

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. 4

TO: LIMITED DISTRIBUTION - OHIO DOH/WIC, *INDIANA AND WISCONSIN WIC PROGRAMS AND OTHER STATE WIC PROGRAMS AUTHORIZED BY THE NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO)

FROM: ROBERT BLAIR, DIRECTOR, DEPARTMENT OF ADMINISTRATIVE SERVICES

SUBJECT: TERM CONTRACT - DRY INFANT CEREAL - WIC REBATE PROGRAM - NASPO COOPERATIVE CONTRACT

As a result of mutual agreement between the state of Ohio and the Contractor, this amendment is issued to renew the subject contract an additional fifteen (15) months, effective January 1, 2012 through March 31, 2013.

To indicate that the Indiana WIC will no longer participate in the Contract after December 31, 2011. Please remove pages 1, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17 and 18; and replace with the attached pages.

All other prices, terms and conditions remain unchanged.

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

Janice Fitzpatrick, CPPB
janice.fitzpatrick@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):
Gerber Products Company
12 Vreeland Road, 2nd Floor, Box 697
Florham Park, NJ 07932-0697

STATE OF OHIO
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MANDATORY USE_CONTRACT FOR: DRY INFANT CEREAL - WIC REBATE PROGRAM - NASPO COOPERATIVE CONTRACT

CONTRACT No.: OT904709

EFFECTIVE DATES: 01/01/09 to 12/31/11
* Renewal through 03/31/13

The Department of Administrative Services has accepted bids submitted in response to Invitation to Bid No. OT904709 that opened on 09/24/08. 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 WISCONSON WIC PROGRAMS AND OTHER STATE WIC PROGRAMS AUTHORIZED BY THE NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO), as applicable.

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:

Janice Fitzpatrick, CPPB
janice.fitzpatrick@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>

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Signed: _____ Date _____
Robert Blair, Director

SPECIAL CONTRACT TERMS AND CONDITIONS

PRODUCT SAMPLES: The Bidder(s) may be required to submit samples of the supplies being offered. The samples will be used in the evaluation process to determine the lowest responsive and responsible Bidder. If not included as part of their Bid Response, the Bidder will be required to provide the samples within ten (10) calendar days after notification. Failure to provide the samples within the stated time period will result in the Bidder being deemed not responsive. After award of the Contract, the samples will be used as a basis of comparison with actual product delivered under Contract. Any variation between the samples and product being delivered will be considered as an event of default. Any variations between the samples and actual product being delivered that are due to manufacturer changes may be acceptable and shall require prior written approval from DAS.

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 program for at least three varieties of infant cereal, one of which must be rice cereal. The Contract shall be awarded to the responsive Bidder offering the lowest total monthly net cost per ounce.

To determine the lowest total monthly net cost of the Bid, the State will utilize the following procedure: On the Rebate Bid Page, the Bidder will submit a price for the container size that reflects the highest cost per ounce for each variety of infant cereal being offered, as documented by the nationally published Commercial Wholesale Price List. The Bidder will also submit the rebate amount per ounce for each infant cereal variety being offered.

- * For each authorized variety of infant cereal offered, the State will subtract the rebate amount per ounce from the wholesale price per ounce to obtain the net price per ounce. The net price per ounce will be multiplied by the estimated total monthly ounces for Ohio, *Indiana, and Wisconsin: 1,032,856. This will determine the total Monthly Net Price.

CONTRACT AWARD: The Contract will be awarded to the lowest responsive and responsible Bidder meeting all Bid specifications and requirements listed herein offering the lowest Monthly Net Price of infant cereal to the participating states. 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 cereal for which the Bidder submits a rebate Bid will be considered a primary brand infant cereal. The State WIC Agency provides no guarantee of the quantity or cereal varieties that will be used under a Contract awarded pursuant to this Bid.

SUBCONTRACTING: The awarded Contractor shall be solely responsible for the Contract. Subcontracting by the Contractor shall not be permitted unless approved by the State. On a per project basis, the Contractor shall clearly identify which requirements are subcontracted and identify the subcontracting company, corporation, etc., and responsible business contacts therein. No Contractor shall engage a Subcontractor for work on this Contract without the prior written approval of the State.

INCURRED COSTS: The State is not liable for any costs incurred by the Bidder prior to issuance of a Contract.

ESCALATOR CLAUSE: Any increase or decrease in the lowest nationally published Commercial Wholesale Price List of a particular infant cereal awarded on Contract pursuant to this Bid after the published Bid opening date, or during the term of any pursuant Contract, shall result in a cent-for-cent adjustment in the rebate amount per ounce of that infant cereal to ensure the net price per ounce of that infant cereal is equivalent to the net price obtained in this Bid. The adjustment to the rebate amount shall be effective for Food Instruments with the first day of use during the month following the month for which the price change was effective. The Office of Procurement Services shall be notified by the Contractor, in writing, at least forty-five (45) calendar days in advance of any change in the wholesale price of the infant cereal. Notification shall consist of a letter to the Office of Procurement Services announcing the price(s) to be changed and shall be accompanied by a copy of the new wholesale price list. In the event that the Contractor fails to provide at least forty-five (45) calendar days notice of a price increase, the State will take the rebate adjustment at the time same will be effective.

- * To indicate that the Indiana WIC will no longer participate in the Contract after December 31, 2011.

SPECIAL CONTRACT TERMS AND CONDITIONS

CONTRACTOR QUARTERLY SALES REPORT: The Contractor must report the quarterly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales, to include all state agencies served under this Contract by calendar quarter (i.e. January-March, April-June, July-September and October-December). The dollar value of the sale is the price paid by the Contract user for the products and/or services listed on the purchase order or other encumbering document, as recorded by the Contractor.

The Contractor shall be required to report the quarterly dollar value of sales to the Department of Administrative Services (DAS) on a form prescribed by DAS. If no sales occur, the Contractor must show zero. The report must be submitted thirty (30) days following the completion of the reporting period.

The Contractor shall also submit a close-out report within ninety (90) days after the expiration of this Contract. The Contract expires upon the physical completion of the last outstanding task or delivery order of the Contract. The close-out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero "0" sales in the close-out report.

The Contractor must forward the Quarterly Sales Report to the following address:

* Attn: Janice Fitzpatrick
Department of Administrative Services
General Services Division, Term Contract Program
4200 Surface Road
Columbus, OH 43228-1395

If the Contractor fails to submit sales reports, falsifies reports or fails to submit sales reports in a timely manner, DAS may terminate this Contract.

As required by other participating state WIC agencies, the Contractor shall also forward a likekind report. When required, the Contractor must forward the Quarterly Sales Report to the following addresses:

Mr. Bob Parker,
Program Analysis Unit Supervisor
Bureau of Nutrition Services
Ohio Department of Health
246 N. High Street
Columbus, Ohio 43215

* ~~Mr. Ed Talucci
Business Administrator 2
Indiana State Department of Health
Division: Operational Services
2 North Meridian Street
Indianapolis, IN 46204~~

Ms. Nancy Brown-Joyce
Nutrition & WIC Fiscal Manager
CSFP Program Coordinator
1 West Wilson Street, Room 243,
Madison, Wisconsin 53701

Upon request, the Contractor must forward the appropriate Quarterly Sales Report to any state WIC agency participating in this Contract.

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SPECIAL CONTRACT TERMS AND CONDITIONS

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: Janice Fitzpatrick.

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: Janice 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: Janice Fitzpatrick.

* **ADDITIONAL TERMS AND CONDITIONS:** Included as exhibits to this Bid are five (5) documents that present the Standard Terms and Conditions and the Rebate Procedures specific to *Indiana and Wisconsin. Reference Bid Exhibits 1-4.

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SPECIFICATIONS AND REQUIREMENTS
FOR THE WIC INFANT CEREAL 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 infant cereal. The infant cereals offered by the Contractor shall be designated to be Ohio, * Indiana, and Wisconsin's contract brand infant cereal, 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). Other states may join this Contract as Cooperative participants, if authorized by NASPO.

B. Classification

1. Contractor shall provide rebates for the following:
 - a. Contractor shall provide a rebate for 8oz, 16oz, and 24oz containers of infant cereal redeemed by WIC retail vendors.
 - b. The Bidder must offer at least three types of cereals, one of which must be Rice.
 - c. Acceptable types of cereals include Rice, Barley, Oatmeal, and Mixed.
2. Any other infant cereal 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 Cereal" means all authorized infant cereals produced by the manufacturer awarded the infant cereal 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 primary brand specific infant cereal at a WIC retail vendor location.
- D. "Participants" are eligible individuals who are receiving Food Instruments under the WIC Program.
- E. "Redeemed" means the transacted Food Instrument submitted by the WIC retail vendor for payment.
- F. "State WIC Agency" means the *Indiana State Department of Health, the Ohio Department of Health, and the Wisconsin Department of Health and Family 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.

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

III. PROGRAM REQUIREMENTS

A. Infant Cereal

1. Infant cereal 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 cereal shall be sold at the retail level in 8oz, 16oz, and 24oz containers:
3. Infant cereal shall be nutritionally complete, not requiring the addition of any ingredient other than water.
 - a. Infant cereal shall be a dry type without added fruit, fruit flakes or infant formula.
 - b. The cereal must be plain, dry infant cereal, not wet-packed (jarred).
4. The cereals shall contain a minimum of 45 milligrams of iron per 100 grams of dry cereal (i.e. iron content per 1/2 dry ounces of cereal = 45% U.S. RDA for infants).
5. The Bidder must offer at least three varieties of cereals, one of which must be rice.
 - a. Acceptable types of cereals include Rice, Barley, Oatmeal, and Mixed.
 - b. All varieties must meet USDA regulatory requirements for use in the WIC Program.
6. Current Federal program regulations allow a maximum of 24 ounces of cereal to be prescribed for each infant each month. This is a maximum amount that may be prescribed to all infants. It is not guaranteed that all infants will be prescribed infant cereal nor is it guaranteed that all prescribed quantities will be purchased. Food packages generally include infant cereal, when the infant turns four months of age.

B. General Program Requirements

1. All products offered as infant cereal shall be under the same manufacturer/brand name.
2. The Contractor will be required to pay a rebate on all contract brand infant cereal redeemed by WIC retail vendors.
3. Infant cereal for rebate specified in this Bid are being bid as brand specific, which signifies that no alternates will be accepted for an award. This is in accordance with the Ohio Administrative Code 123:5-1-10(I).
4. The rebate amount per ounce may be adjusted, if applicable, in accordance with the Escalator Clause of this agreement.

C. Contract Brand Infant Cereal Rebate Procedure

* Reference Bid Exhibits One and Two for the rebate procedures specific to *Indiana and Wisconsin, respectively. The following rebate procedures are specific to Ohio:

1. For the term of any Contract awarded pursuant to this Bid, the Contractor shall, in exchange for single supplier status, rebate monthly, a fixed amount per ounce of Contract brand infant cereal calculated by multiplying the rebate 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 cereal redeemed.

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

3. The rebate amount applied to the infant cereal shall be the rebate amount effective for that infant cereal during the month of the first day of use of the Food Instrument on which the infant cereal is specified.
4. The State WIC Agency shall produce a monthly report specifying the amount of infant cereal 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 cereal redeemed through the State WIC Agency exception payment process.
6. 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 shall contain the methodology and all data used to calculate the monthly rebate payment owed by the Contractor.
7. For each Food Instrument that is redeemed during the month for which a rebate is invoiced and that includes Contract brand infant cereal, the State WIC Agency shall provide, to the Contractor, the following data 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 redeemed of the Contract brand infant cereal.
8. 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.
9. 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.
10. 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.

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 cereal 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 CEREAL REBATE PROGRAM FOR OHIO, *INDIANA, AND WISCONSIN

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

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 2c 2 North Meridian Street Indianapolis, IN 46204	Mr. Ed Talucci Business Administrator 2 Indiana State Department of Health Division: Operational Services Telephone: (317) 234-3858 E-mail: etalucci@isdh.in.gov
Treasurer, State of Wisconsin c/o Wisconsin Division of Public Health Nutrition & WIC Fiscal Manager 1 West Wilson Street, Room 243, Madison, Wisconsin 53701	Ms. Nancy Brown-Joyce Nutrition & WIC Fiscal Manager CSFP Program Coordinator, Fax: 608-266-3125 E-mail: brownnj@dhsf.state.wi.us

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.

11. The Contractor shall pay rebates on infant cereal 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.
12. Each State WIC Agency shall have the option of requesting from the Contractor up to one (1) prepayment of the monthly rebate amount owed per calendar year. The prepayment invoice will be based on the amount of infant cereal redeemed from the most recent invoice paid by the Contractor. The State WIC Agency will submit a notice of request for a prepayment at least thirty (30) calendar days prior to the requested payment date. The notice shall specify the month to which prepayment shall be applied. The Contractor may deduct from the prepayment up to one percent (1%) of the total prepayment invoice. Once the actual amount of infant cereal delivered and redeemed is determined for the month for which the prepayment was requested, over and/or under adjustments shall be made. The adjustment shall treat any deduction up to one percent (1%) made by the Contractor as though the Contractor made the prepayment without making such deduction. The State WIC Agency shall not be required to pay interest on overpayments made by the Contractor.

D. 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.
3. The Contractor shall retain for three (3) 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 CEREAL 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 E, 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 E of any Contract awarded pursuant to this Bid.
- B. The Contractor shall guarantee that sufficient quantities of Contract brand infant cereals, 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 cereal to WIC retail vendors in one or more counties, for more than seven (7) calendar days for instances not covered under force majeure, the Contractor shall pay a rebate, at the same percentage discount under the terms of this Contract, on another brand of similar infant cereal issued to participants. Before issuing a non-contract brand infant cereal, the State will first provide an alternative Contractor product that meets the authorized food requirements as specified by Federal nutrition requirements.
- 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 ninety (90) calendar days prior to the effective date of such changes.
- D. Due to federal confidentiality requirements, the Manufacturer may not have access to actual or microfilmed food instruments or other client records which identify WIC participants.
- E. States are prohibited from disclosing confidential Vendor information to the Manufacturer.

V. 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.
- C. The State WIC Agencies shall abide by WIC Program Federal regulations and Ohio WIC policies and procedures pertaining to the monitoring of authorized WIC retail vendors for compliance with applicable program participation requirements and shall employ sanctions, if necessary.
- D. The State WIC Agencies' obligations under any Contract awarded pursuant to this Bid are contingent upon the grant of funds by the federal government, specifically the United States Department of Agriculture and appropriation of funds by the each state's legislative body. If the 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. 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 cereals, including those of the Contractor, are USDA authorized WIC Program approved brands for distribution to WIC Program participants in the retail vendor system.
- E. 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 contained in, as they exist now or may be amended.

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- F. 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.

VI. 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.

VII. 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 sign this certification, in the form of a letter, on Bidder's company letterhead.
- 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 infant cereal produced and/or subcontracted. Price list shall be that which is in effect on the published opening date of the Bid.

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

VIII. PROCEDURAL NOTES

- A. This solicitation is for infant cereal only. However, if the State WIC Agency adds more types of infant cereals produced by the Contractor to its approved list during the term of the Contract, the Contractor must pay a rebate. To determine the rebate amount, the State will use the per ounce rebate from the Rebate Bid Page and Contractor's published national wholesale price per ounce at the time the infant cereals are approved by the State WIC Agency.
- B. During the term of any Contract issued pursuant to this Bid, if the Contractor discontinues the production of the Contract brand infant cereal, the Contractor may, in writing to the State WIC Agency, offer a replacement for the infant cereal. The Contractor must include in the written offer for the replacement: (1) the reason for the offer, (2) the wholesale price per ounce, (3) the net price per ounce, (4) documentation that the offered product is a USDA approved WIC infant cereal and meets the Federal WIC definition for an infant cereal, (5) the formulation of the offered product, and (6) an explanation of how the offered product will serve the same population served by the product being replaced.
- 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 cereal. To be appropriate, the offered infant cereal must at a minimum:
1. Be a cereal approved by the United States Department of Agriculture, Food and Nutrition Service to be used as an infant cereal by meeting the Federal WIC definition for infant cereal;
 2. Be offered at the same net price per ounce as the Contracted product, and
 3. Be necessary because the manufacturer is discontinuing production of the Contract brand infant cereal.
- D. If the State WIC Agency adds a new or replacement infant cereal, the change will take effect within 120 days of written notification by the State WIC Agency of the addition or replacement.
- 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.

* To indicate that the Indiana WIC will no longer participate in the Contract after December 31, 2011.

PRICE SCHEDULE

GERBER PRODUCTS COMPANY

A	B	C	D	
	*		**	
	Average Monthly	Average Monthly	Average Monthly	
State Program	Issuance (ounces)			
*	Per Infant	Infant Participation Receiving Cereal	Total Ounces Issued	
Ohio WIC	16.6	34,151	568,000	
*Indiana WIC	16	49,144	305,776	
Wisconsin WIC	16.5	*** 9,641	*** 159,080	
Total		62,903	1,032,856	

- * Maximum amount allowed by WIC Program Regulations (7CFR section 246.10) Issued amounts may be less.
- ** Currently the acceptable package size issued to WIC program infant participants is an eight (8) ounce container.
- *** Currently the acceptable package sizes issued to WIC program infant participants is 603 of twenty-four (24) ounce containers per month plus an additional 9,038 of sixteen (16) ounce containers per month.

OAKS Item ID for all procurements against this Contract: 14720

	E				F	G	H	I
Cereal Varieties Offered	Manufacturer's Brand Name:	Indicate Available Packaging Sizes			(6) Commercial Wholesale Price Per Ounce	(6) Rebate Amount	Net Price Per Ounce (1) (2)	Monthly Net Price (5) (D x H)
					In Effect as of the Bid Opening Date	(4) Per Ounce	(F-G)	
		8 OZ	16 OZ	24 OZ				
# (3) RICE		XX	XX		\$ 0.223	\$ 0.098	\$ 0.125	\$ 129,107.00
# BARLEY		XX			\$ 0.223	\$ 0.098	\$ 0.125	\$ 129,107.00
# OATMEAL		XX	XX		\$ 0.223	\$ 0.098	\$ 0.125	\$ 129,107.00
# MIXED		XX	XX		\$ 0.223	\$ 0.098	\$ 0.125	\$ 129,107.00
# WHOLE WHEAT (7)		XX			\$ 0.223	\$ 0.098	\$ 0.125	\$ 129,107.00
							\$	\$

- (1) If there is an error in the numbers provided by the Bidder, the Bidder is bound by the Net Price Per Ounce indicated in Column H.
- (2) The Net Price Per Ounce is applicable to all participating states.
- (3) Pricing must include Rice and not less than two other varieties.
- (4) The Rebate Amount Per Ounce must be the same for all varieties of infant cereal.
- (5) Monthly Net Price is calculated for each variety as (Average Monthly Total Ounces Issued) X (Net Price Per Ounce).
- (6) 10/08/08 published price adjustments to Gerber commercial wholesale and rebate amounts to be effective 01/01/09. Net price per ounce is unchanged.
- (7) New product added to the Contract, effective 04/01/09.

To indicate new wholesale price schedule and rebate per ounce effective April 4, 2011.

* To indicate that the Indiana WIC will no longer participate in the Contract after December 31, 2011.

CONTRACT EXHIBITS
SPECIFIC TO * INDIANA AND WISCONSIN

EXHIBIT ONE

[..\DOH BID DRAFT MATERIAL\BID EXHIBIT FILES FOR PDF BID ATTACHMENT\Exhibit 1-Indiana Rebate Procedures.pdf](#)

EXHIBIT TWO

[Wisconsin WIC Rebate Procedures](#)

EXHIBIT THREE

[..\DOH BID DRAFT MATERIAL\BID EXHIBIT FILES FOR PDF BID ATTACHMENT\Exhibit 3-2007 ISDH Federal Personal Services Contract Boilerplate.pdf](#)

* [..\DOH BID DRAFT MATERIAL\BID EXHIBIT FILES FOR PDF BID ATTACHMENT\Exhibit 1A-INDIANA QPA Additional Terms.pdf](#)

EXHIBIT FOUR - A

[WISCONSIN STANDARD T&C'S](#)

EXHIBIT FOUR – B

[WISCONSIN SUPPLEMENTAL T&C'S](#)

EXHIBIT FIVE

[Ohio Infant Formula Rebate Procedure](#)

* To indicate that the Indiana WIC will no longer participate in the Contract after December 31, 2011.

SUMMARY OF AMENDMENTS

Amendment Number	Revision Date	Description
4	01/01/12	To indicate mutual agreement for renewal for fifteen (15) months, effective January 1, 2012 through March 31, 2013; under the same terms and conditions and pricing. To indicate that the Indiana WIC will no longer participate in the Contract after December 31, 2011.
3	04/04/11	To indicate an increase to the published wholesale and rebate effective 4/4/11. Net price per ounce is unchanged. To indicate a change in the Contract on pages 1, 6 and 7.
2	04/01/09	Whole Wheat Infant Cereal added to the Contract/Authorized Foods List.
1	01/01/09	10/08/08 published price adjustments to Gerber commercial wholesale and rebate amounts to be effective 01/01/09. Net price per ounce is unchanged.