



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  
 WIC90140

PAGE  
 1

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

RFQ COPY  
 TYPE NAME/ADDRESS HERE

VENDOR

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
06/15/2009				

BID OPENING DATE: 06/30/2009 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
ADDENDUM NO. 3						
1. QUESTIONS AND ANSWERS ATTACHED. 2. TO MOVE BID OPENING DATE FROM 6/26/2009 TO 6/30/2009. 3. ADDENDUM ACKNOWLEDGEMENT IS ATTACHED. THIS DOCUMENT SHOULD BE SIGNED AND RETURNED WITH YOUR BID. FAILURE TO SIGN AND RETURN MAY RESULT IN DISQUALIFICATION OF YOUR BID.						
EXHIBIT 10						
REQUISITION NO.: WIC90140						
ADDENDUM ACKNOWLEDGEMENT						
I HEREBY ACKNOWLEDGE RECEIPT OF THE FOLLOWING CHECKED ADDENDUM(S) AND HAVE MADE THE NECESSARY REVISIONS TO MY PROPOSAL, PLANS AND/OR SPECIFICATION, ETC.						
ADDENDUM NO. 'S:						
NO. 1 .....						
NO. 2 .....						
NO. 3 .....						
NO. 4 .....						
NO. 5 .....						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE		TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE	

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

## 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, the State may deem this contract null and void, and terminate such contract 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."

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### 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



State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
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<p>I UNDERSTAND THAT FAILURE TO CONFIRM THE RECEIPT OF THE ADDENDUM(S) MAY BE CAUSE FOR REJECTION OF BIDS.</p> <p>VENDOR MUST CLEARLY UNDERSTAND THAT ANY VERBAL REPRESENTATION MADE OR ASSUMED TO BE MADE DURING ANY ORAL DISCUSSION HELD BETWEEN VENDOR'S REPRESENTATIVES AND ANY STATE PERSONNEL IS NOT BINDING. ONLY THE INFORMATION ISSUED IN WRITING AND ADDED TO THE SPECIFICATIONS BY AN OFFICIAL ADDENDUM IS BINDING.</p> <p>.....            SIGNATURE</p> <p>.....            COMPANY</p> <p>.....            DATE</p> <p>REV. 11/96</p> <p>END OF ADDENDUM NO. 3</p>						

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**WIC90140 Bidders Questions and Spending Unit Responses from Pre-Bid Conference May 5, 2009**

1. Please confirm that pages 1-5 must be signed and returned with the bid. Are bidders required to complete and sign the bottom section of all five pages?

**Only one of the pages needs to be filled out completely.**

2. Page 2 – Renewal – this section states that “This contract may be renewed upon the mutual written consent of the spending unit and vendor. Paragraph 12 of the General Terms & Conditions also states the “Contract may be renewed only upon mutual written agreement of the parties.” However, Section III on page 9 – Terms and Conditions – appears to provide for renewals as a “unilateral option of the States, either individually or together.” In order to attract the best possible bids on this contract, we strongly encourage the State agencies to clarify that mutual consent is required form contract extensions. We therefore request Page 9, Section III and Page 20, Section VII.A.5 to be amended confirming mutual consent is required for contract renewals. Please confirm this change will be made.

**Mutual consent is required for contract renewals.**

3. Page 2 – Open Market Clause – As discussed at the pre-bid conference, please confirm this provision does not apply to this contract. We request this provision be deleted in its entirety.

**This cannot be deleted, this is standard language for WV Department of Administration contracts.**

4. Page 2-3 – Form Number WV-39 – Please confirm this Form is not applicable to this contract and will not be utilized during the term of this contract.

**A WV-39 will be issued to the vendor upon award of the master contract authorizing services against the master contract. The WV-39 will be for a one year period. Upon expiration of the master contract, if the master contract is renewed, another WV-39 will be issued for another one year period.**

5. Page 3 – The middle of this page includes the following: “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 . . .”
  - a. Please clarify which documents will be included and incorporated into the original contract?

**All documents submitted for bid will become part of the contract.**

- b. As discussed at the pre-bid conference, please confirm the answers to bidders questions will become a part of the contract and will supersede and take precedence over conflicting provisions found elsewhere in the contract.

**Yes, answers to questions will become part of the contract and answers to questions will supersede and take precedence over conflicting provisions found elsewhere in the contract.**

6. Page 3 – Inquiries:

- a. Please confirm we may contact you at the email address above to confirm receipt of these questions.

**Answer: All inquires should be directed to the buyer, Roberta Wagner at Fax: 304-558-4115 or E-mail: [Roberta.A.Wagner@wv.gov](mailto:Roberta.A.Wagner@wv.gov).**

- b. Please further confirm that all bidders will receive the responses to all questions submitted by each bidder.

**Yes all bidders will receive responses to all questions submitted by each bidder.**

- c. Given that this is one of the first WIC infant food bids (fruits, vegetables, and meats) and many issues are not yet clearly understood, we request all potential bidders be given an opportunity to submit a second round of questions to ensure all bidders and the States have a clear understanding of the requirements and obligations under the contract resulting from this RFQ. Please confirm bidders will have the opportunity to submit additional questions in response to the answers provided by the States.

**Given the time constraints in awarding the contract, there will not be a second round of questions.**

- d. We request all bidders be provided a minimum of ten (10) business days to review responses to the questions prior to the submission of bids. Therefore, if the State(s) are unable to provide responses to all questions prior to May 12, we request the bid date be extended accordingly. Please confirm the State will comply with this request.

**The bid opening for WIC 90140 has been extended to June 26, 2009**

- e. Please confirm all questions related to this bid are to be submitted in writing to you, and that no other contacts with State Agency officials is permitted during the period in which this bid has been open.

**Yes.**

- f. If there have been contacts with other State Agency officials with respect to this bid, other than during the pre-bid conference, please document those discussions and provide such documentation to all bidders.

**We know of no other contacts that have been made with State Agency Officials with respect to this bid, other than at the pre-bid conference.**

7. Page 6 – Infant Participation Data – We request each State review the numbers submitted for the table on this page. It appears that Delaware, the District of Columbia, New Jersey, and the Virgin Islands have submitted infant participation for those aged 0-11 months. We request all states review these participation numbers and amend the Table on page 6 to ensure only infants aged 6 to 11 months are counted.

**The infants ages 6 to 11 months have been adjusted as follows:**

<b>Avg. No. of Fully Formula/Partially Breastfed Infants Per Month</b>	
<b>Participating States</b>	
District of Columbia	3,171
Maryland	17,278
New Jersey	26,000
Pennsylvania	28,081
Puerto Rico	20,166
Virginia	19,528
Virgin Islands	626
West Virginia	6,265
<b>Total Monthly Averages</b>	<b>121,115</b>

**Please note: Due to the lateness of the bid award, the Delaware WIC Program will no longer be a part of this solicitation.**

8. Page 7, Section II.A.1. – This section states, “Textures may range from strained through diced...As diced varieties are recommended for children ages 12 months and up...” The RFQ acknowledges that diced varieties are recommended for children ages 12 months and up. However, this bid document and the resulting contract only covers eligible infants who are provided products contained in Food Package II. We therefore request the sentence referencing diced products be removed from the RFQ in all instances in which it appears. This language adds unnecessary ambiguity and confusion to this document. Please confirm such language will be removed.

**Diced varieties of infant fruits, vegetables and meats will not be allowed on the States’ approved food list.**

9. Pages 7-8, Section II.A.1-3 – Each of these sections states that “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 religious reasons.” The phrase “cannot supply” is susceptible to two distinct meanings/interpretations which we request the State clarify prior to submission of bids. We have the following questions related to each of the two potential interpretations of “cannot supply”:

- a. Prior to the pre-bid conference, we interpreted “cannot supply” as relating to a lack of production or product availability to the retailers. Pursuant to this understanding we have the following questions:
  - i. Please further explain the circumstances under which the State(s) will determine that the Contractor “cannot supply” required products. We request the RFQ be amended to specify that “cannot supply” will cover those situations in which the Contractor is unable to fill product orders for seven consecutive days or longer. Please confirm such a change will be made.
  - ii. We request that other, WIC eligible items, including other container sizes, from the Contractor be substituted first, prior to permitting the purchase of a competitor’s product. Please confirm this change will be made.
  - iii. Once a State makes a determination to exercise this clause, how will the Contractor be notified? Please indicate a response for each State.
  - iv. How long will vouchers be issued for another brand’s products? Do all the States agree to minimize, as much as possible, the time period in which participants are able to purchase non-contract products under this clause?
  - v. Will new food instruments be issued to participants if this clause is invoked or will participants be able to submit existing food instruments containing the brand name of Contractor for the purchase of non-contract products?
  - vi. Once the supply issue is resolved, how will both retailers and participants be notified that the purchase of non-contract products is no longer permissible?
  - vii. Please confirm this provision will only apply in instances in which the Contractor’s product is not available due to a manufacturing or distribution problem. The Contractor should not be held liable if shortages arise because of actions (or nonactions) attributable to the retailer or wholesaler and which arise through no fault of the Contractor.

**Cannot supply is when the lack of production cannot produce sufficient quantities of infant fruits/vegetables and meats to serve all eligible WIC infants**

served by the States. This may include product recalls. These productions/supply issues would be handled on a state by state basis after the contract award as needed.

- b. A second interpretation of “cannot supply”, which was clarified at the pre-bid conference relates to a portfolio gap (i.e., the contractor does not produce a product requested by a particular participant). Based on the discussions at the pre-bid conference it appears the State is requesting the Contractor to pay rebates on products it currently does not manufacture even if none of the potential bidders produce such products. We strongly object to this provision. It is fundamentally unfair and we urge the State to amend the RFQ to clarify the Contractor will not pay rebates for products it does not produce. As with infant formula contracts, specialty products required by a small subset of the infant population should be purchased by participants on a non-contract basis.
- i. Please confirm this change will be made.
- ii. In addition to kosher needs, please also specify what other foreseeable dietary restrictions might require issuance of products other than those offered by the Contractor.
- iii. Please confirm each section (Infant Fruits, Infant Vegetable, and Infant Meat) will be amended to address our concerns.

**Anything that the manufacturer does not produce (e.g. kosher meats) the States reserved the right to issue another manufacturer’s product and the State will forego the rebate for this product.**

10. Page 7-8 – We request from each State a description of the product stages (i.e., Stage 1, 2, and 3) and container sizes each intends to authorize and provide to its participants. This information will be important in enabling bidders to provide the best possible bids for this contract.

	<b>Stages Offered</b>		<b>Size</b>
District of Columbia	1 & 2	4 oz. Fruits/vegetables	2.5 ounce Meats
Maryland	1 & 2	4 oz. Fruits/vegetables	2.5 ounce Meats
New Jersey	1 & 2	4 oz. Fruits/vegetables	2.5 ounce Meats
Pennsylvania	1 & 2	4 oz. Fruits/vegetables	2.5 ounce Meats
Puerto Rico	1 & 2	4 oz. Fruits/vegetables	2.5 ounce Meats
Virginia	1 & 2	4 oz. Fruits/vegetables	2.5 ounce meats
Virgin Islands	1 & 2	4 oz. Fruits/vegetables	2.5 ounce meats
West Virginia	1 & 2	4 oz. Fruits/vegetables	2.5 ounce Meats

11. Page 9 – Task 3 – This section states that “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.” Is the State suggesting that if the Contractor increases the price on its 2.5 oz. infant meat



products but does not increase (or reduces) the price on its 4 oz. infant vegetable and infant fruit products, the States will require the Contractor to increase its rebates on these products as well? This again is fundamentally unfair and improper. We strongly urge the State to reconsider this provision and in fact the entire process for adjusting rebates for price increases. We suggest that rebates for products authorized by the State be adjusted only when the wholesale prices for those particular products are increased. Please provide a response to address these concerns.

**The bid sheet will be changed to allow for a separate rebate amount for Fruits/Vegetables and Meats. Thus an increase in the wholesale price of infant meats will only increase the rebate for that product, an increase in the wholesale price of fruits/vegetables will increase the rebate for that product.**

12. Page 11 – Section IV.D. – Dispute Resolution – paragraph 3 in this section states that “Failure to notify a State of a billing dispute by December 31 shall result in waiver of the dispute.” We request this provision be amended to apply to the State(s) as well. Please confirm this provision will be amended by specifically stating that the failure of the State(s) to notify the Contractor of a billing dispute by December 31 shall result in waiver of the dispute. Additionally, please confirm all the States will resolve all billing disputes within the Fiscal Year to which they relate.

**Failure of the State(s) to notify the Contractor of a billing dispute by December 31 shall result in waiver of the dispute. The States will resolve all billing disputes within the Fiscal Year in which they relate.**

13. Page 12 – Section IV.F. - Audits – We note this Contract does not involve government funds paid to the Contractor and should therefore not be treated as a grant under federal or state contracting law. We therefore do not understand the purpose of this provision and we respectfully request an explanation for why this provision is included in this RFQ. We further request that it be deleted prior to submission of bids. With that background, we have the following questions:

- a. Please explain the purpose of requiring access to the records of the Contractor. What records belonging to the Contractor would require an audit by the States? All of the documentation required for the payment of rebates is prepared by the States, their banks, and their authorized vendors. The Contractor simply pays the invoices as they are presented. We believe there is no legitimate purpose for these provisions and urge that they be deleted.

**These records might include the wholesale price sheets that would be reviewed by the States’ auditors or Mid-Atlantic Region reviewers as part of a State Technical Assistance Reviews and therefore must be available.**

- b. Please confirm the Contractor has the right to audit each State agency’s records as they relate to the resulting contract from this RFQ.

**Yes. See section V.B**

- c. Please confirm Paragraph 3 does not apply to this RFQ and the resulting contract.

**IV.F.3 does not apply to this RFQ.**

- d. Paragraph 4 in this section states that Manufacturer shall allow "public access" to all documents, etc in conjunction with this Contract. Why is this provision included in this RFQ? How does it differ from Paragraph 1 in this section? We request this paragraph be deleted from the RFQ.

**Paragraph one (1) refers to maintenance of records whereas paragraph four (4) refers to access of these records. This paragraph will not be deleted.**

14. Page 12, Section IV.G. – Retention of Records, paragraph 2 – Please explain the purpose for the States to exercise the rights under this Section if at the time the request is made, the Manufacturer shall have paid all invoices and is otherwise current on its rebate account.

**In the event of a state or federal audit, this information may be needed. See also mandatory provisions in doing business with the states of Maryland, Pennsylvania and Virginia.**

15. Page 13-14 – Federal Lobbying Prohibition – The Contractor will not be receiving any federal or state funds under this contract. Therefore, please confirm Section IV.J. does not apply to this contract.

**This section will stand as written. See also mandatory provisions in doing business with the states of Maryland, Pennsylvania and Virginia.**

16. Page 15, section V.A. – Reports – This section states that "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." This statement is restated on page 21 in paragraph #3 with an additional statement indicating "States have no way of accurately calculating the purchased quantities." We do not believe the previous statement is an accurate reflection of the States' capabilities. In our view it should not be acceptable for the States to expect potential Contractors to provide rebates on products if the States cannot accurately determine how many products are purchased. The States will not receive the best possible bids if bidders will likely be billed for a substantially larger number of units of product than what is actually purchased by WIC participants. The States can, and should, establish systems to accurately determine the number of units purchased, which is the only way the States can accurately bill the Contractor for rebates we would be obligated to pay under the Contract. The States are required under federal law and regulations to have a system in place to provide a reasonable estimate of the actual count of the number of units of infant formula sold. The best interests of the States and taxpayers will not be

served if the States refuse to institute similar systems to accurately account for the number of units of infant foods purchased by WIC participants.

**Bidders should build into their bid what they anticipate partial redemptions of the State will be.**

- a. We request each State provide a brief description of the system utilized to account for differences in the amount of infant formula products issued versus those actually purchased?

**Not applicable to this RFQ.**

- b. We request each State indicate whether it is willing to institute a similar system for infant food products. Please indicate whether each State is unable or unwilling to institute such a system and why. Please provide additional information, by State, on the system limitations that preclude an estimate of the number of units purchased based upon the average retail price for these products and the total amount of the transaction.

**Current Federal Regulations 246.12 do not require a cost containment system be in place for Infant Foods. The calculation of partial redemptions would increase the States' costs for the printing of additional checks and increase banking fees with the addition of these check types. The States will calculate rebate owed based on the number of ounces of each product issued to the WIC participant. The States will not be providing partial redemption information.**

- c. Do any of the States plan to institute a system to accurately account for the number of units of infants foods purchased by WIC participants? If yes, please indicate which States will institute such a system.

**No.**

- d. We request each State indicate which products they plan to authorize.

**States are awaiting award decision.**

- e. Separate and apart from ensuring that the Contractor is billed based on the number of units actually purchased, how will each State ensure only the Contractor's products will be those actually purchased by participants? If a participant brings 32 or 64 jars of baby food to the cash register, how will the States ensure that 5, 10, or 15 of these aren't other manufacturer's products?

**Infant foods will be handled like all other eligible WIC products.**

- f. How will the States ensure that other ineligible products are not included in the purchase, such as organic products or those containing DHA? How will the States ensure that ineligible desserts, jarred cereal, or dinners are not purchased?

**Infant foods will be handled like all other eligible WIC products.**

- g. We request each State clarify whether it plans to authorize organic products or those enhanced with DHA. The RFQ only states these products cannot be bid; it does not say they cannot be authorized.

**The States are not authorizing organic and those products enhanced with DHA.**

- h. Please explain what precautions or procedures are in place within each State to protect against fraudulent conduct by the participants or retailers in the voucher redemption process.

**Infant foods will be handled like all other eligible WIC products.**

- i. We request each State indicate whether food instruments will list the number of units that can be purchased or the total number of ounces. We request each State indicate how it will bill the Contractor (i.e., based on number of units or number of ounces).

**Units**

- j. We request each State indicate whether it plans to bill the Contractor based upon the number of units/oz purchased rather than the number of units/ounces issued?

**The States will bill on the number of units/ounces issued.**

- k. We request that each State indicate whether separate food instruments will be issued for infant meats and infant foods.

**States are awaiting award decision.**

- l. We request each State indicate how many units may be purchased with one food instrument.

**States are awaiting award decision.**

- m. We request each State indicate whether the food instruments for infant foods will contain a "not to exceed" amount (total cost)?

**Each State will handle these food instruments in the same manner it does with other WIC eligible foods.**

- n. We request each State indicate whether the food instruments will include a place for the retailer to indicate the total purchase amount at the time of the transaction? Will the food instrument include a place for the retailer to indicate the total units/oz purchased at the time of the transaction?

**Each State will handle these food instruments in the same manner it does with other WIC eligible foods.**

- o. We request each State indicate whether it will be authorizing the purchase of fresh bananas?

**The States are not authorizing fresh bananas**

- i. If yes, what is the maximum allowance per month per participant
  - 1. Fully/Partially Formula Fed Infants?
  - 2. Fully Breastfed Infants?
- ii. How will bananas be listed on the voucher?
- iii. Will the choice for fresh bananas be determined by the mom/clinician in the WIC clinic and listed on the food instrument accordingly, or will mom decide at the store if she would like to substitute 1–4 jars of baby food fruits/vegetables for fresh bananas?
- iv. Please describe, in detail, how the States will ensure that the contractor is not invoiced for purchases of fresh bananas? If a detailed plan is not in place, we strongly object to this RFQ and we request that each State explain, prior to bids being requested, the process or system it will utilize to ensure the Contractor is accurately invoiced.

- 17. We request each State indicate whether participants will be required to purchase a specific mix of fruits or vegetables, or will a participant be able to buy all fruit or all vegetable products?

**The States are not requiring the participants to buy a specific mix of fruits or vegetables.**

- 18. Page 16, Section V.E. – Monitoring of Retail Vendors. Please explain the process for monitoring authorized WIC 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.

- a. If the States find a vendor to be non-compliant, what is the consequence to the vendor?
- b. Will the vendor be subject to additional, subsequent audits?
- c. Will the Contractor be notified of such violations and allowed to reconcile past invoices?

**Monitoring of Retail Vendors will be handled as done currently in all the States**

19. Page 17, Section VII.A.1.d. – wholesale price lists – Are bidders required to submit a wholesale price list covering all of its WIC-eligible products? Will bidders be deemed non-responsive if incomplete price lists are submitted?

**Wholesale prices lists should include all WIC eligible infant fruits, infant vegetables and infant meats. Yes**

20. Page 17, Section VII.A.1.e. – wholesale price lists – Please confirm that all bidders must include a separate price list for all WIC-eligible products sold in Puerto Rico and the Virgin Islands?

**If Bidders have a separate wholesale price structure for Puerto Rico and Virgin Islands they would be required to submit a wholesale price list for Puerto Rico and Virgin Islands.**

21. Page 19, Section VII.A.1.i. – Bid opening – Please confirm the following information will be read aloud at the bid opening: (1) name of bidder, (2) the wholesale price per ounce for both A and B, and (3) the rebate per ounce for both A and B.

**After the bid opening the bids will be scanned and will be made public.**

22. Page 19, Section VII.A.1.o. – Wholesale Price – This section states that the “Wholesale Price is the price contained in the wholesale price list submitted by the vendor for the container size which reflects the highest cost per ounce in the highest pricing tier.” We have the following questions related to this requirement:

- a. Why is the State requiring bidders to submit the highest wholesale price for the highest pricing tier? We urge the State to use the best (lowest) wholesale price because that price reflects the price the large majority of retailers will pay for these products. Basing the bid evaluation on prices that do not accurately reflect the actual cost to the States provides a disadvantage to some bidders while not necessarily providing a cost benefit to the States. We therefore request the State amend the bid sheet and the definition of wholesale cost to require pricing based on the lowest wholesale cost for the product being bid. We note that all infant formula contracts and the accompanying federal regulations require the use of the lowest wholesale cost in these bids.

**The States will continue to use the highest wholesale price.**

- b. The definition of wholesale price used in this RFQ provides an advantage for some bidders over others, and also does not accurately reflect the cost paid by the States. The best interest of the States will not be served if the current definition of wholesale price is utilized. We therefore request the State further amend the definition of wholesale price to require bidders to submit its best (lowest) wholesale price for 4 oz. infant fruits/vegetables rather than the highest wholesale price for infant meats. Infant meat represents approximately 7 percent of the products that will be purchased under

this contract. The current wholesale pricing structure of the potential bidders provides a significant advantage to one of the bidders because this bidder has a significantly lower wholesale price for infant meat products. This large difference in pricing is not extended to this bidder's infant fruit and vegetable products. Therefore, this bidder could bid an amount representing the lowest net cost per ounce for infant meats but resulting in a higher net cost per ounce for infant fruits and vegetables (the large majority of product purchased by WIC participants will be infant fruits and vegetables – more than 90% of total infant food purchases). Based on the current bid evaluation method, this bidder would win the bid but the actual cost to the States might be significantly higher if this product is provided because the large majority of this contract is for infant fruits and vegetables and the States would be paying a higher amount for these products. We therefore strongly urge the State to revise the bid Sheet to require wholesale prices be based on the lowest wholesale cost for 4 oz. infant fruits and vegetables. This amount most closely provides a level playing field for all bidders and most accurately represents the actual price, and therefore cost, to the States. Please confirm this change will be made.

**The States will continue to use the highest wholesale price.**

- c. Additionally, we strongly recommend the States request separate wholesale prices and net costs for infant fruits/vegetable and infant meats. These are two distinct product categories should be listed separately on the Bid Sheet. Requesting bids on both products would most accurately represent the true cost to the States. Please confirm this change will be made.

**See answer to #11.**

23. Pg. 20, section VII.A.3. – Notice of Contract Award:

- a. The RFQ states, "The WV WIC program will send a written notification to all bidders announcing the award after the receipt of the signed contract from the successful bidder". WV Bid Protest rules only allow for bid protests within 5 days of the date of the award of the contract. Therefore, we request the State notify all bidders of the award date prior to such award, or at a minimum the State notify all bidders by email or phone call on the award date. Please confirm the RFQ will be amended accordingly.

**No this will not be amended. The original specs will stand as written.**

- b. Please provide the approximate number of days it will take following submission of bids for the State to notify bidders of an award.

**The approximate number of days it will take to notify bidders of an award is undetermined at this time. Bidders will be notified by the DOA Purchasing Division once an award has been made.**

- c. Please clarify the documents that will constitute the resulting contract from this bid. The documents in the bid solicitation are not clearly labeled and it appears that the entire package is considered the RFQ. Also, please confirm the answers to bidders' questions will be incorporated by reference into the contract and will take precedence over all other documents constituting the final contract.

**The entire package is considered the RFQ. Answers to bidders questions will take precedence.**

24. Pg. 20, section VII.A.4. – Contract Award:

- a. Please confirm that only one contract will be signed between the Contractor and the States (i.e., the Contractor will not sign nine (9) separate contracts with the States).

**There will only be one contract signed, but each state has their terms and conditions that need signed. Each states terms and conditions will become part of the one contract.**

- b. This section also requires proof of insurance (see also page 39, Indemnity Clause). We note that, like most large multinational corporations, we employ the common practice of self-insuring which is a practice deemed acceptable by other WIC programs and other customers as adequate to meet all foreseeable claims and the insurance requirements contained in similar contracts and agreements.

**The Indemnity Clause will remain a part of this RFQ.**

25. Page 21, Section VII.C. – Evaluation Process – We request a more complete explanation of how bids will be evaluated? During the pre-bid conference an evaluation spreadsheet was referenced. Please provide all bidders with a copy of the spreadsheet so each bidder fully understands how these bids will be evaluated.

**The evaluation spreadsheet is attached**

26. Page 25 – Bid Sheet – In order to more accurately reflect the true costs to the States, we request the Bid Sheet be revised to include separate prices for infant meats and infant fruits/vegetables, as well as separate prices for Puerto Rico and the Virgin Islands. We further request the Bid Sheet be revised to include the number of infants receiving infant fruits and vegetables; the number of infants receiving infant meats; the total units or ounces to be provided for each infant; the net wholesale cost for each product (infant fruits and vegetables, and infant meats); the net dollar cost based on the price and number of units/ounces provided; and the total net cost to the States. Please confirm the Bid Sheet will be revised. We also reiterate our concerns over the definition of wholesale price and again request that definition be amended.

**See answer to #11.**



27. Page 49 – Federal Funds Attachment – This contract does not involve the payment of federal or state funds to the Contractor. We therefore request the State confirm this document is not applicable to this contract. We further request that it be deleted from the RFQ.

**This is mandatory language for those contractors that wish to do business with the States of Pennsylvania, Maryland and Virginia and will not be deleted.**

28. Page 52 – For the same reason as cited in question #27, we request this document be removed from the RFQ.

**This is mandatory language for those contractors that wish to do business with the States of Pennsylvania, Maryland and Virginia and will not be deleted.**

29. Page 53 – Certification Regarding Lobbying – For the same reason as cited in question #27 and 28, we request this document be removed from the RFQ.

**This is mandatory language for those contractors that wish to do business with the States of Pennsylvania, Maryland and Virginia and will not be deleted.**

30. Page 61 – Financial Disclosure Information and Political Contribution Disclosure Information – Please confirm these provisions do not apply to this contract as the Contractor will not received any state funds under this contract.

**This is mandatory language for those contractors that wish to do business with the States of Pennsylvania, Maryland and Virginia and will not be deleted.**

31. Page 69 – eVA Business-To-Government Vendor Registration – Please confirm this provision does not apply to this contract.

**This is confirmed.**

32. Who do we contact to confirm receipt of our bids? May we contact you at the email provided to confirm receipt?

**Contact Roberta Wagner @ Fax: 304-558-4115 or E-Mail:  
Roberta.A.Wagner@wv.gov.**

33. For each State agency, please specify the minimum stocking requirements for (1) infant fruits, (2) infant vegetable, (3) infant meats, and (4) infant cereal.

**States are awaiting award decision.**

34. We request each State agency provide a sample food instrument (voucher) for both infant foods fruits/vegetables and meats, and infant cereal.

**States are awaiting award decision.**

35. For each State agency, please provide information on any current or future plans for implementation of EBT systems for the WIC program.

**There are currently no States that have an approved Advance Planning Document with USDA for EBT.**

36. For each State agency, please state whether any WIC-only stores operate in the state and if so, how many.

	WIC Only Stores	
District of Columbia	No	
Maryland	No	
New Jersey	No	
Pennsylvania	No	
Puerto Rico	Yes	49
Virginia	No	
Virgin Islands	No	
West Virginia	No	

37. Section VII.C "Evaluation Process", states that "The bid providing the lowest net cost per ounce to the States will become the successful bidder...providing the accompanying materials satisfy the requirements in Section II.A.2.e & f".

a. Please provide a description of the evaluation methodology that will be used to calculate the extended cost to the States.

**See answer to question #25**

- b. Section VII.A.1 includes a variety of requirements that go beyond the submission of a per ounce bid and the responses to Section II.A.2.e & f. Are there any other requirements that must be met to be considered the successful bidder? If so, please provide the methodology that will be used to evaluate these additional non-financial requirements.

**Items listed under VII.A.1.a-o are considered mandatories under this solicitation and must be addressed. Incomplete or missing information will be deemed unresponsive to this RFQ.**

c. How will non-financial factors be assessed (i.e., distribution, or product assortment offered in response to the RFQ) if according to Section VII.C, the successful bidder will be selected on the basis of the "net lowest cost" offering to the States and satisfying "requirements in Section II.A.2.e & f"? For these additional factors, are there thresholds that must be met in order for a bid to be considered for award? Please provide detail for each factor being assessed:

- i. Distribution: (including method for calculating distribution – ACV? Total Store count? Other – please identify/explain); minimum threshold required for bid award consideration?
- ii. Product Assortment: Range of products being evaluated; minimum number of products required in the bid?
- iii. Other: please list other factors/attributes being evaluated

**There are no additional thresholds to be met other than what is stated in the RFQ**

38. If the bidders submit bids which reflect the highest cost per ounce from the highest pricing tier, do the States recognize that by not accounting for the predominance of Infant Fruits and Vegetables, inequity is created in the bid evaluation process?

**The bid sheet will be changed to allow for a separate rebate amount for Fruits/Vegetables and Meats. The evaluation spreadsheet will take into account the greater number of ounces for infant fruits/vegetables.**

Example: The gap between Bidder A with the highest rebate and the Bidder B with the second-highest rebate for the highest cost per ounce in the highest pricing tier (infant meats) is a gap of 26%, and the pricing gap between the same bidders is only 17% for Infant Fruits and Vegetables. If the gap between the rebate values is less than the difference between the pricing gap, then the second highest bidder will win the bid – assuming all other things remain equal.

Please see the following example:

Separately bidding Fruits/Vegetables and Meats leads to a clearer and more accurate bid result:

	Bidder B	Bidder A	Bidder C
4.0 oz Applesauce 2.5 oz Chicken	4.0 oz Applesauce 2.5 oz Chicken	4.0 oz Applesauce 2.5 oz Chicken	4.0 oz Applesauce 2.5 oz Chicken
Fruits: Wholesale price (highest tier)	\$5.95	\$6.99	\$7.08
Cost/ounce	\$0.124	\$0.146	\$0.148
Rebate/ounce	\$0.020	\$0.049	\$0.035
Monthly ounces required (est)	19,859,561	19,859,561	19,859,561
Monthly cost of product	\$2,461,758	\$2,892,049	\$2,929,285
Monthly rebate value	\$397,191	\$973,118	\$695,085
Fruits & Vegetables: Net Cost to 9 States	\$2,064,567	\$1,918,930	\$2,234,201
Meats: Wholesale price (highest tier)	\$8.35	\$10.56	\$10.92
Cost/ounce	\$0.278	\$0.352	\$0.364
Rebate/ounce	\$0.020	\$0.049	\$0.035
Monthly ounces required (est)	1,494,806	1,494,806	1,494,806

Monthly cost of product \$416,054 \$526,172 \$544,109  
 Monthly rebate value \$29,896 \$73,245 \$52,318  
 Meats: Net Cost to 9 States \$386,158 \$452,926 \$491,791  
**Total Net Cost to 9 States \$2,450,725 \$2,371,856 \$2,725,992**

Will the states change the bidding format required for RFQ 90140 to address this inequity – by requesting separate bids, and wholesale pricing, for 1) Infant Fruits and Vegetables, and 2) Meats?

**See answer #38**

39. In Section VII.A.1.o of the RFQ, the terms used for evaluating the bids requests that bidders use the wholesale price “which reflects the highest cost per ounce in the highest pricing tier”.

- a. Will the States change the RFQ language, and Bid Sheet language, to the “lowest cost per ounce”?

**No**

Changing this language makes the bid format and submission align with the New England Bid for Infant Foods and Infant Cereal (led by State of Maine, IFB#200800340), as well as align with rules governing bids for Infant Formula (as stated in 7 CFR 246.16a(c) (“Infant Formula Cost Containment”).

- b. Given that bidders have differing pricing formulas that govern pricing tiers, and have different ordering volumes associated with those pricing tiers, will the States change the language of the RFQ to address the unequal evaluation that the current bid documents create?

**No, refer to VII.A.1.o.(i)**

Example regarding use of lowest price tier instead of highest price tier.

If Lowest Wholesale price were used the bids would align even further; and bidding method would be consistent with other Infant Foods bids conducted to date

Note: Lowest Tier, used for Truckload Pricing, is the most common price tier among manufacturers of Infant Food.

Bidder B Bidder A Bidder C

4.0 oz Applesauce 2.5 oz Chicken 4.0 oz Applesauce 2.5 oz Chicken 4.0 oz Applesauce 2.5 oz Chicken

Fruits: Wholesale price (lowest tier) \$5.67 \$6.48 \$6.48

Units/case 12 12 12

ounces/case 48 48 48

Cost/ounce \$0.118 \$0.135 \$0.135

Rebate/ounce	\$0.020	\$0.049	\$0.035
Monthly ounces required (est)	19,859,561	19,859,561	19,859,561
Monthly cost of product	\$2,345,911	\$2,681,041	\$2,681,041
Monthly rebate value	\$397,191	\$973,118	\$695,085
Fruits & Vegetables: Net Cost to 9 States	\$1,948,719	\$1,707,922	\$1,985,956
Meats: Wholesale price (highest tier)	\$7.95	\$10.20	\$10.44
Units/case	12	12	12
ounces/case	30	30	30
Cost/ounce	\$0.265	\$0.340	\$0.348
Rebate/ounce	\$0.020	\$0.049	\$0.035
Monthly ounces required (est)	1,494,806	1,494,806	1,494,806
Monthly cost of product	\$396,123	\$508,234	\$520,192
Monthly rebate value	\$29,896	\$73,245	\$52,318
Meats: Net Cost to 9 States	\$366,227	\$434,988	\$467,874
<b>Total Net Cost to 9 States</b>	<b>\$2,314,947</b>	<b>\$2,142,911</b>	<b>\$2,453,830</b>

39. Please confirm the complete list of documents required for a complete bid submission.

**Please read the solicitation to ascertain the complete list of documents required for a complete bid submission.**

41. We respectfully request that each state provide information regarding the distribution of vouchers and the expected information to be contained on those vouchers. Please provide this information on a state-by-state basis.

**States are awaiting award decision.**

42. As our company is privately held, our financial data is considered confidential. Can the States please identify the method and procedures by which our financial data can remain secure and confidential? What recourse is available and what liability does West Virginia assume should the confidentiality of this proprietary information be breached? Assuming that acceptable confidentiality terms are established, **Beech Nut** would only be able to submit internal financial statements as it does not have a standalone audited financial statement. Will this be sufficient to meet the requirements of the RFQ?

**A financial statement is required per VII.A.1.f.ii of the RFQ. Once the financial statement is submitted it becomes public record and is open for review.**

43. Per Section V.C., we respectfully request that each state provide a list of approved vendors so that we may be able to confirm distribution through those vendors prior to the May 26 Bid Submission date.

**This information will be provided by the States to the successful bidder**

44. If the contract holder were to conduct a third-party compliance audit, what level of compliance would the states consider to be required? If the compliance is below that required level, what actions would be taken to adjust the manufacturer's rebate?

**Standard auditing rules and practices will be followed. Any contractor compliance issues with an individual State would not alter the rebate amount stated in the contract.**

45. Are there any container sizes other than 2.5 oz and 4.0 oz being considered for this bid? If a bidder does not include the other sizes being considered, will that be grounds for disqualification of a bid?

**See answer #10. Yes.**

46. Are products that have combinations of ingredients being considered for this bid? If a bidder does not include the, will that be grounds for disqualification of a bid?

**See requirement as listed in Section II.A.1-3. Combinations of single ingredients are allowed and should be included in bidder's proposal.**

2009 Infant Foods RFQ WIC90140  
 Bid Evaluation Tool

	Infant Foods Cost Based on # of Infants Receiving 128 oz of Fts/Veg/Mo Mainland States			Infant Foods Cost Based on Avg. No. of Fully Breastfed Infants Per Month Receiving 256 oz of Fruits/Veg - Mainland States			Infant Foods Cost Based on Avg. No. of Fully Breastfed Infants Per Month Receiving 77.5 oz of Meats - Mainland States		
	Bidder 1	Bidder 2	Bidder 3	Bidder 1	Bidder 2	Bidder 3	Bidder 1	Bidder 2	Bidder 3
Wholesale cost infant fruits/vegetables	0.000								
Proposed rebate per ounce	0.000								
<b>Net cost per ounce for Inf Fts/Vegs mainland participating States</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>
Wholesale cost infant meats	0.000								
Proposed rebate per ounce for infant Meats	0.000								
<b>Net cost per ounce infant meats for mainland participating States</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>
<b>Puerto Rico/Virgin Islands</b>									
Wholesale cost infant fruits/vegetables	0.000								
Proposed rebate per ounce	0.000								
<b>Net cost per ounce for Inf. Fts/Vegs Puerto Rico/Virgin Islands</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>
Wholesale cost infant meats	0.000								
Proposed rebate per ounce for Infant Meats	0.000								
<b>Net cost per ounce infant meats for Puerto Rico/Virgin Islands</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>
Net Cost by Category to States									
<b>Net Cost 8 States</b>									
Rev. 5/31/2009									