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

REQUIREMENTS CONTRACT: DRY INFANT CEREAL - WIC REBATE PROGRAM - NASPO COOPERATIVE CONTRACT

CONTRACT No.: OT904709 EFFECTIVE DATES: 01/01/09 to 12/31/11

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 WISCONSIN 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:

Michael S. Shaw, CPPB
michael.shaw@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

Signed: _____
Hugh Quill, Director Date

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SPECIAL CONTRACT TERMS AND CONDITIONS

AMENDMENTS TO CONTRACT TERMS AND CONDITIONS: The following Amendments to the Contract Terms and Conditions do hereby become a part hereof. In the event that an amendment conflicts with the Contract Terms and Conditions, the Amendment will prevail.

INVALIDITY OF A PARAGRAPH: Each paragraph of any Contract awarded pursuant to this Bid is an independent paragraph. The holding of any paragraph or part thereof to be unconstitutional, void, or legally ineffective for any reason does not affect the validity or effectiveness of any other paragraph or part thereof. The remainder of any Contract awarded pursuant to this Bid shall remain fully enforceable.

SPECIFICATION QUESTIONS: Information regarding submission of questions and clarifications for this Bid is provided on page one (1) of the Bid. Through the indicated inquiry closure date, Bidders may visit the Procurement Services website to post Bid related questions at <www.ohio.gov/procure>. Answers to all Bidder questions will be posted on the Procurement Services website and linked to the Bid Number. Bidders can make their own inquiry and/or review all inquiry questions/responses from the same website page from which the Bid document is downloaded. The State will make every effort to respond to website inquires within forty-eight (48) hours of receipt. The State will not respond to any verbal or written questions received through any other medium. No prospective Bidder shall respond to any verbal instructions or changes to this Bid. Only Bid communications, issued by the Department of Administrative Services, Office of Procurement Services, in a public, published format, will be considered valid.

EXCEPTIONS: Any exceptions to these specifications must be explicitly detailed in the Bidder's response. Exceptions will not disqualify a Bidder's response, except in cases where specifically noted. It is the intention of the State to fully evaluate all acceptable, alternate equal Bid Responses that meet the overall requirements of these specifications. State personnel will evaluate exceptions to determine whether variances are material enough to represent a violation of the specification intent or would give the Bidder a competitive advantage. However, exceptions to the stated levels of performance, reliability, and timeliness would represent such a violation of the intent of these specifications that would necessitate rejection of the Bid Response. The State will require the Bidder to retract any intolerable exceptions in order to remain in consideration for award.

MANDATORY/REQUIRED SUBMISSIONS: As specified, mandatory submissions must be submitted with the Bid Response. Required documentation/materials should be submitted with the Bid. If not submitted with the Bid, the Bidder must provide the said documentation/materials within five (5) business days, after notification, to the Office of Procurement Services. Failure to provide mandatory submissions with the Bid Response or failure to provide the required documentation/materials, as applicable, within the stated time period will result in the Bidder being deemed as not responsive and the Bid Response will be immediately disqualified with no further consideration given for potential awarding of the Contract.

For specific submission requirements, Bidders should refer to Specifications and Requirements and the Bid Submission Check List for a listing of those mandatory submissions due with the Bid Response and those other submissions that should be submitted with the Bid Response, but which do not become mandatory until requested during the Bid evaluation period.

DELIVERY AND ACCEPTANCE: Services will be performed as set forth in the Contract and in accordance with paragraphs S-8, S-9, and S-10 of the SUPPLEMENTAL CONTRACT TERMS AND CONDITIONS. The location of performance will be noted on the purchase order issued by the participating agency. Payment for services rendered will occur upon the inspection and written confirmation by the ordering agency that the services provided conform to the requirements set forth in the Contract. Unless otherwise provided in the Contract, payment shall be conclusive except as regards to latent defects, fraud, or such gross mistakes as amount to fraud.

DESCRIPTIVE LITERATURE: The Bidder shall submit, as part of their Bid Response, descriptive literature of the supplies or services being offered. The descriptive literature is to include the price list(s) in effect at the time of Bid submission and upon which the Bid Response is based. The descriptive literature will be used in the evaluation process to determine the lowest responsive and responsible Bidder. Any references, that may appear in the descriptive literature, that may alter the terms and conditions and specifications of the Bid (i.e. F.O.B. Shipping Point or Prices Subject to Change), will not be part of any Contract and will be disregarded by the state of Ohio. Failure of the Bidder to furnish descriptive literature as part of their Bid Response will deem the Bidder not responsive.

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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.

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TERMINATION: Any Contract awarded pursuant to this Bid may be terminated by either party upon at least one hundred and eighty (180) days advance written notice to the other party, subject to the following limitations. The Contractor shall not terminate any Contract awarded pursuant to this Bid prior to September 30, 2011. Failure to provide services in accordance with the requirements of any Contract awarded pursuant to this Bid may be cause for immediate termination by the State WIC Agency. In this case, the State WIC Agency agrees to provide at least thirty (30) days written notice to the Contractor to resolve the problem. Satisfactory resolution of the problem shall be determined by the State WIC Agency. In its notice, the State WIC Agency will specify what "satisfactory resolution of the problem" means.

Failure of the State WIC Agency to insist on strict performance on any Contract awarded pursuant to this Bid or to terminate any Contract awarded pursuant to this Bid after giving the Contractor the opportunity to resolve problems does not waive the State WIC Agency's right to insist on subsequent strict performance. In addition, any Contract awarded pursuant to this Bid shall automatically terminate under the circumstances specified in the following paragraph (Liquidated Damages). Notice of written termination must be sent to the State WIC Agency or the Contractor by certified mail, return receipt requested or delivered in person, with proof of delivery.

LIQUIDATED DAMAGES: In the event that the Contractor fails or refuses to provide services as agreed in any Contract awarded pursuant to this Bid or terminates any Contract awarded pursuant to this Bid at any time during the term of the Contract or any extension of the Contract, the Contractor shall pay to the State WIC Agency monthly payments equal to the rebate amount the State WIC Agency would receive to maintain the net price per ounce of contract brand infant cereal established pursuant to this Bid, as if the Contract were still in effect. The Contractor shall continue to make such payments each month until the date the Contract or extension to the Contract has been scheduled by the State WIC Agency to expire as provided herein, or until the State WIC Agency has executed a Contract with another Contractor to provide substantially the same services as named in any Contract awarded pursuant to this Bid and the term of such Contract has commenced, whichever is sooner. Payments by the Contractor pursuant to this term shall be made in accordance with Section III, Item B.

Payments by the Contractor shall be liquidated damages and not a penalty, and shall enable the State WIC Agency to continue to provide contract brand infant cereal to its then-current caseload of WIC participants within the funding amount appropriated to the State WIC Agency for that purpose.

The State WIC Agency shall make its best efforts to mitigate the liquidated damages obligation of the Contractor by securing another Contractor to provide substantially the same services as named in any Contract awarded pursuant to this Bid. It is estimated to require three (3) to five (5) months from the date the Contractor ceases provision of services to the date another Contractor commences provision of services. This section does not apply to disputed invoices.

FDA REGISTRATION: Pursuant to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) all domestic and foreign facilities that manufacture, process, pack or hold food for human or animal consumption in the United States are required to be registered with the Food & Drug Administration (FDA) no later than December 12, 2003. This registration includes owners, operators, or agents in charge of domestic or foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States. All domestic facilities, whether or not food enters interstate commerce, are required to register. Facilities may complete their registration with the FDA online at: http://www.cfsan.fda.gov/~furls/ovffreg.html

When applicable, by signature affixed on Page 1, the Bidder, or their supplier, certifies that they comply with this requirement.

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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: Michael S. Shaw
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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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: Michael S. Shaw.

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: Michael S. Shaw.

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: Michael S. Shaw.

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.

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.

SPECIFICATIONS AND REQUIREMENTS
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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.

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.

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@dhfs.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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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.

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

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.

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.

PRICE SCHEDULE

CONTRACTOR: 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	19,111	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.

	E				F	G	H	I
Cereal Varieties Offered	Manufacturer's Brand Name:	Indicate Available Packaging Sizes			Commercial Wholesale	Rebate Amount	Net Price Per Ounce	Monthly Net Price
					Price Per Ounce		(1) (2)	
					In Effect as of the Bid Opening Date	(4) Per Ounce	(F-G)	(5) (D x H)
		8 oz	16 oz	24 oz				
(3) RICE		XX	XX		$ 0.1888	$ 0.0638	$ 0.125	$ 129,107.00
BARLEY		XX			$ 0.1888	$ 0.0638	$ 0.125	$ 129,107.00
OATMEAL		XX	X		$ 0.1888	$ 0.0638	$ 0.125	$ 129,107.00
MIXED		XX	XX		$ 0.1888	$ 0.0638	$ 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).

CONTRACTOR INDEX

CONTRACTOR, TERMS:

BID CONTRACT NO.: OT904709-1 (12/31/11)

0000160934
Gerber Products Company
12 Vreeland Road, 2nd Floor, Box 697
Florham Park, NJ 07932-0697

TERMS: N/A

DELIVERY: N/A

CONTRACTOR'S CONTACT: Susan Eberhart

Telephone: (973) 593-7543
FAX: (973) 593-7661
E-mail: Susan.Eberhart@us.nestle.com

PREFERRED METHOD OF RECEIVING PURCHASE ORDERS: E-MAIL TO: Lynn.schuvie@us.nestle.com

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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

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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

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EXHIBIT FOUR - A

WISCONSIN STANDARD T&C'S

EXHIBIT FOUR – B

WISCONSIN SUPPLEMENTAL T&C'S

EXHIBIT FIVE

Ohio Infant Formula Rebate Procedure