

STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
OFFICE OF PROCUREMENT SERVICES
4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

AMENDMENT FOR CHANGE
AMENDMENT NO. 3

TO: LIMITED DISTRIBUTION - OHIO DOH/WIC, **INDIANA, AND WISCONSIN WIC PROGRAMS AND OTHER STATE WIC PROGRAMS MUTUALLY AGREED UPON.

FROM: ROBERT BLAIR, DIRECTOR, DEPARTMENT OF ADMINISTRATIVE SERVICES

SUBJECT: CONTRACT FOR WIC INFANT FOODS REBATE PROGRAM

Attached are pages 1, 4, 6-16 and 24 to this contract. Remove these pages from the existing contract and replace with the attached pages on the effective and/or revision date.

The state of Ohio elects to exercise its option to renew the subject contract for an additional nine (9) months effective 04/01/13 through 12/31/13.

Additional changes to contract analyst and contractor contact information are included.

All other prices, terms and conditions remain unchanged.

Questions regarding this Amendment and/or the Requirements Contract may be directed to:

Jennifer Shaefer, CPPB
jennifer.shaefer@das.state.oh.us

This Amendment, the main Requirements Contract and any additional amendments thereto are available from the DAS Web site at the following address:

<http://www.ohio.gov/procure>

Affected Contractor(s):
177319
Beech Nut Nutrition Corporation
100 Hero Drive
Amsterdam, NY 12010
WKAericher@beechnut.com

STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
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4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

REQUIREMENTS CONTRACT: WIC INFANT FOODS REBATE PROGRAM

CONTRACT No.: OT904010

EFFECTIVE DATES: 04/01/10 to 03/31/13
Renewal through 12/31/13*

The Department of Administrative Services has accepted bids submitted in response to Invitation to Bid No. OT904010 that opened on 12/18/09. The evaluation of the bid response(s) has been completed. The bidder(s) listed herein have been determined to be the lowest responsive and responsible bidder(s) and have been awarded a contract for the items(s) listed. The respective bid response, including the [Terms and Conditions for Bidding, Standard Contract Terms and Conditions, and Supplemental Contract Terms and Conditions](#), special contract terms & conditions, any bid addenda, , specifications, pricing schedules and any attachments incorporated by reference and accepted by DAS become a part of this Requirements Contract.

This Requirements Contract is effective beginning and ending on the dates noted above unless, prior to the expiration date, the Contract is renewed, terminated or cancelled in accordance with the Contract Terms and Conditions.

This Requirements Contract is available to OHIO DOH/WIC, **INDIANA, AND WISCONSIN WIC PROGRAMS AND OTHER STATE WIC PROGRAMS MUTUALLY AGREED UPON.

Agencies are eligible to make purchases of the listed supplies and/or services in any amount and at any time as determined by the agency. The State makes no representation or guarantee that agencies will purchase the volume of supplies and/or services as advertised in the Invitation to Bid.

SPECIAL NOTE: State agencies may make purchases under this Requirements Contract up to \$2500.00 using the state of Ohio payment card. Any purchase that exceeds \$2500.00 will be made using the official state of Ohio purchase order (ADM-0523). Any non-state agency, institution of higher education or Cooperative Purchasing member will use forms applicable to their respective agency.

Questions regarding this and/or the Requirements Contract may be directed to:

***Jennifer Shaefer, CPPB
Jennifer.shaefer@das.state.oh.us

This Requirements Contract and any Amendments thereto are available from the DAS Web site at the following address:

<http://www.ohio.gov/procure>

* To indicate renewal for nine (9) months, effective April 1, 2013 through December 31, 2013.

** To indicate that the Indiana WIC will no longer participate in the contract after 9/30/12.

*** To indicate a change in the Contract Analyst.

Signed: _____ Date _____
Robert Blair, Director

SPECIAL CONTRACT TERMS AND CONDITIONS

EVALUATION: Bids will be evaluated in accordance with Article I-17 of the "Instructions to Bidders". In addition, the State will evaluate the Bid in accordance with WIC Program Regulations. The Bidder must submit a rebate proposal for each category (two categories: 1) fruits & vegetables; 2) meat & poultry) of WIC eligible infant food products. The Contract shall be awarded to the lowest, responsive and responsible Bidder.

To determine the lowest Bid, the State will utilize the following procedure:

On the Bid Price Page, the Bidder will submit an Average Commercial Wholesale Price Per Ounce for each category. The Commercial Wholesale Price Per Ounce for each category shall be the average of the lowest Commercial Wholesale Price Per Ounce of all foods in that category being offered, as documented by the nationally published Commercial Wholesale Price List, as of the Bid Opening date. An example at how a Bidder might arrive at an Average Commercial Wholesale Price for Category One (fruits and vegetables) is:

Authorized Item	Commercial Wholesale Price List	Percent of Sales based on UPC sales data	Weighted Price
Green Beans	\$0.25	20%	\$0.050
Peas	\$0.29	70%	\$0.203
Carrots	\$0.27	10%	\$0.027
Average Commercial Wholesale Price			\$0.280

There are two (2) categories for this Bid. Category One is Fruits and Vegetables (4 oz. containers) and Category Two is Meats & Poultry (2.5 oz. containers).

The Bidder shall also submit a Rebate Amount Per Ounce for each category.

The State will subtract the Rebate Amount Per Ounce from the Average Commercial Wholesale Price Per Ounce to determine the Net Price Per Ounce.

The Net Price Per Ounce for each category will be multiplied by the Average Total Monthly Ounces Issued to arrive at the Monthly Net Price.

The State will use the sum of the Monthly Net Prices for all categories to determine the lowest Bid.

CONTRACT AWARD: The Contract will be awarded to the lowest responsive and responsible Bidder meeting all Bid specifications and requirements listed herein. Only those Bids meeting the requirements specified in this Bid will be considered for award. Any Bidder deviating from the intent of this Bid will be considered not responsive.

For purposes of this Contract, any authorized brand of infant foods for which the Bidder submits a rebate Bid will be considered a contract brand infant food. The State WIC Agency provides no guarantee of the quantity of infant foods that will be used under a Contract awarded pursuant to this Bid.

CONTRACT RENEWAL: At the sole discretion of the State, any term contract issued pursuant to this bid may be extended for any number of months not to exceed 12 months. Additional extensions may be achieved by mutual agreement between the State and the Contractor for any number of months not to exceed 12 months. The cumulative total of all extensions shall not exceed 24 months for Ohio and Wisconsin, or twelve (12) months for Indiana.*

INCURRED COSTS: The State is not liable for any costs incurred by the Bidder prior to issuing of a contract and following termination of a contract.

* To indicate that the Indiana WIC will no longer participate in the contract after 9/30/12.

SPECIAL CONTRACT TERMS AND CONDITIONS

NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO): NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. The procurement strategy adopted for this Invitation for Bid has been approved by the NASPO Cooperative Purchasing Committee. NASPO is comprised of the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO is an organization through which member purchasing officials provide leadership in professional public purchasing, and improving the quality of purchasing and procurement, by exchanging information and cooperation to attain greater efficiency and economy. See Exhibit One

INSURANCE RENEWAL DOCUMENTS: Upon the policy renewal date, the Contractor must submit, within thirty (30) days, updated insurance documents showing compliance with all applicable coverage required by this Contract. As applicable, the documents must include a current Workers' Compensation Certificate and an Acord Certificate of all applicable insurance coverage and must include all required Commercial General Liability endorsements as described in Articles S-12 and S-13 of the Supplemental Terms and Conditions of this Contract.

Failure to maintain compliant insurance coverage per Article S-14 of the Supplemental Contract Terms and Conditions will be considered a default and will be cause for cancellation of the Contract under the Standard Contract Terms and Conditions, Section I, Item C, Part 1.

These documents shall be forwarded to the Office of Procurement Services, 4200 Surface Road, Columbus, OH 43228-1395, Attn: Jennifer Shaefer.*

~~**DMA RENEWAL DOCUMENT: Within thirty (30) days of the annual anniversary date of the Contract inception, the Contractor must submit an updated copy of the Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization (DMA) form. This form is available at http://www.homelandsecurity.ohio.gov/DMA_Terrorist/HLS_0038_Contracts.pdf. The Terrorist Exclusion List is available at http://www.homelandsecurity.ohio.gov/DMA_Terrorist/terrorist_exclusion_list.pdf. In addition, the Contractor must annually update their registration with the Ohio Business Gateway (OBG) at <http://obg.ohio.gov>.~~

~~Failure to maintain a current, compliant certificate will be considered a default and will be cause for termination of the Contract under the Standard Contract Terms and Conditions, Section I, Item C, Part 1.~~

~~These documents shall be forwarded to the Office of Procurement Services, 4200 Surface Road, Columbus, OH 43228-1395, Attn: Jan Fitzpatrick.~~

AA/EEO RENEWAL DOCUMENT: Within thirty (30) days of the annual anniversary date of the initial plan acceptance date by EEO, the Contractor must submit an updated copy of their Affirmative Action Program Verification Form from the DAS Equal Opportunity Division. The application form is available at <http://www.das.ohio.gov/Eod/AAEEO.htm>.

Failure to maintain a current certificate in compliance with all State and Federal laws regarding equal employment opportunity, including Ohio Revised Code Section 125.111 and all related Executive orders will be considered a default and will be cause for termination of the Contract under the Standard Contract Terms and Conditions, Section I, Item C, Part 1.

These documents shall be forwarded to the Office of Procurement Services, 4200 Surface Road, Columbus, OH 43228-1395, Attn: Jennifer Shaefer.*

ADDITIONAL TERMS AND CONDITIONS: Included as attachments to this Bid are four (4) documents that present the Standard Terms and Conditions and the Rebate Procedures specific to Indiana and Wisconsin. The laws of the State of Ohio in accordance with the Ohio Revised Code as adopted by the State of Ohio shall govern this procurement and any resulting Contract. However, the laws of each participating state shall govern for purchases made by each respective participating state.

USE OF WIC LOGO AND NAME: The WIC acronym and the WIC logo are registered service marks of the United States Department of Agriculture ("USDA") and may not be used by the vendor in a way that will likely cause confusion in regard to their involvement with the WIC program. Vendors may not use in the official name in which the vendor is registered or in the name under which it does business the WIC acronym or a similar acronym or logo that would give the impression that the business is affiliated with or sponsored by the WIC program.

* To indicate a change in the Contract Analyst.

** To indicate that the DMA Renewal Documents are no longer required per H.B. 487 effective 9/10/12.

SPECIFICATIONS AND REQUIREMENTS
FOR THE WIC INFANT FOOD REBATE PROGRAM FOR OHIO, *INDIANA, AND WISCONSIN

I. SCOPE AND CLASSIFICATION

A. Scope

The Federal Government requires states to examine cost containment measures in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program). The purpose of this Bid is to secure a rebate contract for authorized infant foods (fruits, vegetable, meats, and poultry). The infant foods offered by the Contractor shall be designated to be Ohio, *Indiana, and Wisconsin's contract brand infant foods, thereby establishing a Sole Source Rebate System.

This Bid/Contract is designated as a Cooperative Contract under the participation guidelines established by the National Association of State Procurement Officials (NASPO). Additional states, not exceeding the 150,000 threshold of eligible participants, may join this Contract upon mutual consent between the State and the Contractor.

B. Classification

1. Contractor shall provide a rebate for all authorized infant foods (fruits & vegetables, meats & poultry) redeemed by WIC retail vendors.
2. Any other infant food produced by the Contractor and authorized by the State WIC Agency during the contract including any extensions shall receive rebate.

II. DEFINITIONS

- A. "Alternate Shoppers" are individuals designated by the participants to transact Food Instruments on behalf of the participant.
- B. "Contract Brand Infant Foods" means all authorized infant foods as defined by USDA-FNS, (fruits & vegetables, meats & poultry) produced by the manufacturer awarded the infant food cost containment rebate contract.
- C. "Food Instruments", "WIC Program Food Instruments" or WIC coupons are documents that may be exchanged/used by a participant or alternate shopper for authorized foods and contract brand specific infant foods at a WIC retail vendor location.
- D. "Participants" are eligible individuals who are receiving Food Instruments under the WIC Program. Participants may choose the type and quantity of authorized food items to purchase as listed on the food instrument.
- E. "Redeemed" means the transacted Food Instrument submitted by the WIC retail vendor for payment. Redeemed is defined in the Ohio Administrative Code 3701-42-01 "U" as the process by which a food instrument or fruit and vegetable voucher is transacted by a vendor or farmer and submitted to the designated processing firm of payment.
- F. "State WIC Agency" means the Indiana State Department of Health, the Ohio Department of Health, and the Wisconsin Department of Health Services.
- G. "Valid period" is the duration of time that a Food Instrument may properly be exchanged by a participant for authorized foods.
- H. "WIC retail vendors" are authorized by the State WIC Agency to exchange Food Instruments for WIC authorized foods.
- I. "Average Commercial Wholesale Price Per Ounce is the average of the lowest Wholesale Price Per Ounce for foods in the category being offered, as documented by the nationally published Commercial Wholesale Price List.

* To indicate that the Indiana WIC will no longer participate in the contract after 9/30/12.

SPECIFICATIONS AND REQUIREMENTS
FOR THE WIC INFANT FOOD REBATE PROGRAM FOR OHIO, *INDIANA, AND WISCONSIN

- J. "Rebate Amount Per Ounce" is the amount the Bidder is submitting. This amount will be subtracted from the Average Commercial Wholesale Price Per Ounce to determine the Net Price Per Ounce.
- K. "Net Price Per Ounce" is the result of subtracting the Rebate Amount Per Ounce from the Average Commercial Wholesale Price Per Ounce.

III. PROGRAM REQUIREMENTS

A. Infant Food

- 1. Infant food shall be manufactured under and comply with all applicable provisions of the Federal Food, Drug and Cosmetic Act, as amended, and all regulations promulgated there under.
- 2. Infant fruits and vegetables shall be sold at the retail level in accordance with authorized commercial wholesale pricelist. Ohio & *Indiana are currently sold in 4 ounce containers and Wisconsin in 3.5 ounce containers. Not allowed: added sugars, starches (e.g., cereal), salt or meat; added DHA/ARA; or baby food desserts (e.g., peach cobbler or tutti frutti)
- 3. Infant meat and poultry shall be sold at the retail level in 2.5 ounce containers, strained with gravy or broth only. Not allowed: added sugars or salt; added DHA/ARA; infant food combinations (e.g., chicken and green beans), or dinners (e.g., spaghetti and meatballs)
- 4. All varieties must meet USDA regulatory requirements for use in the WIC Program. Please see WIC Interim Rule at <http://www.fns.usda.gov/wic/regspublished/wicfoodpkginterimrulepdf.pdf>.

B. General Program Requirements

- 1. All products offered as infant food shall be under the same manufacturer/brand name.
- 2. The Contractor will be required to pay a rebate on all authorized contract brand infant food redeemed by WIC retail vendors.
- 3. Infant foods for rebate specified in this Bid are being bid as brand specific, which signifies that no alternates will be accepted for an award. In Ohio, this is in accordance with the Ohio Administrative Code 123:5-1-10(I).
- 4. The Average Commercial Wholesale Price Per Ounce may be adjusted, if applicable, in accordance with the Escalator Clause of this agreement.
- 5. Rebateable infant foods applicable to each state (Ohio, *Indiana, and Wisconsin) must be available statewide.

C. Contract Brand Infant Food Rebate Procedure

Reference Attachments One through Four for the rebate procedures and Terms and Conditions specific to Indiana and Wisconsin, respectively.

The following rebate procedures are specific to Ohio; however, the procedures would include participating States if not otherwise specified in their respective rebate procedures and Terms and Conditions.

- 1. For the term of any Contract awarded pursuant to this Bid, the Contractor shall, in exchange for single supplier status, rebate monthly, the Rebate Amount per ounce of Contract brand infant food calculated by multiplying the amount for that item by the number of ounces redeemed during the valid period by WIC retail vendors.
- 2. Payments due to the State shall be based on the number of ounces of infant food redeemed.

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SPECIFICATIONS AND REQUIREMENTS
FOR THE WIC INFANT FOOD REBATE PROGRAM FOR OHIO, *INDIANA, AND WISCONSIN

3. The rebate amount applied to the infant food shall be the amount effective during the month of the first day of use of the Food Instrument. (i.e., coupons issued on or after the start date of the rebate program.)
4. The State WIC Agency shall produce a monthly report specifying the amount of infant food identified as redeemed and paid in the preceding month through the regular WIC payment system.
5. The State WIC Agency shall also produce a monthly report specifying the amount of infant food redeemed through the State WIC Agency exception (e.g., payment of rejected coupons) payment process.
6. Partial redemptions are accounted for in the calculations for invoices and will be discussed with the Contractor upon award. These redemptions are minimal, having little or no impact on this Bid. The methodologies for each participating State will be available to the awarded Contractor upon request.
7. The State WIC Agency shall submit an invoice based on Section III, Item C, paragraphs 4 and 5 and a copy of the reports to the Contractor within forty-five (45) calendar days after the end of the month for which the State WIC Agency is invoicing the Contractor for payment. The invoice and supporting documentation shall contain the methodology and data used to calculate the monthly rebate payment owed by the Contractor.
8. For each Food Instrument that is redeemed during the month for which a rebate is invoiced and that includes Contract brand infant food, the State WIC Agency shall provide, to the Contractor, the following data and supporting documentation that will enable the Contractor to verify the invoiced amount:
 - a. The Food Instrument ID;
 - b. The Issue Date of Food Instrument;
 - c. The Food Instrument Valid Begin Date;
 - d. The number of ounces/units redeemed of the Contract brand infant food.
 - e. The number of items purchased and the actual amount of sale.
9. The Contractor must notify the State WIC Agency of any dispute or error in the invoice within ninety (90) calendar days after receipt of the invoice. If the Contractor does not notify the State WIC Agency of a discrepancy in the invoice within ninety (90) calendar days after receipt of the invoice, the invoice will be determined to be accurate and the Contractor shall waive the right to dispute the invoice.
10. In the event that the invoice submitted to the Contractor for payment is determined by the State WIC Agency to be inaccurate, a revised invoice will be submitted and the Contractor shall pay the State WIC Agency in accordance with Section III, Item C, Parts 8 and 10. If the Contractor identifies a discrepancy on the invoice, the State WIC Agency will respond to the Contractor with an answer or an update as to the status of their investigation into the discrepancy within twenty (20) State working days, although final resolution may take longer. All disputes of any invoice during a federal fiscal year must be resolved by the first day of February in the following fiscal year. The Contractor shall not withhold any rebate payments to the State WIC Agency.
11. The Contractor shall pay the State WIC Agency the amount indicated on the invoice specified above within thirty (30) calendar days after receipt of the invoice. Invoice accuracy shall solely be determined by the State WIC Agency, based on appropriate documentation provided by the State WIC Agency.
12. Because WIC retail vendors have thirty (30) days to submit Food Instruments for processing after the Food Instrument's valid period, the total exchanges for any given month may include Food Instruments from at least two issue months. In addition, USDA occasionally approves payment of coupons that may be expired at the time of submission. The Contractor agrees that infant food identified on Food Instruments issued with a first day of use during the term of this Agreement, but not redeemed until after the date of expiration or termination of this Agreement, shall be rebate eligible.

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SPECIFICATIONS AND REQUIREMENTS
FOR THE WIC INFANT FOOD REBATE PROGRAM FOR OHIO, *INDIANA, AND WISCONSIN

13. In the event the Contractor has not issued payment to the State within thirty (30) calendar days of receipt of invoice, for any outstanding balance for any month during the Contract term, the Contractor shall be assessed and shall pay, in addition to the outstanding balance due, a penalty equal to one percent (1%) of the outstanding balance.
14. The Contractor shall pay rebates on infant foods (fruits & vegetable, meat & poultry) issued with a first day of use while any Contract issued pursuant to this Bid is in effect and redeemed, even though the Contract may have been terminated or may have expired when the rebate amount is paid.

D. State Agency Payment and Contact Information

As applicable, the Contractor shall issue rebate payment checks payable to:

Payment Mailing Address:	Program Contact Person:
Treasurer, State of Ohio. c/o Ohio Department of Health Bureau of Nutrition Services P.O. Box 15278 Columbus, OH 43215-0278	Mr. Bob Parker, Program Analysis Unit Supervisor Bureau of Nutrition Services Ohio Department of Health 246 N. High Street Columbus, Ohio 43215 Telephone: 614-728-2877 Fax: 614-564-2470 E-mail: robert.parker@odh.ohio.gov
*Indiana WIC Program Division of Finance c/o Indiana State Department of Health Section 2e 2 North Meridian Street Indianapolis, IN 46204	Mr. Ed Talucci Indiana State Department of Health Telephone: (317) 234-3858 E-mail: etalucci@isdh.in.gov
Wisconsin WIC Program Department of Health Services Attn: Cashier PO Box 7850 Madison WI 53707	Ms. Nancy Brown-Joyce Nutrition & WIC Fiscal Manager Division of Public Health Telephone: 608-261-6383 Fax: 608-266-3125 E-mail: nancy.brownjoyce@dhs.wisconsin.gov

E. Record Keeping

1. The Contractor shall allow the State WIC Agency, the United States Department of Agriculture's Food and Nutrition Service, the Comptroller General of the United States, or any of their duly authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to any Contract awarded pursuant to this Bid, for the purpose of making audits, examinations, excerpts, or transcriptions.
2. The Contractor shall retain for three and half (3.5) years, after the final rebate payment is made, all records directly related to any Contract awarded pursuant to this Bid.

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SPECIFICATIONS AND REQUIREMENTS
FOR THE WIC INFANT FOOD REBATE PROGRAM FOR OHIO, *INDIANA, AND WISCONSIN

3. If any audit, litigation, or other action involving the records is commenced before the end of the retention period specified in Section III, Item D, Part 2, the records must be retained until all issues arising out of the audit, litigation, or action are resolved.

IV. CONTRACTOR RESPONSIBILITIES

- A. The Contractor shall perform in compliance with Section III, Items A through D of any Contract awarded pursuant to this Bid.
- B. The Contractor shall guarantee that sufficient quantities of Contract brand infant food, offered on their Bid Response and awarded on any Contract awarded pursuant to this Bid, to meet State WIC Agencies participant demand, shall be made available for purchase by authorized WIC retail vendors. In the event the Contractor cannot make available the contract brand infant food to WIC retail vendors in one or more counties, for more than five (5) consecutive days for instances not covered under force majeure, the Contractor will provide the same Average Commercial Wholesale Price Per Ounce minus Rebate Price Per Ounce (Net Price Per Ounce) as listed in the Contract for that category under the terms of this Contract, on another brand of similar infant food issued to participants.
- C. The Contractor shall provide to the State WIC Agencies advance notice of any changes in product packaging size, retail price, product labeling including UPC, or product reformulation. The notice shall be provided at least one hundred and twenty (120) calendar days prior to the effective date of such changes.
- D. If the Contractor produces new infant food products or new container sizes that are eligible for the WIC Program, the Contractor will provide the same Average Commercial Wholesale Price Per Ounce minus Rebate Price Per Ounce (Net Price Per Ounce) for that category.

V. CONFIDENTIALITY

- A. Due to federal confidentiality requirements, the Manufacturer may not have access to actual or copies of food instruments or other client records which identify WIC participants.
- B. States are prohibited from disclosing confidential Vendor information to the Manufacturer.

VI. STATE WIC AGENCIES RESPONSIBILITIES

- A. The State WIC Agencies shall perform in compliance with any Contract awarded pursuant to this Bid.
- B. The State WIC Agencies shall make available to the Contractor or the Contractor's designated representative all necessary reports pertaining to the redemption and billing process of the Sole Source Rebate System. The Contractor may have access to the WIC retail vendor's name, address and authorization status. Further, the State WIC Agencies will not be required to provide documents and/or information regarding policies and procedures (not related to billing processes), or operations of the WIC Program and the methods used to issue infant food.
- C. The State WIC Agencies' obligations under any Contract awarded pursuant to this Bid are contingent upon the funds awarded by the federal government, specifically the United States Department of Agriculture and appropriation of funds by the each state's legislative body. If each state's legislative body fails at any time to fund the State WIC Agency any Contract awarded pursuant to this Bid shall terminate on the date the funding expires without further obligation to the State WIC Agency. In Ohio, the State WIC Agency's obligations under any Contract awarded pursuant to this Bid are subject to O.R.C. Section 126.07. Nothing in any Contract awarded pursuant to this Bid shall be construed to alter the State WIC Agencies' exclusive right to determine which brands of infant foods, including those of the Contractor, are USDA authorized WIC Program approved brands for distribution to WIC Program participants in the retail vendor system.
- D. In the performance of their duties under any Contract awarded pursuant to this Bid, the State WIC Agencies shall abide by all applicable State and Federal regulations concerning the WIC Program including the regulations developed by the Food and Nutrition Service, United States Department of Agriculture contained in 7 CFR Part 246, and State WIC Program administrative rules, as they exist now or may be amended.
- E. The State WIC Agencies agrees to provide the Contractor with reasonable notification regarding changes to State WIC Program administrative rules which affect the Contractor's obligations under any Contract awarded pursuant to this Bid.

* To indicate that the Indiana WIC will no longer participate in the contract after 9/30/12.

SPECIFICATIONS AND REQUIREMENTS
FOR THE WIC INFANT FOOD REBATE PROGRAM FOR OHIO, **INDIANA, AND WISCONSIN

VII. CONTRACTOR QUALIFICATIONS

The Contractor shall be in compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in United States Department of Labor regulations.

VIII. BIDDER DOCUMENTATION

A. ~~The Bidder shall certify to the state of Ohio that their company is registered under the Federal Food, Drug and Cosmetic Act as required by 42 USC section 1786(f)(15). An officer of the company shall in the form of a letter, on Bidder's company letterhead, sign this certification.*~~

B. The Bidder shall certify to the state of Ohio that their company is in compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in United States Department of Labor regulations. This certification may be included in the same letter as that specified in Section VII, Item A.

C. The Bidder shall certify to the state of Ohio that their company is in compliance with all applicable standards, orders, or requirements issued under 33 USC 1368, Executive Order 11738, ~~and 40 CFR Part 32*~~, and any applicable standards and policies related to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. This certification may be included in the same letter as that specified in Section VII, Item A.

D. The Bidder shall certify to the state of Ohio that:

1. The rebates offered in this Bid Response have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such rebate with any other manufacturer or with any competitor.
2. Unless otherwise required by law, the rebates, which have been offered, have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to the award directly or indirectly to any other manufacturer or to any competitor.
3. No attempt has been or will be made by the Bidder to induce any other person or firm to submit or not submit a Bid Response for the purpose of restricting competition.
4. This certification may be included in the same letter as that specified in Section VII, Item A.

E. The Bidder shall provide with the Bid Response the name, address, and telephone number of company representative to be Contractor's contact for any Contract awarded pursuant to this Bid, as specified in Section VIII, Item E.

Notice: Documentation for Section VII, Items A thru D, as specified above, should be attached to the Bid Response. If documentation is not attached to Bid Response, the Office of Procurement Services may request it during Bid evaluation. If requested during evaluation, documentation shall be provided within five (5) business days of verbal request. Failure to submit documentation as specified will deem your Bid not responsive and further consideration for award will not be given.

F. The Bidder shall provide with the Bid Response a copy of the nationally published Commercial Wholesale Price List for each category of infant foods (fruits & vegetables, meats & poultry) produced. Price list shall be the most current in effect on the published opening date of the Bid.

* All bidders certified required bidder documentation; however, Sections VIII A., and "40 CFR Part 32" of VIII C. have been removed from the Contract. Section VIII A. was in reference to the WIC Infant Formula program, and "40 CFR Part 32" of Section VIII C. no longer exists in the current CFR.

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SPECIFICATIONS AND REQUIREMENTS
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IX. PROCEDURAL NOTES

- A. This solicitation is for infant food (fruit & vegetables in 4 ounce containers) in Ohio, *Indiana, and Wisconsin; and meats & poultry in 2.5 ounce containers in accordance with authorized commercial wholesale pricelist. If the State WIC Agency adds more types of infant foods produced by the Contractor to its approved list during the term of the Contract, the Contractor will provide the same Average Commercial Wholesale Price Per Ounce minus Rebate Price Per Ounce (Net Price Per Ounce) as listed in the Contract for that category.
- B. During the term of any Contract issued pursuant to this Bid, if the Contractor discontinues the production any of the types of Contract brand infant foods, the Contractor may, in writing to the State WIC Agency, offer a replacement infant food. The Contractor must include in the written offer for the replacement: (1) the reason for the offer, (2) the Average Commercial Wholesale Price Per Ounce, (3) documentation that the offered product meets the Federal WIC definition for an infant food, (4) the formulation of the offered product, and (5) an explanation of how the offered product will serve the same population.
- C. The State WIC Agency reserves the sole discretion to determine if a product offered by the Contractor under Section VIII, Item B is appropriate as a replacement of the Contract brand infant food. To be appropriate, the offered infant food must at a minimum:
1. Must meet the United States Department of Agriculture, Food and Nutrition Service WIC definition for infant foods.
 2. Be offered at the same Average Commercial Wholesale Price as the Contracted product, and
 3. Be necessary because the manufacturer is discontinuing production of the Contract brand infant food.
- D. If the State WIC Agency adds a new or replacement infant food, the change will take effect within 120 days of written notification by the State WIC Agency.
- E. Representative - Both the State WIC Agency and the Contractor shall appoint a representative to assist in the administration of any Contract awarded pursuant to this Bid. All required notices pursuant to any Contract awarded pursuant to this Bid by either party shall be sent to the other party's representative. In the event that either party designates a different representative after the term of any Contract awarded pursuant to this Bid has begun, notice of that individual's name, address, and telephone number shall be furnished to the other party, in writing, within fifteen (15) calendar days after the designation.
- F. Misredemptions and Partial Redemptions - A review of rebateable food instruments may be performed no less than six months from the inception of this Contract upon request. Any excessive discrepancies in redemptions will be reviewed and evaluated to allow for necessary monetary adjustments, as mutually agreed upon between the State and the Contractor.
- G. Accountability - Participating States use one of the five methodologies in the August 5, 2005, [USDA Rebate Invoice Memo](#) as a guideline to provide an actual count or reasonable count estimate of the number of units sold.

* To indicate that the Indiana WIC will no longer participate in the contract after 9/30/12.

BID PRICE PAGE

OHIO, #INDIANA, AND WISCONSIN WIC INFANT FOOD REBATE BID

YOUR BID: In accordance with [Instructions, Terms, and Conditions for Bidders](#), Section I-18, Bidders shall insert a unit cost with at least, but no more than three digits.

* **REBATE AMOUNT OFFERED:** The Contractor agrees to pay to the State WIC Agency the bid Rebate Amount Per Ounce, for which the State WIC Agency will invoice the Contractor.

Manufacturer: Beech Nut Nutrition

State Program	Average Monthly Issuance (ounces) per Infant *	Average Monthly Infant Participation	Average Total Monthly Ounces Issued	Brand Name	Average Commercial Wholesale Price Per Ounce (most current as of the Bid Opening Date) *	Rebate Amount Per Ounce *
Ohio	133.07 oz. – Fruits & vegetables	36,577	4,867,456	Beech Nut	\$ 0.145 **	\$0.065 **
	77.5 oz. – Meats & Poultry	1,450	112,375	Beech Nut	\$0.340	\$0.055
# Indiana	128.02 oz. – Fruits & vegetables	26,468	3,388,416	Beech Nut	\$0.145 **	\$0.065 **
	77.5 oz. – Meats & Poultry	4	340	Beech Nut	\$0.340	\$0.055
Wisconsin	136.98 oz. – Fruits & vegetables	16,326	2,236,416	Beech Nut	\$0.145 **	\$0.065 **
	77.5 oz. – Meats & Poultry	1,146	88,815	Beech Nut	\$0.340	\$0.055

* Maximum amount allowed by WIC Program Regulations. Issued amounts may be less.

BRAND NAME OF PRODUCTS OFFERED: BEECH NUT NUTRITION

FOOD VARIETIES OFFERED: Applesauce, Pears, Bananas, Apples & Cherries, Apricots with Pears and Apples, Apples Mango Kiwi, Pears & Raspberries, Bananas and Strawberries, Apples and Bananas, Apples and Blueberries, Apples with Pears and Bananas, Pears and Pineapple, Pears and Blueberry, Peach Apple Banana, Apple Cherry Plum, Sweet Potatoes, Butternut Squash, Peas, Green Beans, Carrots, Corn and Sweet Potatoes, Country Garden Vegetables, Mixed Vegetables, Squash & Zucchini, Sweet Corn and Rice, Green Beans & Potatoes, Beef and Beef Broth, Chicken and Chicken Broth, Turkey and Turkey Broth.

** To indicate a price increase and a rebate increase on fruits and vegetables only effective with all orders issued on or after August 1, 2010

*** To indicate addition of Stage 2.5 Homestyle Textures (4 oz) Infant Fruits and Vegetables, available in OH, IN, and WI September 1, 2011.

To indicate that the Indiana WIC will no longer participate in the contract after 9/30/12.

CONTRACTOR INDEX

CONTRACTOR TERMS:

BID CONTRACT NO.: OT904010 (12/31/13*)

Beech Nut Nutrition Corporation
100 Hero Drive
Amsterdam, NY 12010

TERMS: Net 30 Days

DELIVERY: As Offered

CONTRACTOR'S CONTACT: William Kaericher**

Telephone: (518) 839-0300**

FAX: (518) 839-0301

E-mail: WKaericher@beechnut.com**

*To indicate renewal for nine (9) months, effective April 1, 2013 through December 31, 2013.

** To indicate a change in the contractor contact information effective on all orders on or after 04/01/13.

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BID ATTACHMENTS
SPECIFIC TO *INDIANA AND WISCONSIN

ATTACHMENT ONE

~~[*\(LINK TO PDF THE INDIANA REBATE PROCEDURE\)](#)~~

ATTACHMENT TWO

~~[\(LINK TO PDF THE WISCONSIN REBATE PROCEDURE\)](#)~~

ATTACHMENT THREE

~~[*\(LINK TO PDF INDIANA TERMS AND CONDITIONS\)](#)~~

ATTACHMENT FOUR

~~[\(LINK TO PDF THE WISCONSIN TERMS AND CONDITIONS\)](#)~~

* To indicate that the Indiana WIC will no longer participate in the contract after 9/30/12.

SUMMARY OF AMENDMENTS

Amendment Number	Revision Date	Description
3	04/01/13	To indicate a renewal for nine (9) months, effective April 1, 2013 through December 31, 2013. To indicate that the Indiana WIC will no longer participate in the contract after 9/30/12. To change the contract analyst and the contractor contact information.
2	09/01/11	To indicate the addition of Stage 2.5 Homestyle Textures (4 oz) Infant Foods and Vegetables, available in OH, IN and WI September 1, 2011.
1	08/01/10	To indicate a price and rebate increase on fruits and vegetables only effective with all orders issued on or after August 1, 2010. And to change the Contract Analyst on pages one and six, and to add page 24 for the Summary of Amendments.