersey, and West Virginia, the Commonwealths of Pennsylvania, Puerto Rico, Virginia, the Territory of Virgin Islands and the District of Columbia (hereinafter referred to as the "States") and _____ (hereinafter referred to as the "Manufacturer").

This Contract shall be effective for thirty-one (31) months effective October 1, 2009, with a unilateral option of the States, either individually or together, to continue the Contract for two additional periods of twelve (12) months each. Due to the administrative burden necessary to rebid this Contract, the States will notify the manufacturer six months prior to the end of the initial Contract, or any renewals, if the extension option will be exercised. Such notification shall have no effect on the remainder of the Contract or extension in effect at that time. The States also reserve the unilateral right to order changes and/or to delay initiation of the Contract if necessary and if such changes or delays do not alter the scope of the Contract.

I. THE MANUFACTURER AGREES TO THE FOLLOWING PROVISIONS:

A. PROVISION OF INFANT FOODS

The Manufacturer agrees to provide infant foods in sufficient supply through retail outlets to serve 100% of the WIC eligible caseload in the States and remit to the States' WIC Programs a rebate per ounce of infant foods purchased as set forth in part I.B of this Contract.

B. CONTRACT PAYMENT AMOUNT

The Manufacturer agrees to pay each of the States' WIC Programs a rebate amount for infant foods as specified in the bid as follows:

Rebate Amount	Product.
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\$	Per Ounce Authorized	Infant Foods Mainland States
\$	Per Ounce Authorized	Infant Foods - Puerto Rico/Virgin Islands

C. METHOD OF PAYMENT

The Manufacturer shall submit a separate check each month to each of the State WIC Programs for the total amount of each States' invoice for rebates due from the amount of infant foods authorized to purchase with WIC funds during the one-month period. States should have the option of an automated funds transfer from the Manufacturer each month should the State so choose. Checks shall be payable to each State, as follows:

Delaware WIC Program
 Ms. Joanne White
 State WIC Director
 Delaware State Division of Public Health
 655 Bay Road
 Blue Hen Corp Center, Suite 4-B
 Dover, Delaware 19001

Maryland WIC Program
 201 W. Preston St. - Room 103
 Baltimore, Maryland 21201

New Jersey WIC Program
 Ms. Jean Malloy
 State WIC Director
 P. O. Box 364
 Trenton, NJ 08625-0364

Pennsylvania WIC Program
 PHHS Comptroller's Office
 Accounting Control Division
 P.O. Box 2675
 Harrisburg, Pennsylvania 17120

Puerto Rico WIC Program
 Puerto Rico Department of Health
 PO Box 25220
 San Juan, Puerto Rico 00928-5220

Virginia WIC Program

Ms. Donna Seward
 State WIC Director
 Division of WIC & Community Nutrition Services
 109 Governor Street, 9th Floor
 Richmond, VA 23219

Virgin Islands WIC Program
 Department of Health
 28-29 Norre Gade
 St. Thomas, VI 00802

West Virginia WIC Program
 Ms. Denise Ferris
 State WIC Director
 350 Capitol Street, Room 519
 Charleston, West Virginia 25301-3717

District of Columbia Treasurer
 Ms. Gloria Clark, Director
 Department of Health
 2100 Martin Luther King Jr. Ave., S. E.
 Suite 409
 Washington, D. C. 20020

D. PAYMENT AND INTEREST PENALTIES

The Manufacturer shall submit payment to the States within thirty (30) days of the date of the receipt of the States' invoices which will either be transmitted to the Manufacturer by FAX or E-Mail, with the time and date of the transmission documented on the invoice, or by express or certified mail, return receipt requested. If the Manufacturer does not mail, as evidenced by a postmark or receipt, or authorize a funds transfer payment within 30 days of the receipt as evidenced by receipt or transmission data, of the invoice, the Manufacturer will pay the State submitting the invoice, in addition to the amount due, interest at a rate of 0.8 percent per month or portion thereof on the unpaid balance from the expiration of such 30 day period until such time as the check is mailed to the State.

E. DISPUTE RESOLUTION

1. The parties agree that each State shall be responsible for implementation of The Infant Foods Rebate Contract within the State. Disputes between a State and the Manufacturer arising out of this Contract shall be resolved between the State and the Manufacturer in accordance with terms of this paragraph.

2. Each State agrees to resolve promptly any billing errors that the State identifies.
3. The Manufacturer shall notify the State(s) of any dispute concerning a rebate invoice within 90 days of receipt of the invoice. Each State shall respond to the Manufacturer within 90 days of receipt of the billing dispute. All billing disputes must be raised no later than December 31 following the fiscal year to which the dispute applies. Failure to notify a State of a billing dispute by December 31, shall result in waiver of the dispute.
4. **(Pennsylvania only)** Any controversy or claim arising out of or relating to this Contract, or the breach thereof, that remains unresolved after 3 months shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The obligation to arbitrate any disputes under the Contract shall be specifically enforceable under applicable law in any court having jurisdiction. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it, in accordance with applicable law in any court having jurisdiction.
5. Manufacturer shall have no right of offset against future invoices for billing errors without advance approval from the State(s).
6. Manufacturer shall not withhold any rebate payments under any circumstances.

F. COVENANT AGAINST CONTINGENT FEES

The Manufacturer warrants that no commissions, percentages, brokerage, gratuities, kickback, or contingency fees were paid in connection with the Contract, nor exchanged for substantial consideration by the Manufacturer for the purpose of securing this Contract.

G. AUDITS AND RECORDS

1. The Manufacturer shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices.
2. The Manufacturer assures that these records created solely for this Contract shall be subject, during normal business hours, to inspection, review, or audit by States' personnel and other personnel duly authorized by the States, as well as by Federal personnel also duly authorized.
3. The Manufacturer shall maintain and file with the States the progress, fiscal, inventory, and other reports as the States may require within the period of

this Contract.

4. The Manufacturer shall allow public access to all documents, papers, letters, or other material made, or received by the Manufacturer in conjunction with this Contract. It is expressly understood that receipt of substantial evidence of the Manufacturer's refusal to comply with this provision shall constitute a breach of this Contract. In addition to termination of this Contract, the Manufacturer shall be barred from bidding in the solicitation to replace the Contract.

H. RETENTION OF RECORDS

1. The Manufacturer shall retain all financial records, supporting documents, statistical records, and any other documents created solely for this Contract for a period of four (4) years after termination of this Contract including any option year. If an audit or litigation has been initiated and has not been resolved at the end of the four (4) years including any option year, the records shall be retained until resolution of the audit or litigation.
2. The Manufacturer shall allow persons duly authorized by state or federal WIC Program personnel to have full access to, and the right to examine any of the records and documents in G.1 above, during the retention period.

I. MONITORING

1. The Manufacturer shall provide to the States access to or furnish to the States whatever information is necessary to effect monitoring of this Contract.
2. The Manufacturer shall permit the States to monitor the Contract according to applicable regulations of state and federal governments.

J. NONDISCRIMINATION

The Manufacturer shall operate under this Contract so that no person, otherwise qualified, is denied employment or other benefits on the grounds of race, color, sex, creed, national origin, age, marital status, religion, ancestry, or physical or mental handicap which would not reasonably preclude the required performance. Except in subcontracts for standard commercial supplies or raw materials, the Manufacturer shall include a clause similar to this clause in all subcontracts. The Manufacturer and each subcontractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

K. FEDERAL LOBBYING PROHIBITION

1. In accordance with Section 1352 of Title 31 of the United States Code, the States and all subgrantees, subcontractors, etc. of the States are prohibited from using any federal funds for the purpose of lobbying Congress or any federal agency in connection with the awarding of a particular contract, grant, cooperative agreement or loan.
2. Further, any recipient of such federal funds including subgrantees, subcontractors, etc., which receives over \$100,000 in federal monies must also file a Disclosure of Lobbying Activities form (Federal Form SF LLL), which requires the disclosure of any and all such lobbying activities, even those funded with non-federal monies.
3. By entering into this Contract with the States the Manufacturer hereby specifically agrees to abide by all applicable requirements of 31 United States Code, Section 1352.

L. NON-HIRING OF EMPLOYEES

1. The Manufacturer warrants that it has not paid, directly or indirectly, any officer or employee of the States any wages, compensation, or gifts in exchange for acting as officer, agency, employee, subcontractor, or consultant to the Manufacturer in connection with this Contract.
2. The Manufacturer further agrees that no employee of the States, whose duties as such employee include matters relating to or affecting the subject matter of this Contract shall while such employee, become or be an employee of the Manufacturer.

M. DRUG-FREE WORKPLACE

The Manufacturer agrees to abide by the requirements for a drug and alcohol free work place as promulgated by U.S.D.A. and each of the States.

N. MANDATORY FINANCIAL DISCLOSURE (MARYLAND ONLY)

The Manufacturer agrees to comply with the Maryland State Finance and Procurement Article, Section 13-221 of the Annotated Code of Maryland which requires that every business that enters into contracts, leases or other agreements with the State file with the Secretary of State a list containing the names and addresses of its resident agent, each of its officers, and any individual who is beneficial owner, as that term is defined in Section 13-221 of the State Finance and Procurement Article.

O. AFFIDAVITS (MARYLAND ONLY)

It is understood that this Contract may not become effective until the Manufacturer has signed and returned to the Maryland Contract Monitor the Contract and Bid/Proposal Affidavits.

P. ANTI-BRIBERY (MARYLAND ONLY)

The Manufacturer should be aware of the State Finance and Procurement Article, Section 16-203 of the Annotated Code of Maryland which requires that any person convicted of bribery, attempted bribery, or conspiracy to bribe based upon acts committed after June 30, 1977, in the obtaining of a contract from the State or any of its subdivisions, shall be subject to disqualification pursuant to State Finance and Procurement Article, Section 16-203, Annotated Code of Maryland from entering into a contract with the State, or any county or other subdivision of the State, for the supply of materials, supplies, equipment, or services by the person.

Q. DEBARMENT AND SUSPENSION

The Manufacturer certifies by execution of this Contract that it is eligible for participation in federal-sponsored programs under Executive Order 12549, Debarment and Suspension. A false statement regarding the Manufacturer's status will be treated as a material breach of this Contract and may be grounds for termination at the option of the States. The manufacturer also certifies that it is in compliance with 7 C.F.R. Part 3017 regarding debarment and suspension.

R. OFFICIAL USE

"Use of WIC Service Marks"

Manufacturer acknowledges that the WIC Acronym and the WIC Logo are service marks owned by the Department of Agriculture (USDA), and that all rights therein and goodwill pertaining thereto belong exclusively to USDA.

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").

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 Regional Directors Manufacturer's goods, services, advertising, or commercial activities, including nutritional message(s), by the WIC Program, USDA, or the State agency.

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."

S. NOTIFICATIONS

The manufacturer will provide advance notification to the States at the same time retailers/wholesalers/customers are notified of any changes in the label, unit size, UPC Code and product reformulation of the infant foods. The manufacturer will provide within 48 hours such notice of any product recall to each state named in this Contract.

II. THE STATES AGREE TO THE FOLLOWING PROVISIONS:

A. REPORTS

Each of the States' WIC Programs shall provide to the Manufacturer an invoice that indicates the total number of ounces of infant foods authorized on all drafts redeemed by the State's WIC Program participants in a calendar month. The invoices will be transmitted to the Manufacturer by FAX or E-MAIL system, documenting time and dates on the invoice, or by express or certified mail, return receipt requested, by each State's WIC Program and shall specify the total products authorized on redeemed drafts for a one-month period. Invoices for each month will be sent by FAX or e-mailed within 45 days after the last day of the month. The WIC Program recognizes that we cannot guarantee that all authorized product has been purchased nor that we can provide an accurate estimate of percentage not purchased. Bidders are expected to take this into consideration when submitting their bids.

B. AUDITS AND RECORDS

The States' WIC Programs upon request will each provide to the Manufacturer, upon request, a monthly report specifying the number of ounces of infant foods authorized on all drafts redeemed during the month. Supporting documentation to verify the accuracy of the monthly invoice will be provided to manufacturer upon request. Only those records which are directly related to monthly billing and which are for current federal fiscal year at the time of the request shall be provided.

C. LIST OF VENDORS

If requested, the States will supply the Manufacturer with a list of approved retail vendors in each state prior to the effective date of the Contract.

D. DESIGNATION OF SOLE SOURCE

The States will designate the Manufacturer's infant foods as the only infant foods that can be purchased with WIC food instruments by WIC participants in the States. With the exceptions for documented availability, dietary or religious reasons stated in III. A. 1-3, of the RFQ.

E. MONITORING OF RETAIL VENDORS

The States shall monitor all authorized WIC retail vendors for compliance with the designation of the Manufacturer's product as being the only such products that can be purchased with WIC food instruments.

III. THE MANUFACTURER AND THE STATES MUTUALLY AGREE:

A. TERMINATION

1. Termination for Breach

Unless the Manufacturer's breach of a material provision of this Contract is waived by the States in writing, the States may individually or as a group, by written notice to the Manufacturer specifying Manufacturer's breach, terminate its Contract upon no less than a 30 day notice unless the Manufacturer has cured the breach within time frames agreed upon by both parties. This notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The provisions herein do not limit the States' right to remedies at law or to damages.

2. Termination due to Non-availability of Funds

If the Congress of the United States or the U. S. Department of Agriculture fails to make funds available for continued performance for any fiscal period of this Contract, this Contract shall be cancelled automatically as of the beginning of the fiscal period for which funds are not available; provided, however, that this will not affect either the States' rights or the Manufacturer's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Manufacturer and the States from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The States shall notify the Manufacturer as soon as they have knowledge that funds may not be available for the continuation of this Contract.

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B. NOTICE AND CONTACT

Each State has an agreement monitor; the names and address are listed below:

Delaware WIC Program
Ms. Joanne White, State WIC Director
Delaware State Division of Public Health
655 Bay Road
Blue Hen Corp Center, Suite 4-B
Dover, Delaware 19001

Gene Nadolny
Office of the Maryland WIC Program
201 W. Preston St., Room 103
Baltimore, Maryland 21201

Agnes Denalane, Assistant Director
Department of Health
2100 Martin Luther King Jr. Ave., S. E.
Suite 409
Washington, D. C. 20020

Gregory Landis
Pennsylvania WIC Program
2150 Herr St.
1st Floor, Suite, B
Harrisburg, PA 17103-1625

Ms. Gladys Candelario, Director
Finance Division
Puerto Rico WIC Program
PO Box 25220
Rio Piedras, Puerto Rico 00928-5220

Ms. Donna Seward
State WIC Director
Virginia WIC Program
Division of WIC & Community Nutrition Services
1500 E. Main St., Rm. 132
Richmond, VA 23218-2448

Ermine Hendrickson
 Virgin Islands WIC Program
 Department of Health
 28-29 Norre Gade
 St. Thomas, VI 00802

Kip Smith
 West Virginia WIC Program
 350 Capitol Street, Room 519
 Charleston, West Virginia 25301-3717

Jay Duco
 New Jersey WIC Program
 P. O. Box 364
 Trenton, NJ 08525-0364

The representative of the Manufacturer responsible for administration of the services under this Contract is (Name)
(Address & Phone No.)

In the event that different representatives are designated by either party after execution of this Contract, notice of the name and address of the new representative shall be provided immediately, in writing, to the other party and this notification attached to the originals of this Contract.

C. RENEGOTIATION OR MODIFICATION

1. Modifications of the provisions of this Contract shall only be valid when they have been reduced to writing and duly signed and approved by all involved parties. The parties agree to renegotiate this Contract if federal and/or state revisions of any applicable laws or regulations make changes in this Contract necessary.
2. Price increases in the Manufacturer's wholesale price of any forms of the product listed in Section I.B. shall result in an automatic rebate increase on a cent-for-cent basis. The States' WIC Programs shall be notified in writing of any increase in the wholesale prices at least thirty (30) days in advance of the time of any such increase or at the same time as wholesalers, if less than thirty days notice is given. The per ounce rebate shall increase effective the first day of the month in which prices were increased. Any decrease in the wholesale price shall result in a cent for cent rebate decrease.

D. GOVERNING LAW

This Contract shall be deemed to have been executed and entered into

separately in the State of Delaware, the State of Maryland, the State of New Jersey, the Commonwealth of Pennsylvania, the Commonwealth of Puerto Rico, the Commonwealth of Virginia, the Territory of Virgin Islands, the State of West Virginia and the District of Columbia, and shall be construed, performed, and enforced in all respects in the respective jurisdiction in accordance with the laws of the State of Delaware, the State of Maryland, the State of New Jersey, the Commonwealth of Pennsylvania, the Commonwealth of Puerto Rico, the Commonwealth of Virginia, the US Virgin Islands, the State of West Virginia and the District of Columbia. In Delaware, Delaware law shall apply. In Maryland, Maryland law shall apply. In New Jersey, New Jersey law shall apply. In Pennsylvania, Pennsylvania law shall apply. In Puerto Rico, Puerto Rico law shall apply. In Virginia, Virginia law shall apply. In the Virgin Islands, Virgin Island law will apply, in West Virginia, West Virginia law shall apply. In the District of Columbia, the District of Columbia law shall apply. Each party shall perform its obligations hereunder in accordance with the terms and conditions of this Contract.

E. NON-ASSIGNMENT

No party shall assign, sublicense, or otherwise transfer its rights, duties, and/or obligations under this Contract without the prior written consent of the other party, which consent shall not unreasonably be withheld. Any sublicense, assignment, or transfer otherwise occurring shall be null and void, provided, however, that each of the States shall at all times be entitled to assign or transfer its rights, duties, and/or obligations under this Contract to another governmental agency within each State upon giving prior written notice to the Manufacturer.

F. RELEASE OF PARTICIPANT INFORMATION

Due to federal confidentiality requirements, the Manufacturer may not have access to actual or microfilmed food instruments or other client records which identify WIC participants.

G. CONFIDENTIALITY OF VENDOR INFORMATION

States are prohibited from disclosing confidential Vendor information to the Manufacturer, per 7 C.F.R. § 246.26(e).

H. ALL TERMS AND CONDITIONS INCLUDED

All conditions of the States' Request for Quote for a WIC Infant Foods Rebate System and the Manufacturer's accepted responses to the bid as well as (in Maryland) the Bid/Proposal and Contract Affidavit are hereby incorporated herein

and are a part of this Contract. This Contract contains all of the terms and conditions agreed upon by the parties.

I. INDEMNITY CLAUSE

The Manufacturer, being an independent contractor and not an employee of the States, agrees to carry adequate public liability insurance of not less than \$1,000,000 per occurrence and other appropriate forms of insurance. The Manufacturer agrees to hold the States harmless, for all claims, losses, or suits accruing from or resulting from defects in the contracted products. The States shall give the Manufacturer written notice of each such claim or suit and full right and opportunity to conduct the Manufacturer's own defense thereof, together with full information and all reasonable cooperation.

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THE FOLLOWING REQUIREMENTS ARE MANDATORY FOR COMPANIES DOING BUSINESS IN PENNSYLVANIA. THESE CLAUSES APPLY ONLY TO THE PENNSYLVANIA PORTION OF THE CONTRACT AND WOULD SUPERCEDE CONFLICTING LANGUAGE ELSEWHERE, ONLY FOR PENNSYLVANIA.

(FOR ALL OTHER STATES THIS SECTION DOES NOT APPLY.)

NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE.

During the term of the Contract, the Contractor agrees as follows:

- A. The Contractor and any subcontractors shall comply with any federal, state, or local law, as applicable, pertaining to nondiscrimination and equal opportunity in regard to its employees, applicants for employment, independent contractors, or any other person.
- B. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, color, religion, age, sexual preference, handicap or national origin discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- C. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, color, religion, age, sexual preference, handicap or national origin.
- D. The Contractor shall not discriminate by reason of gender, race, creed, color, religion, age, sexual preference, handicap or national origin against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- E. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- F. The Contractor and any subcontractors ensure that any services or benefits available to the public or other third parties by way of this Contract shall not be denied or restricted for such persons due to race, creed, color, religion, sex, sexual preference, age, handicap, or national origin (national origin protections include persons who are limited English proficient) consistent with the provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act and The Age Discrimination Act of 1975 as well as applicable provisions of the Omnibus Reconciliation Act of 1981.
- G. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services' Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.
- H. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- I. The Commonwealth may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

MANUFACTURER INTEGRITY PROVISIONS

- A. For purposes of this clause only, the words "confidential information," "consent," "Manufacturer," "financial interest," and "gratuity" shall have the following definitions.
1. *Confidential information* means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
 2. *Consent* means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
 3. *Manufacturer* means the individual or entity that has entered into the Contract with the Commonwealth, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.
 4. *Financial interest* means:
 - a. Ownership of more than a five percent interest in any business; or
 - b. Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 5. *Gratuity* means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- B. The Manufacturer shall maintain the highest standards of integrity in the performance of the Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
- C. The Manufacturer shall not disclose to others any confidential information gained by virtue of the Contract.
- D. The Manufacturer shall not, in connection with this or any other agreement with the Commonwealth, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
- E. The Manufacturer shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

- F. Except with the consent of the Commonwealth, neither the Manufacturer nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.
- G. Except with the consent of the Commonwealth, the Manufacturer shall not have a financial interest in any other manufacturer, subcontractor, or supplier providing services, labor, or material on this project.
- H. The Manufacturer, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
- I. The Manufacturer, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.
- J. The Manufacturer, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Manufacturer's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Manufacturer's business or financial records, documents or files of any type or form which refers to or concern the Contract. Such information shall be retained by the Manufacturer for a period of three years beyond the termination of the Contract unless otherwise provided by law.
- K. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Manufacturer, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Manufacturer to complete performance hereunder, and debar and suspend the Manufacturer from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

MANUFACTURER RESPONSIBILITY PROVISIONS

- A. The Manufacturer certifies, for itself and all its subcontractors, that as of the date of its execution of this Bid/Contract, that neither the Manufacturer, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Manufacturer cannot so certify, then it agrees to submit, along with its Bid, a written explanation of why such certification cannot be made.
- B. The Manufacturer also certifies, that as of the date of its execution of this Bid/Contract, it has no tax liabilities or other Commonwealth obligations.

- C. The Manufacturer's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Manufacturer shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- D. The failure of the Manufacturer to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- E. The Manufacturer agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Manufacturer's compliance with the terms of this or any other agreement between the Manufacturer and the Commonwealth, which results in the suspension or debarment of the Manufacturer. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Manufacturer shall not be responsible for investigative costs for investigations that do not result in the Manufacturer's suspension or debarment.
- F. The Manufacturer may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.state.pa.us> or contacting the:
- Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No. (717) 783-6472
FAX No. (717) 787-9138

AMERICANS WITH DISABILITIES ACT

- A. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Manufacturer understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this Contract, the Manufacturer agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- B. The Manufacturer shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the

Manufacturer's failure to comply with the provisions of subparagraph A above.

RIGHT OF OFFSET

The Manufacturer agrees that the Commonwealth may set off the amount of any state tax liability or other debt of the Manufacturer or its subsidiaries that is owed to the Commonwealth and not being contested on appeal (per our T's and C's against any payments due the Manufacturer under any contract with the Commonwealth.

THIS ENDS THE PENNSYLVANIA ONLY PORTION OF THE CONTRACT

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THE FOLLOWING REQUIREMENTS ARE MANDATORY FOR COMPANIES DOING BUSINESS IN MARYLAND. THESE CLAUSES APPLY ONLY TO THE PORTION OF THE CONTRACT AND WOULD SUPERCEDE CONFLICTING LANGUAGE ELSEWHERE, ONLY FOR MARYLAND.

(FOR ALL OTHER STATES THIS SECTION DOES NOT APPLY.)

Title 21

State Procurement Regulations

Mandatory Contract Clauses and Attachments

01. Compensation and Method of Payment.

The contractor's taxpayer identification number, consisting of the federal employer identification number, shall be found on all invoices presented by the contractor.

02. Non-Hiring of Officials and Employees.

No official or employee of the State of Maryland, as defined under State Government Article, § 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall during the pendency and term of this contract and while serving as an official or employee of the State, become or be an employee of the contractor or any entity that is a subcontractor on this Contract

03. Disputes.

This Contract shall be subject to the Provisions of State Finance and Procurement Article Title 15, Subtitle 2, Annotated Code of Maryland, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the procurement officer's decision.

04. Maryland Law Prevails

The provisions of this Contract shall be governed by the laws of the State of Maryland.

05. Nondiscrimination in Employment.

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any Subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause."

06. Contingent Fee Prohibition.

The contractor, warrants that it has not employed or retained any person partnership, corporation, or

other entity, other than a bona fide employee or agent working for the contractor, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement.”

07. Multi-Year Contracts Contingent Upon Appropriations.

If the Maryland Assembly fails to appropriate funds, or if funds are not otherwise made available, for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's right or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.”

08. Termination for Convenience.

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligation of the parties, shall be governed by the provisions of COMAR 21.07.01.12A (2).

09. Delays and Extensions of Time.

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.”

10. Variations in Estimated Quantities.

All quantities shown in the Request for Quotes are estimates only. The State shall not be obligated to purchase those quantities but shall only be required to purchase those quantities necessary to conduct program operations.

11. Suspension of Work.

The procurement officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the State."

12. Pre-existing Regulations.

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract."

13. Payment of State Obligations.

Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited."

14. Financial Disclosure.

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business."

15. Political Contribution Disclosure.

The Contractor shall comply with Election Law Article, §§14-101-14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the state Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31;

and (b) August 5, to cover the 6-month period ending July 31.”

16. Retention of Records.

The Contractor shall retain and maintain all records and documents relating to this contract for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the procurement officer or designee, at all reasonable times.”

17. Compliance with Laws.

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligation under this Contract; and
- D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.”

18. Cost and Price Certification.

- A. The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date.
- B. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.”

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FEDERAL FUNDS ATTACHMENT

A Summary of Certain Federal Fund Requirements and Restrictions

[Details of particular laws, which may levy a penalty for noncompliance, are available from the Maryland Department of Health and Mental Hygiene.]

1. Form and rule: 18 U.S.C. 1913 and section 1352 of P.L. 101-121 require that all *prospective* and present subgrantees (this includes all levels of funding) who receive more than \$100,000 in federal funds must submit the form "Certification Against Lobbying". It assures, generally, that recipients will not lobby federal entities with federal funds, and that, as is required, they will disclose other lobbying on form SF- LLL.
2. Form and instructions: "Form LLL, Disclosure of Lobbying Activities" must be submitted by those receiving more than \$100,000 in federal funds, to disclose any lobbying of federal entities (a) with profits from federal contracts or (b) funded with nonfederal funds.
3. Form and summary of Act: Subrecipients of federal funds on any level must complete a "Certification Regarding Environmental Tobacco Smoke," required by Public Law 103-227, the Pro-Children Act of 1994. Such law prohibits smoking in any portion of any indoor facility owned or leased or contracted for regular provision of health, day care, early childhood development, and education or library services for children under the age of 18. Such language must be included in the conditions of award (they are included in the certification, which may be part of such conditions.) This does not apply to those solely receiving Medicaid or Medicare, or facilities where WIC coupons are redeemed.
4. In addition, federal law requires that:
 - A) OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations requires that grantees (both recipients and subrecipients) which expend a total of \$500,000 or more in federal assistance shall have a single or program-specific audit conducted for that year in accordance with the provisions of the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. and the Office of Management and Budget (OBM) Circular A-133. All subgrantee audit reports, performed in compliance with the aforementioned Circular shall be forwarded within 30 days of report issuance to the DHMH, Audit Division, 605 S. Chapel Gate Lane, Old School Building, Baltimore, MD 21229.
 - B) All subrecipients of federal funds comply with Sections 503 and 504 of the Rehabilitation Act of 1973, the conditions of which are summarized in item (C).
 - C) Recipients of \$10,000 or more (on any level) must include in their Contract language the requirements of Sections 503 (language specified) and 504 referenced in item (B).

Section 503 of the Rehabilitation Act of 1973, as amended, requires recipients to take affirmative action to employ and advance in employment qualified disabled people. An affirmative action program must be prepared and maintained by all contractors with 50 or

more employees and one or more federal contracts of \$50,000 or more.

This clause must appear in subcontracts of \$10,000 or more:

- a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- c) In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the act.
- d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the director, provided by or through the contracting office. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- e) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- f) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the [federal] secretary issued pursuant to section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 791 et seq.) prohibits discrimination on the basis of handicap in all federally assisted programs and activities. It requires the analysis and making of any changes needed in three general areas of operation- programs, activities, and facilities and employment. It states,

among other things, that:

Grantees that provide health... services should undertake tasks such as ensuring emergency treatment for the hearing impaired and making certain that persons with impaired sensory or speaking skills are not denied effective notice with regard to benefits, services, and waivers of rights or consents to treatments.

- D) All subrecipients comply with Title VI of the Civil Rights Act of 1964 that they must not discriminate in participation by race, color, or national origin.
- E) All subrecipients of federal funds from SAMHSA (Substance Abuse and Mental Health Services Administration) or NIH (National Institute of Health) are prohibited from paying any direct salary at a rate more than \$125,000 per year. (This includes, but is not limited to, subrecipients of the Substance Abuse Prevention and Treatment and the Community Mental Health Block Grants and NIH research grants.)
- F) There may be no discrimination on the basis of age, according to the requirements of the Age Discrimination Act of 1975.
- G) For any education program, as required by Title IX of the Education Amendments of 1972, there may be no discrimination on the basis of sex.
- H) For research projects, a form for Protection of Human Subjects (Assurance/Certification/Declaration) should be completed by each level funded, assuring that either: (1) there are no human subjects involved, or that (2) an Institutional Review Board (IRB) has given its formal approval before human subjects are involved in research. [This is normally done during the application process rather than after the award is made, as with other assurances and certifications.]
- I) In addition, there are conditions, requirements, and restrictions which apply only to specific sources of federal funding. These should be included in your grant/contract documents when applicable.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Services
Health Resources and
Service Administration
Rockville, MD 20857

CERTIFICATION REGARDING ENVIRONMENT TOBACCO SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned, or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences, portions of facilities used for inpatients drug or alcohol treatment, service providers whose sole sources of applicable Federal funds are Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply will result with the monetary penalty of up to \$1000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this certification, the offer or/contractor (for acquisitions) or applicant/grantee (for grants) certifies that the submitting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The submitting organization agrees that it will require that the language of this certification be included in any sub-awards which contain provisions for children's services and that all sub-recipients shall certify accordingly.

Signature of Authorized Certifying Official

4/2004

Certification Regarding Lobbying

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract grant loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying" in accordance with it's instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contract, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

Award No.	Organizational Entry
Name and Title of Official signing for Organizational Entry	Telephone No. of Signing Official
Signature of Above Official	Date Signed

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S. C 1352 (See reverse for public burden disclosure.)

<p>1. Type of Federal Action:</p> <p>a. Contract</p> <p>b. Grant</p> <p>c. Cooperative agreement</p> <p>d. Loan</p> <p>e. Loan guarantee</p> <p>f. Loan insurance</p>	<p>2. Status of Federal Action:</p> <p>a. Bid/offer/application</p> <p>b. Initial award</p> <p>c. Post-award</p>	<p>3. Report Type</p> <p>a. Initial filing</p> <p>b. Material change</p> <p>For Material Change Only:</p> <p>Year _____ quarter _____</p> <p>Date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p>_____ Prime _____ Sub-awardee</p> <p>_____ Tier _____ if known:</p> <p>Congressional District, <i>if known</i></p>		<p>5. If Reporting Entity in No. 4 is Sub-awardee, enter Name and address of Prime:</p> <p>Congressional District, <i>if known</i></p>
<p>6. Federal Department/Agency:</p>		<p>7. Federal Program Name/Description:</p>
<p>8. Federal Action Number, <i>if known</i>:</p>		<p>9. Award Amount, <i>if known</i>:</p>
<p>10. a. Name and Address of Lobbying Entity: (If individual, last name, first name, MI):</p>		<p>11. Individuals Performing Services (Including address if different from No. 10a) (last name, first name, MI):</p>
<p>11. Amount of Payment (<i>check all that apply</i>):</p> <p>\$ _____ actual _____ planned _____</p>		<p>13. Type of Payment (<i>Check all that apply</i>):</p> <p>___ a. Retainer</p> <p>___ b. One-time fee</p> <p>___ c. Commission</p> <p>___ d. Contingent fee</p> <p>___ e. Deferred</p> <p>___ f. Other, specify: _____</p>
<p>12. Form of Payment (<i>check all that apply</i>):</p> <p>___ a. Cash</p> <p>___ b. In-kind: specify: nature _____ value _____</p>		
<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</p> <p>(attached Continuation Sheet(s) SF-LLL-A if necessary)</p>		
<p>15. Continuation Sheet(s) SF-LLL-A attached: _____ yes _____ no</p>		
<p>16. Information required through this form is authorized by</p> <p>title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the per above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,00 for each such failure.</p>		<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No: _____ Date: _____</p>
<p>Federal Use Only:</p>		<p>Authorized for Local Reproduction Standard form-LLL</p>

Continuation Sheet
Reporting Entity: _____

Page _____ of _____

INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether sub-awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of

Congress in connection with a covered Federal action. Use the SF-LLL-A continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or sub award recipient. Identify the tier of the sub-awardee, e.g. the first sub-awardee of the prime is the 1st tier. Sub-awards include but are not limited to subcontracts, sub-grants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Sub-awardee", then enter the full name, address, city, state, and zip code of the prime Federal recipient. Include Congressional District if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational Level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal Identifying number available for the Federal action identified in item 1 (e.g. Request for Proposal (RFP) number, Request for Quote (RFQ) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g. "RFP-DE-90-001".
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name First Name, and Middle initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box (es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal Official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-FFF-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

BID/PROPOSAL AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the [title] _____
and the duly authorized representative of [name of business]

_____ and that I possess
the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101 (b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies (as is defined in Section 16-101 (f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows [indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business]:

C. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies, has:

- (a) Been convicted under state or federal statute of a criminal offense incident to obtaining,

attempting to obtain, or performing a public or private contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;

(b) Been convicted of any criminal violation of a state or federal antitrust statute;

(c) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961, et seq., or the Mail Fraud Act, 18 U.S.C. § 1341, et seq., for acts arising out of the submission of bids or proposals for a public or private contract;

(d) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(e) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (a), (b), (c), or (d) above;

(f) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(g) Admitted in writing or under oath, during the course of an official investigation or other proceeding, acts or omissions that would constitute grounds for conviction or liability under any law or statute described above, except as follows [indicate reasons why the affirmation cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment]:

D. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows [list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds for the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds for the debarment or suspension]:

E. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows [you must indicate the reasons why the affirmations cannot be given without qualification]:

F. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

G. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in

restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

H. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

I. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with Election Law Article, §§14-101 -14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

J. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations).

I CERTIFY THAT:

1. Terms defined in COMAR 21.11.08 shall have the same meaning when used in this certification.
2. By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
- (c) Prohibit its employees from working under the influence of drugs or alcohol;
- (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business' policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §J(2)(b), above;
- (h) Notify its employees in the statement required by §J(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §J(2)(h) (ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §J(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on

any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

(i) Take appropriate personnel action against an employee, up to and including termination; or

(ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §J(2)(a)-(j), above.

3. If the business is an individual, the individual shall certify and agree as set forth in §J(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

4. I acknowledge and agree that:

(a)The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b)The violation of the provisions of, COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under, COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c)The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.06.

K. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1)The business named above is a (domestic _____) (foreign _____) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____

Address: _____

[If not applicable, so state].

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

L. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of the Contract.

M. Repealed

N. ACKNOWLEDGMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify, or waive, on behalf of the State of Maryland or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms, and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____ By: _____
(Authorized Representative and Affiant)

(TO BE COMPLETED BY WINNING BIDDER AFTER NOTIFICATION AND BEFORE CONTRACT AWARD)

CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the [title] _____ and the duly authorized representative of [name of business] _____ and that I possess the legal authority to make this Affidavit on behalf of my self and the business for which I am acting.

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

1. The business named above is a (domestic _____) (foreign _____) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____

Address: _____

2. Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or

acknowledgments contained in that certain Bid/Proposal Affidavit dated _____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract

Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____ By: _____
(Authorized Representative and Affiant)

THIS ENDS THE MARYLAND ONLY PORTION OF THE CONTRACT. ALL FURTHER INFORMATION, STIPULATIONS AND REQUIREMENTS APPLY TO ALL EIGHT INCLUDED STATES

(THE REMAINDER OF THIS PAGE IS BLANK)

THE FOLLOWING REQUIREMENTS ARE MANDATORY FOR COMPANIES DOING BUSINESS IN VIRGINIA. THESE CLAUSES APPLY ONLY TO THE PENNSYLVANIA PORTION OF THE CONTRACT AND WOULD SUPERCEDE CONFLICTING LANGUAGE ELSEWHERE, ONLY FOR VIRGINIA.

(FOR ALL OTHER STATES THIS SECTION DOES NOT APPLY.)

A. VENDORS MANUAL:

This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under "Manuals."

B. APPLICABLE LAWS AND COURTS:

This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. Additionally, this solicitation and any resulting Contract are subject to the Virginia Public Procurement Act at *Code of Virginia*, § 2.2-4300 to the extent that the Act does not conflict with any applicable federal laws.

C. DISPUTE RESOLUTION:

The manufacturer/bidder shall not withhold any rebate payments under any circumstances. Any disputes between the manufacturer and the Commonwealth of Virginia shall be brought in the courts of the Commonwealth. The agency and the Contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

D. RETENTION OF RECORDS:

The manufacturer/bidder shall retain all financial records, supporting documents, statistical records and any other documents created solely for this Contract for a period of five (5) years after termination of this Contract including any option year. If an audit or litigation has been initiated and has not been resolved at the end of the five (5) years including any option year, the records shall be retained until resolution of the audit or litigation.

E. ANTI-DISCRIMINATION:

By submitting their bids, the manufacturer/bidder certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the § 2.2-4310 Discrimination prohibited; participation of small, women, minority and service disabled veteran-owned business, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*.

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
2. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

F. ETHICS IN PUBLIC CONTRACTING:

By submitting their bids, the manufacturer certifies that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

G. IMMIGRATION REFORM AND CONTROL ACT OF 1986:

By entering into a written contract, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

H. DEBARMENT STATUS:

By submitting their bids, the manufacturer certifies that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

I. ANTITRUST:

By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

J. QUALIFICATIONS OF BIDDERS:

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to furnish the goods and the bidder shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The Commonwealth further reserves the right to reject any bid if the evidence submitted by, or investigations of, such bidder fails to satisfy the Commonwealth that such bidder is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

K. TESTING AND INSPECTION:

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

L. ASSIGNMENT OF CONTRACT:

A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

M. eVA Business-To-Government Vendor Registration:

The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected.

- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
- b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.
- c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
- d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

N. AVAILABILITY OF FUNDS:

It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

O. DRUG-FREE WORKPLACE:

During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each Subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

THIS ENDS THE VIRGINIA ONLY PORTION OF THE CONTRACT. ALL FURTHER INFORMATION, STIPULATIONS AND REQUIREMENTS APPLY TO ALL NINE INCLUDED STATES

All parties agree that the documents listed below are hereby incorporated into this Contract and made an integral part thereof.

<u>Title</u>	<u>Number of Pages</u>
<u>Contract Affidavit</u>	
<u>Eight Separate Signature Pages</u>	
<u>Request for Quotes</u>	
<u>Bid Sheet</u>	1
<u>Bid/Proposal Affidavit</u>	

SIMULTANEOUS EXECUTION OF DOCUMENT

This document and any subsequent amendments to this Agreement may be executed by the parties simultaneously, on separate signature pages, with each page to be attached to this document or amendment.

IN WITNESS THEREOF, the parties hereto have caused this 58 page Contract to be executed by their undersigned officials as duly authorized.

MANUFACTURER:

SIGNED BY _____ NAME

TITLE _____ DATE

DELAWARE STATE DIVISION OF PUBLIC HEALTH

SIGNED BY _____ NAME Jaime H. Rivera, MD, FAAP

TITLE Director _____ DATE

DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES

SIGNED BY _____ NAME Vincent P. Meconi

TITLE Secretary _____ DATE

SIMULTANEOUS EXECUTION OF DOCUMENT

This document and any subsequent amendments to this Agreement may be executed by the parties simultaneously, on separate signature pages, with each page to be attached to this document or amendment.

IN WITNESS THEREOF, the parties hereto have caused this 58 page Contract to be executed by their undersigned officials as duly authorized.

MANUFACTURER:

SIGNED BY _____ NAME

TITLE _____ DATE

MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE

SIGNED BY _____ NAME

TITLE _____ DATE

SIMULTANEOUS EXECUTION OF DOCUMENT

This document and any subsequent amendments to this Agreement may be executed by the parties simultaneously, on separate signature pages, with each page to be attached to this document or amendment.

IN WITNESS THEREOF, the parties hereto have caused this 58 page Contract to be executed by their undersigned officials as duly authorized.

MANUFACTURER:

SIGNED BY _____ NAME

TITLE _____ DATE

NEW JERSEY STATE DEPARTMENT OF HEALTH

SIGNED BY _____ NAME

TITLE _____ DATE

SIMULTANEOUS EXECUTION OF DOCUMENT

This document and any subsequent amendments to this Agreement may be executed by the parties simultaneously, on separate signature pages, with each page to be attached to this document or amendment.

IN WITNESS THEREOF, the parties hereto have caused this 58 page Contract to be executed by their undersigned officials as duly authorized.

MANUFACTURER:

SIGNED BY _____ NAME

TITLE _____ DATE

PUERTO RICO DEPARTMENT OF HEALTH

SIGNED BY _____ NAME

TITLE _____ DATE

SIMULTANEOUS EXECUTION OF DOCUMENT

This document and any subsequent amendments to this Agreement may be executed by the parties simultaneously, on separate signature pages, with each page to be attached to this document or amendment.

IN WITNESS THEREOF, the parties hereto have caused this 58 page Contract to be executed by their undersigned officials as duly authorized.

MANUFACTURER:

SIGNED BY _____ NAME _____

TITLE _____ DATE _____

VIRGINIA DEPARTMENT OF HEALTH

SIGNED BY _____ NAME _____

TITLE _____ DATE _____

SIMULTANEOUS EXECUTION OF DOCUMENT

This document and any subsequent amendments to this Agreement may be executed by the parties simultaneously, on separate signature pages, with each page to be attached to this document or amendment.

IN WITNESS THEREOF, the parties hereto have caused this 58 page Contract to be executed by their undersigned officials as duly authorized.

MANUFACTURER:

SIGNED BY _____ NAME _____

TITLE _____ DATE _____

VIRGIN ISLANDS DEPARTMENT OF HEALTH

SIGNED BY _____ NAME _____

TITLE _____ DATE _____

SIMULTANEOUS EXECUTION OF DOCUMENT

This document and any subsequent amendments to this Agreement may be executed by the parties simultaneously, on separate signature pages, with each page to be attached to this document or amendment.

IN WITNESS THEREOF, the parties hereto have caused this 58 page Contract to be executed by their undersigned officials as duly authorized.

MANUFACTURER:

SIGNED BY _____ NAME _____

TITLE _____ DATE _____

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SIGNED BY _____ NAME _____

TITLE _____ DATE _____

SIMULTANEOUS EXECUTION OF DOCUMENT

This document and any subsequent amendments to this Agreement may be executed by the parties simultaneously, on separate signature pages, with each page to be attached to this document or amendment.

IN WITNESS THEREOF, the parties hereto have caused this 58 page Contract to be executed by their undersigned officials as duly authorized.

MANUFACTURER:

SIGNED BY _____ NAME

TITLE _____ DATE

DISTRICT OF COLUMBIA, DEPARTMENT OF HEALTH

SIGNED BY _____ NAME

TITLE _____ DATE

AND	BY:	DATE:	
	Office of General Counsel		
	Commonwealth of Pennsylvania		
AND	BY:	DATE:	
	Office of Attorney General		
	Commonwealth of Pennsylvania		
I hereby certify that funds are available in the amount(s) and in the appropriation symbol(s) as shown below:			
BY:		DATE:	
	Comptroller		
	Public Health and Human Services		

VENDOR PREFERENCE CERTIFICATE

Certification and application* is hereby made for Preference in accordance with West Virginia Code, §5A-3-37. (Does not apply to construction contracts). West Virginia Code, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the West Virginia Code. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

- 1. Application is made for 2.5% resident vendor preference for the reason checked: Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; or, Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or, Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; or,
2. Application is made for 2.5% resident vendor preference for the reason checked: Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,
3. Application is made for 2.5% resident vendor preference for the reason checked: Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,
4. Application is made for 5% resident vendor preference for the reason checked: Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; or,
5. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked: Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; or,
6. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked: Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: _____ Signed: _____
Date: _____ Title: _____

*Check any combination of preference consideration(s) indicated above, which you are entitled to receive.

STATE OF WEST VIRGINIA
Purchasing Division**PURCHASING AFFIDAVIT****VENDOR OWING A DEBT TO THE STATE:**

West Virginia Code §5A-3-10a provides that: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

PUBLIC IMPROVEMENT CONTRACTS & DRUG-FREE WORKPLACE ACT:

If this is a solicitation for a public improvement construction contract, the vendor, by its signature below, affirms that it has a written plan for a drug-free workplace policy in compliance with Article 1D, Chapter 21 of the **West Virginia Code**. The vendor **must** make said affirmation with its bid submission. Further, public improvement construction contract may not be awarded to a vendor who does not have a written plan for a drug-free workplace policy in compliance with Article 1D, Chapter 21 of the **West Virginia Code** and who has not submitted that plan to the appropriate contracting authority in timely fashion. For a vendor who is a subcontractor, compliance with Section 5, Article 1D, Chapter 21 of the **West Virginia Code** may take place before their work on the public improvement is begun.

ANTITRUST:

In submitting a bid to any agency for the state of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the state of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the state of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the state of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership or person or entity submitting a bid for the same materials, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

LICENSING:

Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agencies or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.

CONFIDENTIALITY:

The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.

Under penalty of law for false swearing (**West Virginia Code** §61-5-3), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

Vendor's Name: _____

Authorized Signature: _____ Date: _____