

STATE OF OHIO  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
GENERAL SERVICES DIVISION  
OFFICE OF PROCUREMENT SERVICES  
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 03/31/15\*

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:

@Kellie Johnson  
kellie.johnson@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 twelve (12) months for OHIO ONLY, as a result of mutual agreement between the State of Ohio and the Contractor.  
\*\* To indicate that the Indiana WIC will no longer participate in the contract after 9/30/12.  
\*\*\* To indicate that Wisconsin WIC will no longer participate in the contract after 3/31/14.  
@ To indicate an update to the contract contact for the Office of Procurement Services.

Signed: \_\_\_\_\_  
Robert Blair, Director Date

TABLE OF CONTENTS

<u>CLAUSES</u>	<u>PAGE NO.</u>
Special Contract Terms and Conditions	3-7
Amendments to Contract Terms and Conditions	3
Invalidity of a Paragraph	3
Specification Questions	3
Mandatory/Required Submissions	3
Delivery and Acceptance	3
Descriptive Literature	3
Evaluation	4
Contract Award	4
Contract Renewal	4
Incurred Costs	4
Escalator Clause	5
Termination	5
Liquidated Damages	5
FDA Registration	5
NASPO	6
Insurance Renewal Documents	6
DMA Renewal Document	6
AA/EEO Renewal Document	6
Additional Terms and Conditions	6
WIC Logo and Name	6
Specifications and Requirements	7-13
I.    Scope and Classification	7
II.   Definitions	7-8
III.  Program Requirements	8-11
IV.   Contractor Responsibilities	11
V.    State WIC Agency Responsibilities	11
VI.   Contractor Qualifications	12
VII.  Bidder Documentation	12
VIII. Procedural Notes	13
Bid Attachments – via internet links	16
Attachment One: Indiana Rebate Procedure	16
Attachment Two: Wisconsin Rebate Procedure	16
Attachment Three: Indiana Terms and Conditions	16
Attachment Four: Wisconsin Terms and Conditions	16
Exhibit One – National Association of Procurement Officials	17-23
<b><u>CONTRACT ITEMS</u></b>	
Price Schedule	14
Contractor Index	15

## 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](http://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.

**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.

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. Some submissions 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 infant foods 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.

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

**ESCALATOR CLAUSE:** Any increase or decrease in the lowest nationally published Commercial Wholesale Price List of a particular category 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 Average Commercial Wholesale Price Per Ounce of that category to ensure the Net Price Per Ounce of that category is equivalent to the Net Price Per Ounce obtained in this Bid. The adjustment to the Commercial Wholesale Price Per Ounce 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 Commercial Wholesale Price Per Ounce of the infant food. 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 determine the effective date of the price adjustment, not to exceed sixty (60) calendar days.

The Contractor is additionally responsible for reporting any decreases in the Average Commercial Wholesale Price Per Ounce and request a decrease in the same manner as described above. If the Contractor fails to notify the State of any decrease it may result in being deemed as in default of the awarded Contract.

**CANCELLATION AND 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, 2012. 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 cancellation or 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 foods 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 C.

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 foods 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.

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 Acond 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](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](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/AEEEO.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: Kellie Johnson.\*

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.

\* 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

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.

\* 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**

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: <a href="mailto:robert.parker@odh.ohio.gov">robert.parker@odh.ohio.gov</a>
<del>*Indiana WIC Program Division of Finance c/o Indiana State Department of Health Section 2e 2 North Meridian Street Indianapolis, IN 46204</del>	<del>Mr. Ed Talucci Indiana State Department of Health Telephone: (317) 234-3858 E-mail: <a href="mailto:etalucci@isdh.in.gov">etalucci@isdh.in.gov</a></del>
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: <a href="mailto:nancy.brownjoyce@dhs.wisconsin.gov">nancy.brownjoyce@dhs.wisconsin.gov</a>

**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.

\* 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

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

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	428.02 oz. – Fruits & vegetables	26,468	3,388,416	Beech Nut	<del>\$0.145</del> **	<del>\$0.065</del> **
	77.5 oz. – Meats & Poultry	4	310	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 (03/31/15\*)

Beech Nut Nutrition Corporation  
100 Hero Drive  
Amsterdam, NY 12010

TERMS: Net 30 Days

DELIVERY: As Offered

CONTRACTOR'S CONTACT: Chris Sotir

Telephone: (518) 839-0252

FAX: (518) 839-0301

E-mail: [CSotir@beechnut.com](mailto:CSotir@beechnut.com)

\* To indicate renewal for twelve (12) months for OHIO ONLY, as a result of mutual agreement between the State of Ohio and the Contractor.

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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.

## EXHIBIT ONE

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.

The NASPO Cooperative Purchasing WIC Infant Foods Rebate Program Contract is a cooperative group-Contracting consortium for state government departments for the various states. The purpose of establishing a WIC Infant Foods Rebate Program Contract is to enable participating states and the purchasing entities within those participating states, to join in a cooperative multi-state Contracting alliance, to achieve cost effective and efficient acquisition of quality products.

A state may elect to execute a "Participating Addendum" with the Contractors and submit a copy of the executed agreement to the State of Ohio - Office of Procurement Services. The initial intent is to develop a WIC Infant Foods Rebate Program Contract for use by the following states: Indiana and Wisconsin.

Participation by any state, regardless of geographic location, or specific NASPO region, is permitted at any time during the term of the Contract and upon any Contract extensions by executing a "Participating Addendum" with the Contractors and submitting a copy to the State of Ohio - Office of Procurement Services. Contractor must accept orders from and extend the Contract prices to all participating states. The Contractors must allow qualified new state agencies, participating states facilities and political subdivisions joining the NASPO Cooperative Purchasing WIC Infant Foods Rebate Program Contract to be added to the current participants list and access Contract prices throughout the term of the Contract. The State of Ohio - Office of Procurement Services reserves the right to add and delete other members, states, and political subdivision facilities during the term of this Contract at the request of the Participating State and/or purchasing entity.

The laws of the State of Ohio in accordance with the Ohio Revised Code (ORC) as adopted by the State of Ohio shall govern this procurement and any resulting Contract. The laws of each participating state shall govern for purchases made by each respective participating state.

EXHIBIT ONE

Standard Contract Terms and Conditions  
National Association of State Procurement Officials (NASPO) Cooperative Procurements

**PARTICIPANTS:** The National Association of State Procurement Officials (“NASPO”) is a national association of Chief Procurement Officers that has established a procurement cooperative for state government departments, institutions and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the NASPO Member States and territories of the United States.

Obligations under contracts that result from this cooperative procurement are limited to those states and other eligible purchasing entities that execute a Participating Addendum.

Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds.

Participating States incur no financial obligations on behalf of political subdivisions.

Unless otherwise specified in the solicitation, the resulting master price agreement(s) will be permissive.

**DEFINITIONS:**

“Lead State” means the State conducting this cooperative solicitation and centrally administering any resulting master price agreement with the permission of the Signatory States.

“Master Price Agreement” means this cooperative solicitation and contract, between the designated Lead State and the awarded Contractors.

“Offer” or “Bid” or “Proposal” refers to the offer submitted in response to a solicitation, whether denominated as an invitation to bid, invitation for bid, request for proposal, or otherwise. “Bidder” or “Offeror” similarly refers to the person, company, or other entity submitting the bid or proposal that constitutes an offer capable of acceptance, regardless of the solicitation method used.

“Permissive Price Agreement” means that placement of orders through the price agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the master price agreement without using statutory or regulatory procedures (e.g. invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the master price agreement so long as applicable procurement statutes and rules are followed.

“Participating Addendum” means a bilateral agreement executed by a Contractor and a Participating State (or a political subdivision with the consent of its state’s chief procurement officer) that clarifies the operation of the master price agreement for the State concerned, e.g. ordering procedures specific to a State, and may add other state-specific language or other requirements.

“Participating State” means a Signatory State that has indicated its intent to participate in a specific cooperative procurement/master price agreement by executing an Intent to Participate, or who has subsequently executed a Participating Addendum where required.

“Purchasing Entity” means a Participating State, or other legal entity, properly authorized by a Participating State to enter into a contract for the purchase of goods and/or services described in the cooperative procurement. Unless otherwise limited in the cooperative procurement or in a Participating Addendum, political subdivisions of Participating States are deemed Purchasing Entities.

“Signatory State” means any State who is a member of NASPO that has executed the Memorandum of Agreement (MOA) required to become a member of the NASPO Procurement Cooperative.

**QUANTITY ESTIMATES:** Estimated quantities are informational and not to be construed as a warranty of accuracy of historical or anticipated volumes or a guarantee to purchase any amount.

**SPECIFICATIONS:** Any deviation from specifications must be clearly indicated by offeror, otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers’ numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the solicitation says “no substitute.” Offers will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

EXHIBIT ONE

Standard Contract Terms and Conditions  
National Association of State Procurement Officials (NASPO) Cooperative Procurements

**ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS:** The Lead State reserves the right to accept or reject any or all bids or proposals, or parts of bids or proposals, and to waive informalities therein.

**SAMPLES:** Generally, when required, samples will be specifically requested in the solicitation. Samples, when required, are to be furnished free of charge. Except for those samples destroyed or mutilated during testing, samples will be returned at an Offeror's request, transportation collect.

**CASH DISCOUNT TERMS:** Offeror may quote a cash discount based upon early payment; however discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

**TAXES:** Offered prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the Contractor shall add the sales taxes on the billing invoice as a separate entry.

**MODIFICATION OR WITHDRAWAL OF BIDS AND PROPOSALS:** Bids and proposals may be modified or withdrawn prior to the time set for receipt of bids or proposals. After the time set for receipt of bids or proposals, no proposal may be modified or withdrawn.

**PATENTS, COPYRIGHTS, ETC:** The Contractor shall release, defend, indemnify, and hold harmless NASPO, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of NASPO, the Participating States and the Purchasing Entities, from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, process, patented or unpatented invention, article or appliance furnished or used in performance of this contract.

**AWARD:** Multiple master price agreements may be awarded as a result of this solicitation. Awards in requests for proposals (competitive sealed proposals) shall be made to the responsible offeror(s) whose proposals are determined to be the most advantageous to the Participating States, taking into consideration price and the other evaluation factors set forth in the solicitation. Unless otherwise stated in the solicitation, an award in a solicitation denominated as an invitation to bid will be made to the lowest responsive and responsible bidder(s) meeting specifications and all bid terms and conditions. The Participating States reserve the right to award items separately or by grouping items, or by total lot.

**NON-COLLUSION:** By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the solicitation, designed to limit independent bidding or competition.

**TERMINATION:** Unless otherwise stated in the solicitation, any master price agreement entered into as a result of this solicitation may be terminated by either party upon 60-days notice, in writing, prior to the effective date of the termination. Further, any Participating State may terminate its participation upon 30-days written notice, unless otherwise limited or stated in the special terms and conditions of the solicitation. Any termination under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order.

**DEFAULT AND REMEDIES:**

A. Any of the following shall constitute cause to declare the master price agreement or any order under this master price agreement in default:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this master price agreement.

EXHIBIT ONE

Standard Contract Terms and Conditions  
National Association of State Procurement Officials (NASPO) Cooperative Procurements

B. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the master price agreement), a Participating State (in the case of a breach of the Participating Addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.

C. If the default remains after the opportunity for cure, the non-defaulting party may:

- (1) Exercise any remedy provided by law or equity;
- (2) Terminate the master price agreement or any portion thereof, including any orders issued against the master price agreement;
- (3) Impose liquidated damages, as specified in the solicitation or master price agreement;
- (4) In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations.

**LAWS AND REGULATIONS:** Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

**CONFLICT OF TERMS:** In the event of any conflict between these standard terms and conditions and any special terms and conditions in the solicitation, the terms and conditions specified by the lead state and any participating states shall govern.

**REPORTS:** The Contractor shall submit quarterly reports to the Lead State contract administrator, and upon request to any Participating State, showing the quantities and dollar volume of purchases by each Purchasing Entity.

**HOLD HARMLESS:** The Contractor shall release, defend, indemnify and hold harmless NASPO, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of NASPO, the Participating States and the Purchasing Entities, from and against any damage, cost or liability, including reasonable attorneys fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the Contractor, its employees or subcontractors or volunteers.

**ORDER NUMBERS:** Master price agreement numbers and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

**GOVERNING LAW AND VENUE:** This procurement shall be governed and the resulting master price agreement construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against the master price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the master price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the master price agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

**DELIVERY:** The prices offered shall be the delivered price to any NASPO state agency or purchasing entity. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

**WARRANTY:** The Contractor acknowledges that the Uniform Commercial Code applies to this master price agreement. In general, the Contractor warrants that: (a) the product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any *special purposes* that the Purchasing Entity has relied on the Contractor's skill or judgment to consider when it advised the Purchasing Entity about the product, (e) the product has been properly designed and manufactured, and (f) the product is free of significant defects or unusual problems about which the Purchasing Entity has not been warned.

EXHIBIT ONE

Standard Contract Terms and Conditions  
National Association of State Procurement Officials (NASPO) Cooperative Procurements

The Contractor agrees to warrant and assume responsibility for each hardware, firmware, and/or software product (hereafter called the product) that it licenses, or sells, to the Purchasing Entity under this master price agreement. When applicable, Contractor warrants that product(s) furnished pursuant to this contract shall, when used in accordance with the product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific products must perform as a package or system, this warranty shall apply to the products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this contract for breach of warranty.

AMENDMENTS: The terms of this master price agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Master Price Agreement Administrator of the Lead State.

ASSIGNMENT/SUBCONTRACT: Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this master price agreement, in whole or in part, without the prior written approval of the Master Price Agreement Administrator of the Lead State.

NONDISCRIMINATION: The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to Participating State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This master price agreement may be canceled if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

SEVERABILITY: If any provision of this master price agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the master price agreement did not contain the particular provision held to be invalid.

INSPECTIONS: Goods furnished under this master price agreement shall be subject to inspection and testing by the Purchasing Entity at times and places determined by the Purchasing Entity. If the Purchasing Entity finds goods furnished to be incomplete or not in compliance with proposal specifications, the Purchasing Entity may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Purchasing Entity, the Purchasing Entity may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Purchasing Entity's rights including the rights and remedies under the Uniform Commercial Code.

PAYMENT: Payment for completion of a master price agreement order is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. The Contractor may assess overdue account charges on the outstanding balance in accordance with, and up to the maximum allowed by, the laws of the participating state. Payments may be remitted by mail or electronic funds transfer. Payments may also be made via a Purchasing Entity's "Purchasing Card".

EXHIBIT ONE

Standard Contract Terms and Conditions  
National Association of State Procurement Officials (NASPO) Cooperative Procurements

**FORCE MAJEURE:** Neither party to this master price agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Lead State may terminate this master price agreement after determining such delay or default will reasonably prevent successful performance of the master price agreement.

**HAZARDOUS CHEMICAL INFORMATION:** The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the Purchasing Entity agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

**FIRM PRICE:** Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of receipt of bids or proposals. Prices must remain firm for the full term of the master price agreement.

**EXTENSION OF PRICES:** In the case of error in the extension of prices in the proposal, the unit prices will govern.

**PROPOSAL PREPARATION COSTS:** NASPO and the lead state are not liable for any costs incurred by the offeror in preparation of the bid or proposal.

**CERTIFICATION REGARDING CONFLICT OF INTEREST:** Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any Participating State to any officer or employee of NASPO or Participating States to secure favorable treatment with respect to being awarded this contract.

**INDEPENDENT CONTRACTOR:** Contractor shall be an independent Contractor, and as such shall have no authorization, express or implied to bind the Participating States to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for NASPO or the states, except as expressly set forth herein.

**POLITICAL SUBDIVISION PARTICIPATION:** Participation under this master price agreement by political subdivisions (i.e., statutorily eligible colleges, school districts, counties, cites, etc.) of the NASPO participating states shall be voluntarily determined by the political subdivision.

After the solicitation has closed, and an award has been made, additional non-NASPO purchasing entities in non-Participating States may be added with the consent of the chief procurement official in the non-Participating State, the Contractor and the Lead State (on behalf of the NASPO Participating States) through the execution of an agreement as required by the lead state, and the execution of a Participating Addendum.

The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

**CERTIFICATION REGARDING DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by NASPO.

**RECORDS ADMINISTRATION:** The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this master price agreement. These records will be retained by the Contractor for at least four years after the master price agreement terminates, or until all audits initiated within the four years have been completed, whichever is later.

**AUDIT OF RECORDS:** The Contractor agrees to allow NASPO, State and Federal auditors, and state agency staff access to all the records related to this master price agreement, and the right to copy those records, for audit, inspection and monitoring of services. Such access will be during normal business hours, or by appointment.

EXHIBIT ONE

Standard Contract Terms and Conditions  
National Association of State Procurement Officials (NASPO) Cooperative Procurements

PRICES AS CEILING:

Master Price Agreement prices represent ceiling prices for the supplies and services priced in the master price agreement.

The vendor shall report to the Lead State any price reduction or discount, or other more favorable terms, offered to any Purchasing Entity.

In instances NOT related to the established standards, committed volumes or volume bulk purchases of a participating state or states, the awarded vendor agrees to negotiate in good faith to reestablish ceiling prices or other more favorable terms and conditions applicable to future orders.

STATE PARTICIPATION/UNIQUE TERMS AND CONDITIONS:

Apart from the Lead State conducting the solicitation, the participating States have signified their initial intent to participate in a Master Price Agreement resulting from this Solicitation. Final participation in the Master Price Agreement by the State(s) shall be signified through the execution of a Participating Addendum.

After the solicitation has closed and an award has been made, additional NASPO Procurement Cooperative member States may be added with the consent of the Contractor and the Lead State (on behalf of the NASPO Participating States) through execution of a Participating Addendum.

Revision Date: November 27, 2006

SUMMARY OF AMENDMENTS

<b>Amendment Number</b>	<b>Revision Date</b>	<b>Description</b>
6	04/01/14	To indicate renewal for twelve (12) months for OHIO ONLY, as a result of mutual agreement between the State of Ohio and the Contractor. To indicate Wisconsin WIC will not participate in this contract after 03/31/14. This amendment also updates the contract contact for the Office of Procurement Services.
5	01/01/14	To indicate Ohio is also renewing the contract for three (3) months, effective January 1, 2014 through March 31, 2014. Also to change the contractor contact information.
4	01/01/14	To indicate a renewal for three (3) months, effective January 1, 2014 through March 31, 2014, for Wisconsin only.
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.