



FORMAL BID 23-0162
TO ESTABLISH A CONTRACT TO COMPLY WITH THE “INFANT FORMULA
COST CONTAINMENT” REQUIREMENTS DEFINED IN 7 CFR § 246.16a FOR THE
GOVERNMENT OF PUERTO RICO'S DEPARTMENT OF HEALTH (PRDH), ON
BEHALF OF THE WIC PROGRAM

QUESTION SUBMISSION DEADLINE:
FRIDAY, SEPTEMBER 9, 2022, AT 4:00 PM

BID PROPOSAL SUBMISSION DEADLINE:
WEDNESDAY, SEPTEMBER 28, 2022, AT 1:00 PM

BID OPENING DATE:
WEDNESDAY, SEPTEMBER 28, 2022, AT 1:30 PM



I. INSTRUCTIONS

1. FORM.

Bidders shall submit their bid proposals in the form provided therefor. Bidders may make a copy thereof for their records. Bidders may add separate pages to clarify or describe their proposal in detail. These additional pages must be typed or printed legibly on the bidder's letterhead.

2. TERMS.

The term "days" shall mean calendar days, except as otherwise provided. The words and phrases used shall be construed according to the commonly approved usage of the language; words in the present tense include the future; the singular number includes the plural; the masculine gender includes the feminine and neuter genders, except where such construction would be absurd.

3. REGISTERED BIDDERS.

Every Bidder who: 1) is registered in the RUL; 2) has submitted a bid proposal; and 3) after the Bid Opening is found to be ineligible, shall have a non-extendable period of **five (5) business days**, from the Bid Opening to submit the corresponding information or documents to the RUL. During said period, no award shall be made. The Secretary of the Bid Board and the Procurement and Bid Specialist shall be responsible for notifying the Bidder by telephone and email, so that the bidder may update his records in the RUL within the provided period.

The Bidder shall submit all the requested documents and certifications, and comply with all the requirements, terms, and conditions established in the Bid Documents at the time of submitting the bid proposal. Documents submitted by a Bidder after the bid opening shall be not accepted, except for the RUL's certification of eligibility, which shall be subject to presentation within the aforementioned period.

Ineligible bidders shall not be visible in the RUL to be contracted by the agencies of the Executive Branch, public corporations, and municipalities. Ineligibility will be maintained until the Bidder furnishes the required information or submits the requested documents. **Bidders must hold an eligible status in the RUL before the award of the proposal. See Regulation No. 9230 of November 18, 2020, as amended, known as the "Uniform Regulations for Bids and Procurement of Goods, Works, and Nonprofessional Services of the General Services Administration".**

4. NONREGISTERED BIDDERS.

If a bidder who is not registered in the RUL appears in a formal bidding process and submits a proposal, the Bid Board shall not reject his proposal for the mere fact that said bidder is not registered in the RUL and shall grant such bidder a period of **five (5) business days** from the Bid Opening to file the required documents with



the RUL. The bidder's failure to submit the required documents, shall result in his disqualification. *See Regulation No. 9230, supra.*

5. PROTEST BID DOCUMENTS.

If a bidder interested in participating in a formal bid does not agree with the final terms, instructions, specifications, or conditions established in the bid documents, said bidder may file a protest in person with ASG Assistant Administrator for the Procurement Area within **three (3) business days** following the date on which the Board makes the Bid Documents available. Any protest to the bid documents filed after the deadline established herein shall be rejected outright. The protest shall comply with the provisions of Regulation No. 9230, *supra*.

6. QUESTION SUBMISSION DEADLINE.

Questions related to this Formal Bid must be sent by email to preguntas@asg.pr.gov on or before **Friday, September 9, 2022, at 4:00 pm**. Emails must include the following information in the **SUBJECT: Bid 23-0162 and name of the bidder**. The email must include the contact information of the interested bidder.

The ASG will compile all the questions. Answers will be sent to the bidders who were invited and published on the ASG website, on or before Wednesday, September 14, 2022.

7. CONTENT OF BID OFFERS.

Every bidder shall submit his bid offer in a sealed envelope to the Office of the Bid Board at:

Junta de Subastas
Centro Gubernamental Roberto Sanchez Vilella
Ave. De Diego
Torre Norte Floor 12
San Juan, Puerto Rico 00940-1269

The envelope shall state the bidder's name, address, and telephone number, the company represented as well as the bid number. Upon receiving the envelope, the Secretary shall write thereon the exact time and date on which it was received, which shall constitute the official submission date of the bid proposal. In addition, bidders shall include the following documents:

- a. Duly signed Bid Documents.
- b. RUL Certificate.
- c. Bid Bond.
- d. Attachment I, III and V.
- e. Attachment II, if applicable.
- f. Literature of each product offered identified with item or line number.
- g. Cover Letter.



- h. Resolution in effect issued by the Puerto Rican Industry Investment Board, the Puerto Rico Trade and Export Company, or any other governing body for the use of the percentage granted under the preference laws, if applicable.
- i. Financial Statement required in subsection 4, Section VII of this bid documents.
- j. Any other document required herein or the specifications hereto attached.

According to the Paperwork Reduction Act of 1995, the Bid Board will not request the Bidders to include in their offers the bid documents not establish in this section or in Attachment III.

Every bid not identified as provided herein shall be processed as regular correspondence. In these cases, the Bid Board shall not be held accountable if the bidder loses his opportunity to timely submit his offer. Also, these bidders may not request that their offer be acknowledged or claim that the proposal has been disclosed or opened prematurely.

In addition, a bidder **may be disqualified**, if he fails to attach the documents mentioned above to his offer.

8. ALTERATIONS.

Every bid offer shall be submitted in a legible, clear, complete, and accurate manner. Multiple, varied, or ambiguous proposals shall not be considered. **The person signing the bid proposal** must initial any erasure, crossing out, annotation, or correction in the bid proposal. Otherwise, the proposal for the corresponding item or items shall be voided.

The use of correction fluid to make corrections shall be considered an erasure and **must be initialed by the person signing the bid proposal** in order to be considered. The use of correction paper to write on the bid offer shall not be accepted.

9. ADDRESS IN BID OFFER.

The bid proposal shall contain the street and mailing address of the principal office of the business in Puerto Rico as well as the name and address of the registered agent of the corporation, as applicable.

10. SIGNATURES ON BID OFFER.

The Bidders' Bid Offer (Attachment I) shall be signed with permanent blue ink or pen on the space provided therefor by the person registered in the RUL or his authorized representative. The Bidder's electronic signature on the bid proposal shall be accepted.

Bidders who are not registered in the RUL shall fill out Form **ASG 674** or **ATTACHMENT II** attached hereto, as appropriate.

Failure to meet these requirements will constitute cause for the rejection of the bid.



11. DATE, TIME AND MANNER OF SUBMISSION OF BID OFFER.

Bid offer must be submitted **on or before Wednesday, September 28, 2022, at 1:00 pm**, in the following **phisically in:**

- **Junta de Subastas
Centro Gubernamental Roberto Sanchez Vilella
Ave. De Diego
Torre Norte Floor 12
San Juan, Puerto Rico 00940-1269**

Every bidder shall submit his bid offer in a sealed envelope to the Office of the Bid Board as stated in detail herein below. The envelope shall state the bidder's name, address, and telephone number, the company represented as well as the bid number. Upon receiving the envelope, the Secretary shall write on the envelope the exact time and date on which it was received, which shall constitute the official submission date of the bid offer.

Any bid offer not identified as provided herein shall be processed as regular correspondence. In these cases, the Bid Board shall not be held accountable if the bidder losses his opportunity to timely submit his proposal. Also, these bidders may not request that their proposals be acknowledged or claim that the proposal has been disclosed or opened prematurely.

Failure to comply with this submission method in time shall constitute cause for disqualification.

12. BID OPENING TIME AND DATE:

Bid Opening will be held on **Wednesday, September 28, 2022, at 1:30 pm**. Every person interested in attending the Bid Opening, which shall be held virtually, may access the same through ASG website, "Procurement Reform," where bidders shall find the link to the above-referenced bid, which shall provide them with the option to connect to the "virtual pre-bid meeting."

The purpose of the Bid Opening is for the interested parties to verify that their bid proposals were received, whether they met the basic requirements of form, and learn the amount of each bid proposal. The bid opening shall be led by one of the members of the Bid Board or his authorized representative, who shall be present at the bid opening and be in charge of all proceedings during the same.

Every person attending the bid opening shall comply with the rules of conduct prescribed by the Bid Board for such purposes.

13. BRAND, MODEL, AND LITERATURE.

If applicable, the bidder shall state in the bid offer the brand and model of the product as well as the manufacturer's technical literature which allows to verify whether the quoted product complies with the required specifications. Said literature or specification sheets shall clearly state the bid item to which it refers.



14. DOCUMENTS.

All documents shall be submitted in letter-size paper, that is, 8.5 x 11 inches.

16. COVER LETTER.

The cover letter must be clear, concise, and include sufficient details to allow for an effective evaluation and validation of the proposal. The bidder must assume that the Government has no prior knowledge of his experience or best practices. The cover letter shall include a brief description of the following:

- a) Past performance: of having performed a service or provided a good similar to that requested herein in the past two (2) years, a list of public and private clients to which the service was rendered and their contact information.**
- b) Technical capability, for the purpose of ascertaining the bidder's capability to meet each of the technical requirements, establishing a practical and feasible method to meet them. This includes, but is not limited to, process to communicate back orders; Government billing process; account management; among others.**
- c) Any other information that the bidder believes the Bid Board should know during the evaluation process.**

The cover letter must be signed by the person authorized therefor in the RUL. The past performance and technical capability shall be considered by the Bid Board to have an understanding of the bidder's capabilities and to award the contract.

The Bid Board and ASG reserve the right to request additional information to verify the information submitted by the bidder.

17. WARNINGS.

- a. Providing any type of false or fraudulent information or documentation as part of the bid proposal submitted shall constitute sufficient cause for disqualification or rejection of the bid proposal of any bidder, as well as cancellation or termination of any purchase order or contract executed by virtue thereof.**
- b. ASG and/or the Bid Board may order the partial or total cancellation of the formal bid if it is in the best interest of the Government of Puerto Rico, regardless of the stage of the solicitation process; provided, that it is prior to the execution of any contract or the issuance of a purchase order.**
- c. ASG may amend any formal bid invitation and/or document up to two (2) business days before the bid opening when such amendment involves changes or additional requests to be included in the proposal or bid, or up to one (1) business day before the bid opening, when the amendment does not affect the submission of proposals, and when it is in the best interest of the Government of Puerto Rico. In the case of construction works, the Administration may amend any formal bid document up to five (5) before the bid opening when such amendment involves changes or additional requests to be included in the proposal**



or bid, or up to three (3) business days before the bid opening, when the amendment does not affect the submittal of proposals.

- d. ASG shall not accept a bond in an amount less than the amount provided herein or in the name of an entity other than the Secretary of the Treasury. Failure to meet this requirement shall result in the rejection of the bid.
- e. The General Services Administration and the Bid Board shall comply with the public policy on procurement preference as provided by law.
- f. Every person who, within his relationship with the agencies and other instrumentalities of the Government of Puerto Rico, participates in a bidding process, submits a bid proposal, or is interested in entering into contracts with them, shall be required to disclose all the necessary information so that agencies may evaluate the transactions thoroughly and make correct and informed determinations.
- g. ASG reserves the right to modify the Instructions, Terms, Conditions, and Specifications of the bid object of this document before the holding of the bid opening. Every modification shall be notified in writing to all bidders.
- h. ASG and the Bid Board reserve the right to request additional documentation or information at any stage of the process for the purpose of verifying the accuracy of the information provided by the bidder.
- i. ASG and the Bid Board reserve the right to call pre-bid meetings, site visits, public hearings, among others, in addition to those provided herein.

II. ACCEPTABLE AND UNACCEPTABLE BID OFFERS

1. UNIT PRICE QUOTATION.

Bids shall be expressed in dollars and cents. Bids expressed in percentages, unspecified prices, amounts of money or percentages in excess of the lowest bid shall not be considered.

2. NO BID OFFER.

If a bidder is not interested in submitting a bid offer, he **shall return ATTACHMENT I (Bid Offer)** of the Invitation to Bid, stating his reasons for not submitting a bid proposal and notify whether he is interested in receiving future invitations to bids on such regard.

3. NONRESPONSIVE OR UNACCEPTABLE BIDS.

When submitting a bid proposal, bidders shall base their bid proposals only on the product or service requested according to the specifications and conditions established. The Specifications are the minimum standards. **An**



offer that supersedes the specifications may be accepted; provided, that it does not substantially alters the product or service requested so that it could be interpreted as unfair competition.

Bid proposals that are ambiguous as to their meaning, **incomplete** or **undefined** shall not be accepted. Furthermore, bid proposals that alter, fail to comply, vary or condition the Terms, Conditions, and Specifications established by ASG shall not be accepted either.

4. INCOMPLETE OFFERS.

Bid offers that are not duly completed may be **rejected**. If a bidder has no information or product to include in a blank space, he must write “N/A” - (not applicable) or “N/B” – (no bid).

5. CORRECTIONS, MODIFICATION OR WITHDRAWAL OF OFFERS.

Offers may be corrected, modified or withdrawn only in the manner provided in Section 7.3 of Regulation No. 9230, *supra*.

6. MULTIPLE BIDS BY THE SAME BIDDER.

If a bidder submits several bid offers, either in his own name or under an alias, any of his subsidiaries or branches, one or more of his partners, agents, or officers, **all bids shall be rejected** and may be subject to the penalties established in Regulation No. 9230, *supra*.

7. GLOBAL REJECTION.

The Bid Board may reject all bid offer received if: (1) the bid offers fail to comply with the Instructions, Terms, Conditions, and Specifications; (2) prices are unreasonable; (3) there is collusion among bidders; or (4) the best economic interests of the Government of Puerto Rico may be affected.

8. LIMITED OFFER.

Any bidder who believes that he may hold the prices for a limited period of time shall state so in his offer and establish the time period.

9. FAIR COMPETITION.

ASG issues this bid documents to establish a contract to comply with the “infant formula cost containment” requirements defined in 7 CFR § 246.16a for the Government of Puerto Rico's Department of Health (PRDH), on behalf of the WIC Program.

The successful bidder may not offer to any Government entity or exempt Government entity of the Government of Puerto Rico a lower price than that offered to ASG for the same service, work, or product under this Bid Document.



III. GENERAL CONDITIONS

1. QUOTED PRICES.

All bidders shall base their quotations on fair prices for their products. In the case of supply agreements, the quality of the goods shall be taken into account.

Prices offered by the bidder shall remain firm during the term of the contract awarded and shall not be subject to changes due to market increases or otherwise, except as provided in subsection 8 of Section XX of Attachment V of this Bid Document.

2. SAMPLES.

If the Bid Board requires samples of the quoted equipment and/or products, the bidder shall furnish said samples in their original packaging within three (3) days from the Board's request. Any bidder that fails to meet this requirement shall be **disqualified**.

The samples submitted for evaluation shall be representative of the product offered and shall be identified by line, item, type, quality, style, and size. Once the evaluation of samples concludes, the bidder shall pick up the samples within ten (10) days from the oral or written notice of the Bid Board.

3. REVIEW AND AWARD.

The Bid Board shall review and evaluate all offers submitted before awarding the contract. At any time during the evaluation period, the Board, through the Secretary of the Board, may contact the bidders or call public meetings for clarifications on the offers. The purpose of these clarifications is not to obtain additional information not originally submitted in the offer, but rather to have a better understanding of the content of the bid offer.

The contract shall be awarded to the responsive bidder whose offer complies with the General Instructions, Terms, Conditions, and Specifications, and represents the best value for the Government of Puerto Rico.

In order to determine which offer is the most convenient and beneficial, the price shall not only be considered as the main factor, but also compliance with the Terms, Conditions, Specifications, and Warranty required. The bidder's past performance as well as technical capability may be considered by the Bid Board at the time of awarding the contract. The technical capability shall be evaluated in order to determine the bidder's ability to perform.

Prices shall be evaluated to determine reasonableness. However, the contract may not be awarded to the lowest bidder if, in the judgment of the Bid Board, a bidder offers a higher price, but his bid provides the best value, considering technical requirements, time of delivery, past performance, warranty, among others.



Once the Bid Board makes a final decision, the Secretary shall notify such decision in writing to all participating bidders.

The notice of award shall **not constitute a formal agreement between the parties. It shall be necessary to execute the appropriate contract or the issuance of a purchase order.**

- a) **BOUND BY AWARD: No bidder shall be authorized to deliver products or perform services without having previously executed a contract or the issuance of a purchase order. Therefore, no agency or instrumentality of the Government shall guarantee any payment whatsoever, until a contract is executed or the Administration issues a purchase order signed by the authorized person.** The Government of Puerto Rico shall not be bound by any award until the appropriate contract has been executed. Once the contract is awarded, the Government may issue purchase orders for the products or services contracted. The ASG Acquisitions Division may pass judgment on every order issued under the contract executed as a result of this bid.

4. QUANTITIES TO BE PURCHASED.

The Government of Puerto Rico provides no guarantee of the quantity, physical form or units of infant formula that will be prescribed under the new Contract resulting from this Formal Bid.

5. PAYMENT TO THE GOVERNMENT OF PUERTO RICO.

Payment shall be posted within 30 calendar days of receipt of the invoice to the Puerto Rico's Department of Health by electronic fund transfer or automated clearing house (ACH) wire transfer. The Contractor is not allowed to withhold any rebate due payments under any circumstances.

6. PREFERENCE LAWS.

In every procurement process, ASG shall fully comply with the public policy on procurement preference set forth in the following laws:

- a) Act No. 14-2004, as amended, known as the "Puerto Rican Industry Investment Act";
- b) Act No. 129-2005, as amended, known as the "Government of the Commonwealth of Puerto Rico Procurement Reserve Act";
- c) Act No. 253-2006, known as the "Multiple-Award Contract in Procurement Processes";
- d) Act No. 42-2018, as amended, known as the "Local Contractors and Construction Providers Preference Act."

ASG shall fully comply with those measures that ensure compliance with the aforementioned public policy as well as any other public policy that promote and assist local capital business to improve their business opportunities, for the purpose of creating more and better jobs for the people.

- a. **USE OF PERCENTAGE OF PREFERENCE:** Bidders interested in using their allocated percentage (%) of preference may submit the resolution in effect issued by the Puerto Rican Industry Investment Board,



the Puerto Rico Trade and Export Company, or any other governing body, together with their bid proposal in order to have their preference validated. The resolution must provide the item or items for which preference has been granted.

b. ASSIGNMENT OF PERCENTAGE OF PREFERENCE: Businesses that have obtained a **manufacturing** percentage of preference for any their products may assign such percentage to their agents established in Puerto Rico through a duly notarized letter expressly stating that they are assigning to each agent the percentage of preference granted to said product by the Puerto Rican Industry Investment Board or any other governing body. Said letter must be approved and bear the official seal of the issuing government entity affixed thereon.

c. APPLICATION OF THE PERCENTAGE OF PREFERENCE: If, upon applying the percentage (%) of preference, products are on equal conditions, the award shall be made in the following order: (1) products of Puerto Rico; (2) products of the United States; and (3) products of a foreign country.

d. UPDATED RESOLUTION: In every purchase made under a contract or purchase order resulting from these bid documents, a bidder who has obtained a percentage (%) of preference for his products shall present at the time of each purchase a valid resolution issued by the Puerto Rican Industry Investment Board, the Puerto Rico Trade and Export Company, or any other governing body. Failure to present a valid resolution shall prevent such bidder from availing himself of the benefits granted under said laws.

7. BONDS.

a. **BID BOND:** The bid bond is a provisional guaranty furnished by the bidder for the purpose of ensuring the Government of Puerto Rico that he shall honor his bid throughout the bidding process. **The bond shall be furnished in original and signed. If the bond is furnished by a surety company, it shall be issued in favor of the General Services Administration and, if it is furnished in the form of a certified check or postal money order, it shall be payable to the Secretary of the Treasury.** The bid bond shall be submitted together with the bid proposal or in a lump sum paid annually.

This Formal Bid requires a bid bond of one hundred thousand dollars (\$100,000.00). Every bid proposal submitted without the bid bond provided herein shall be rejected.

b. **PERFORMANCE AND PAYMENT BOND:** This bond shall be a bidder's guaranty, whereby the bidder ensures to the Government of Puerto Rico that he shall comply with the terms of the contract resulting from this bid. This bond shall be furnished only by the successful bidder.

The bond shall guarantee that the supplier shall fulfill his obligations in accordance with the terms and conditions of his bid proposal. If supplier fails to fulfill his obligations, and the next supplier should be selected, the price difference shall be covered by this bond. **The bond shall be furnished in original. If bond is furnished by a surety company, it shall be issued in favor of the General Services Administration and, if it is furnished in the form of a certified check or postal money order, it shall be payable to the Secretary of the Treasury.**



A Performance Bond for five million dollars (\$5,000,000.00) shall be required for this bid.

8. NONCOMPLIANCE.

If the bidder fails to comply with the terms and conditions of this bid, once the purchase order is issued or the contract is executed, ASG shall cancel the same immediately, **enforce the Performance Bond, and exclude the bidder from the RUL for a period of not less than one (1) year nor more than three (3) years**, in accordance with Regulation No. 9230, *supra*. In addition, ASG reserves the right to impose any other sanctions as provided in the aforementioned Regulation, Act No. 73-2019, as amended, as well as those provided in the contract or purchase order.

The measures to be taken in the event of noncompliance shall be imposed solely by ASG, upon investigation of the facts and notice, and affording due process to the bidder.

A delay penalty equal to **one half percent (0.5)** of the total amount of the issued purchase order shall be imposed on any bidder who fails to deliver products or perform services for each day the delay continues, without constituting a waiver of any other applicable legal proceeding. There is a delay, when the vendor fails to meet delivery date or service commencement date. **The delay penalty in a construction project shall be established as provided in Regulation No. 9230, *supra*.**

9. CERTIFICATIONS.

Bidders shall include in their bid proposals the forms provided as well as all the certifications required herein and the specifications attached hereto. Bidders are hereby advised that every proponent shall comply with all of the following:

A. CODE OF ETHICS FOR CONTRACTORS:

Every bidder shall comply with the provisions of Act No. 2-2018, as amended, known as the “Anticorruption Code for the New Puerto Rico,” which requires all government entities to operate under standards of integrity, efficiency, probity, and transparency. This Code of Ethics stresses the public policy of the Government of Puerto Rico on the adequate and efficient use of public resources and the eradication of government corruption.

Said Code requires all contractors, good or service providers, and applicants for incentives to refrain from performing or engaging in conduct that would directly or indirectly imply that former and current public servants are violating the provisions of the Government Ethics Act. Acceptance of the rules established in this Code of Ethics is a condition precedent for the bidders or their representatives to conduct transactions or enter into agreements with executive agencies.

Every person shall be required to report acts that are in violation of said Code that constitute acts of corruption, or that have the elements of the crimes of fraud, bribery, embezzlement or misappropriation



of funds, and of which such person has personal knowledge, concerning a contract, business or transaction between the Government and a contractor or supplier of goods or services. Whistleblowers shall be protected under Act No. 2, *supra*.

B. CODES OF PROFESSIONAL ETHICS:

Every person shall adhere to the rules of conduct and the principles of excellence and honesty of their profession, as well as to the rules or codes of ethics of the professional association or college of which they are members and which regulate their trade or profession with respect to both their competitors and the Government of Puerto Rico.

Persons who are not members of a professional association or college, or in the case of professional associations or colleges that do not have a Code of Ethics for their members, shall adhere to the general principles of ethical conduct considered reasonable in their profession or trade.

10. COOPERATION WITH INVESTIGATIONS.

Every person, bidder, or contractor shall cooperate with any investigation initiated by the state or federal government in connection with business transactions, the execution of contracts or the granting of government incentives to which he was a party or from which he benefited directly or indirectly.

11. NON-DISCRIMINATION CLAUSE.

ASG does not discriminate on the basis of race, color, gender, origin, social status, political ideas or religious beliefs, nationality, being an actual or perceived victim of domestic violence, sexual assault, or stalking, veteran status, actual or perceived sexual identity or orientation, physical, mental or sensory disability.

12. COMMUNICATIONS AND NOTICES.

Communications with other Government representatives in connection with any matter related to the contents of this bid document shall be prohibited during the bid selection and presentation process. Failure to comply with this restriction may result in the rejection of your offer. All communications shall be conducted via the following email: preguntas@asg.pr.gov.

Bidders shall submit all questions or concerns in relation to this bid document to the following email: preguntas@asg.pr.gov.

Any information or public notice related to this bid shall be posted by the Bid Board on ASG's website (www.asg.pr.gov/ReformaCompras/Pages/default.aspx). Any information, public notice, or amendment related to this bid shall be made in writing with ASG and the Bid Board's proper authorizations.



IV. CONTRACT WITH THE GENERAL SERVICES ADMINISTRATION

1. EXECUTION OF CONTRACT.

The successful bidder's proposal and the forms included in the Bid Document shall constitute the basis of the contract between the successful bidder, ASG and/or the Department of Health of Puerto Rico or in the purchase or service order. The contract shall be executed upon receipt by ASG of the bonds and warranties required from the bidder.

2. RENEGOTIATION OF CONTRACT.

The prices offered by the bidder shall remain firm during the term of the contract awarded, as these were quoted and awarded, except as provided in subsection 3 of Section 3 of this Bid Document.

The Delegate Buyer or Deputy Delegate buyer of the requesting government agency or entity shall not be authorized to renegotiate the contract prices. If the original term of the contract is extended, a successful bidder who wishes to renegotiate the contracted prices shall request so in writing to ASG's Administrator. If the change is authorized, it shall be notified in writing and published through an amendment to the contract.

3. REFUSAL TO EXECUTE CONTRACT.

If the successful bidder refuses to execute the contract or does not appear to sign it within the period prescribed in the Notice or Resolution of Award or by the Contract Unit of ASG's Procurement Division, and fails to provide a prior reasonable notice, said bidder shall not be considered to be a party to the contract with ASG and the Department of Health. ASG Administrator may apply the provisions of Regulation No. 9230, *supra* to such bidder.

4. EFFECTIVE TERM OF CONTRACT.

The contract executed pursuant to this bid shall be effective for **four (4) years**, to be counted from **January 1st, 2023 to December 31, 2026**. The ASG Administrator may authorize amendments to the contract in order to extend it for one (1) year. The vendor shall be notified in writing before the expiration date of the contract of ASG's intent to extend the same. Amendments shall be made through an "Amendment" document, which shall include the signatures of the parties.

5. SCOPE OF THE CONTRACT.

The contract to be executed pursuant to this bid shall cover the requesting agency or the governmental or exempt entities of the Government of Puerto Rico, as defined in Act No. 73 *supra*. The supplier shall not refuse to provide services to any agency, public corporation or municipality.



6. CONTRACT USE INSTRUCTIONS.

Once the Bid Board of ASG awards the contract, the ASG Procurement Division and the Department of Health shall establish a contract between the parties. ASG shall advise the Delegate Buyers and Deputy Delegate Buyers on the contract use through the “Contract Use Instructions,” which includes the terms and conditions set forth in the bid documents and the price schedule. These instructions are an exclusive guide for buyers.

V. TERMINATION OF CONTRACT

If the Contractor fails to fulfill in a timely and proper manner the obligations as specified in the Contract, the Government of Puerto Rico has the right to immediately terminate the Contract and request the Contractor to repay any funds expended in the contravention of such conditions. This will not release the Contractor of any liability for damages caused by the breach of this Contract, or due to the safety of the goods provided to the authorized vendors of the WIC Program.

The WIC Program may cancel the Contract upon thirty (30) days written notice to the Contractor. The cancellation notice will state the reasons and the effective date of the termination. The failure to exercise the termination right upon the breach of any of the terms of this Contract shall not constitute a waiver of the immediate termination rights for any future breach.

Termination under this provision will not affect the rights and obligations regarding outstanding orders at the time of cancellation, including any right of the WIC Program to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights pertaining any warranty or default in performance associated with any order.

No head of government agency or instrumentality of the Government, public corporation, municipality or of the Legislative Branch or the Judicial Branch may award or execute a contract for the performance of services or for the sale or delivery of goods, to any natural or juridical person that has been convicted of, or pled guilty to, at the state or federal level, in any other jurisdiction of the United States of America, or any other country, a criminal offense involving fraud, embezzlement, or misappropriation of public funds, as provided in Act No. 2-2018, as amended. This prohibition from awarding or executing contracts is extended to juridical persons whose presidents, vice presidents, directors, executive directors, or members of Boards of Director, or person acting in similar capacity, has been convicted of, or pled guilty to, at the state or federal level, in any other jurisdiction of the United States of America, or any other country, a criminal offense involving fraud, embezzlement, or misappropriation of public funds, as listed in said Act.

The prohibition from contracting, subcontracting or awarding a contract provided in Act No. 2, *supra*, shall be effective for twenty (20) years from the corresponding felony conviction and for eight (8) years in cases of a misdemeanor.

A conviction or guilty plea for any of the offenses listed in Act No. 2, *supra*, shall entail, in addition to any other penalties, the automatic cancellation of all valid contracts as of the date of the finding of guilt or guilty plea, between the person and any agency or instrumentality of the state Government, public corporations,



municipalities, the Legislative Branch, or the Judicial Branch. In addition to the termination of the contract, the Government shall have the right to request reimbursement of all payments made under the contract or contracts directly affected by the commission of the offense.

VI. SPECIFICATIONS

The specifications hereto attached shall serve as a guide to describe in detail the product or service requested. Once ASG certifies the specifications, bidders are bound to fully comply with each one of the details described therein. **Therefore, the Bid Board reserves the right to waive any informalities or minor difference in the terms and conditions, if it fulfills the purpose for which it was requested and is in the best interest of the Government of Puerto Rico.** Deviations shall not substantially affect the quality, capacity or essential characteristics of the products or services requested.

VII. SPECIAL CONDITIONS

- 1. The bidders must comply with the term, conditions and specifications included in the Bid Documents and in the Attachment IV.**
- 2. Bidders must present their net cost using the Bid Sheet provided (Attachment V). The bidders will not altered o modified the Bid Sheet. Offers received, using a different table or bid sheet will be disqualified.**
3. Prior to submitting an offer, Bidders are required to register in the System for Award Management. The following link can be used for the registration <https://www.sam.gov/SAM/pages/public/index.jsf>. **The bidder registry information must be included in the offer.**
4. The bidder should submit with the offer the most recent Financial Statements (Audited or Compiled, as applicable) and summary of operating income.



ASG - 674
Rev. Dec. 2013

General Services Administration
Government of Puerto Rico

CERTIFICATE OF CORPORATE RESOLUTION

I _____, of legal age, (marital status) _____, (profession) _____, and resident of _____, in my capacity as Secretary of Corporation _____, do hereby certify:

That, at regular/special meeting of the Board of Directors held on the ____ day of _____, 20____, a quorum being present resolved to authorize the officers named below, so that any of them, in the name and on behalf of this corporation, may appear in the acquisition of goods and nonprofessional services process conducted by the agencies of the Executive Branch of the Government of Puerto Rico, public corporations, and municipalities, as well as to sign bid proposals and execute any type of document required as part of said appearance; therefore, their signatures, which are provided herein below, bind this Corporation.

Name, signature and position of person authorized to sign proposals.

Name, signature and position of person authorized to sign proposals.

Name, signature and position of person authorized to sign proposals.

AND IN WITNESS WHEREOF, I sign and seal this Certificate with the seal of the Corporation, in _____, Puerto Rico, this ____ day of _____, 20____.

Secretary of the Corporation

Affidavit No.: _____

SWORN TO AND SUBSCRIBED before me by _____, of legal age, _____ and resident of _____, in his or her capacity as Secretary of the Corporation, who has produced _____ as identification, in _____, Puerto Rico, this ____ day of _____, 20____.

NOTARY PUBLIC



ATTACHMENT III

Bidder Certification

The bidder hereby certifies that its company and all infant formula products for which a Rebate is being offered under this IFB and Contract, meet the registration and certification requirements stated in & CFR 246.10(f).

7 CFR 246.10(f) requires the Contractor to certify that the company is registered with the Secretary of Health and Human Services under the federal Food, Drug and Cosmetic Act and that its Contract Brand Infant Formula satisfy FDA requirements and are in compliance with the Infant Formula Act of 1980 and all amendments including all federal regulations issued pursuant to the Act.

I hereby certify that the above statement is true and correct.

Authorized representative's signature: _____

Title: _____

Company Name: _____

Typed or printed name: _____

Date: _____