

INVITATION TO BID

State of Ohio
Department of Administrative Services
General Services Division
Office of Procurement Services

The Original Signed Bid must be submitted to the Office of Procurement Services to receive consideration for award.		BIDDER NAME	
BID NUMBER <u>OT904914</u>	OPENING DATE (1:00 p.m.) <u>NOVEMBER 22, 2013</u>	STREET ADDRESS <input type="checkbox"/> Check if remit address is different and list on separate sheet	
General Services Division Office of Procurement Services 4200 Surface Road Columbus, OH 43228-1395 Attn: Bid Desk		CITY STATE ZIP	
		COUNTY	MBE/EDGE CERTIFICATE NUMBER
		TELEPHONE NO. ()	TOLL FREE NO. 1 - ()
		CONTACT PERSON	FAX NO. ()
REQ./INDEX NO. DOH077	BID NOTICE DATE 10/23/13	CONTRACTOR'S E-MAIL ADDRESS	
SELECT YOUR PREFERRED METHOD OF RECEIVING PURCHASE ORDERS AND ENTER THE E-MAIL OR FAX NUMBER INFORMATION (ONLY SELECT ONE METHOD) <input type="checkbox"/> E-Mail <input type="checkbox"/> Fax			
In addition to the standard terms for payment, the payment terms for state agency(ies) will be 2%, 10 Days, Net 30 Days unless otherwise stated in the following space. If no discount is offered, bidder should circle "Net 30 Days". _____%, _____Days, Net 30 Days			
<u>PARTICIPATING AGENCY(IES):</u> OHIO DOH/WIC, INDIANA, MICHIGAN, NEVADA AND WISCONSIN WIC PROGRAMS AND OTHER STATE WIC PROGRAMS AUTHORIZED BY THE WESTERN STATES CONTRACTING ALLIANCE-NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (WSCA-NASPO)			
ADDENDUM FOR CHANGE ADDENDUM NO.: 2 REVISION DATE: 10/30/13			
<u>THE DEPARTMENT OF ADMINISTRATIVE SERVICES, OFFICE OF PROCUREMENT SERVICES IS SOLICITING BIDS FOR:</u> WIC DRY INFANT CEREAL AND WIC INFANT FOODS REBATE PROGRAMS			
Attached are pages 11 through 25 to this Invitation to Bid. Remove the corresponding pages from the existing bid and replace with the attached.			
As indicated herein this addendum is issued to add page eleven (11) to add specification and requirements language and to repaginate pages 11 through 25.			

**14. Each month as part of the automated WIC Business Intelligence (BI) database process, the State WIC Agency calculates the partial redeemed count and amount for rebated infant cereal/food. Rebated items are not combined on WIC coupons with any other products. The steps in the partial redemption calculation are as follows:

- a. Sum the total containers statewide that were contained on the WIC coupons redeemed in the prior month to obtain a total statewide container count. This summary is by item number and month.
- b. Sum the statewide amount paid for all of these items. This summary is by item number and month.
- c. Calculate an average statewide price for the items paid rounded to 4 decimal points. This average is by item number and month.
- d. For each WIC coupon that contained a rebated item and was paid a value greater than zero, calculate the partial redemption item count for the coupon.
- e. This calculation is equal to the count of items issued on the coupon minus the result of amount paid divided by the state average rounded-up.

Example:

Containers of cereal/food issued on the WIC coupon = 7

Amount State WIC Agency paid on the WIC coupon = \$30.00

State average for this cereal/food = \$6.00

The formula looks like this with the values added:

Partial containers = 7 containers issued – Round-up ($\$30.00 / \6.00)

This equates to 2 partial containers on this WIC coupon.

The State WIC Agency writes the value (2) to the obligation record in the WIC Business Intelligence (BI) database process load process in addition to calculating the Partial Dollar Amount it represents. The Partial Dollar Amount is equal to the Partial Count multiplied by the rebate amount. These values are included in the monthly report run for Rebate Partials.

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** This addendum is issued to add specification and requirements language to this invitation to bid.

SPECIFICATIONS AND REQUIREMENTS cont'd.
FOR THE WIC INFANT CEAREAL AND INFANT FOOD REBATE PROGRAM FOR OHIO, INDIANA,
MICHIGAN, NEVADA AND WISCONSIN

A. State Agency Payment and Contact Information

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, OH 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	Ms. Erin Czajkowski IN WIC Finance Specialist Indiana State Department of Health Division: Operational Services Telephone: 317-234-3536 E-mail: eczajkowski@isdh.in.gov
Michigan WIC Program Michigan Department of Community Health 320 So. Walnut St. Lansing, MI 48913	Stan Bien, Director WIC Division Michigan Department of Community Health 320 So. Walnut St. Lansing, MI 48913 biens@michigan.gov Phone: 517-335-8448 Fax: 517-335-8835
State of Nevada WIC Nevada State WIC Program Division of Public and Behavioral Health 4126 Technology Way, Suite 102 Carson City, NV 89706	Michelle Walker, RD, Health Program Manager State of Nevada WIC Nevada State WIC Program Division of Public and Behavioral Health 4126 Technology Way, Suite 102 Carson City, NV 89706 Ph 775.684.4236 Fax 775.684.4246 E-mail: mwalker@health.nv.gov
Department of Health Services Wisconsin Division of Public Health 1 West Wilson Street PO Box 1668 Madison, WI 53701-1668	Ms. Kersten Knauf Nutrition Fiscal Manager Wisconsin Department of Health Services Telephone: 608-266-3891 E-mail: kerstenk.knauf@dhs.wisconsin.gov

B. 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 one half (3.5) years, after the final rebate payment is made, all records directly related to any Contract awarded pursuant to this Bid.
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 F, Part 2, the records must be retained until all issues arising out of the audit, litigation, or action are resolved.

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SPECIFICATIONS AND REQUIREMENTS cont'd.
FOR THE WIC INFANT CEAREAL AND INFANT FOOD REBATE PROGRAM FOR OHIO, INDIANA,
MICHIGAN, NEVADA AND WISCONSIN

I. CONTRACTOR RESPONSIBILITIES

- A. The Contractor shall perform in compliance with Section III, Items A through F of any Contract awarded pursuant to this Bid.
- B. The Contractor shall guarantee that sufficient quantities of Contract brand infant cereals and/or infant foods, 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 cereals and/or infant foods 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 shall pay a rebate, at the same percentage discount under the terms of this Contract, on another brand of similar infant cereal and/or infant foods issued to participants. Before issuing a non-contract brand infant cereal and/or infant foods, 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 one hundred and twenty (120) calendar days prior to the effective date of such changes.
- D. If the Contractor produces new infant food/infant cereal products or new container sizes that are eligible for the WIC Program, the Contractor will provide that same Average Commercial Wholesale Price Per Ounce minus Rebate Price Per Ounce (Net Price Per Ounce) for that category.

II. 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.

III. STATE WIC AGENCIES RESPONSIBILITIES

- A. The State WIC Agencies shall perform in compliance with any Contract award 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 vendor's name, address and authorized status.
- C. 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 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. 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 cereal and/or 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 the State WIC Program administrative rules contained in, 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.

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SPECIFICATIONS AND REQUIREMENTS cont'd.
FOR THE WIC INFANT CEAREAL AND INFANT FOOD REBATE PROGRAM FOR OHIO, INDIANA,
MICHIGAN, NEVADA AND WISCONSIN

IV. 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 the United States Department of Labor regulations.

V. BIDDER DOCUMENTATION

- A. 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 the United States Department of Labor regulations.
- B. 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 VIII, Item A.
- C. 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 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 VIII, Item A.
- D. 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 IX, Item E.

Notice: Documentation for Section VIII, Items A thru C, 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. Documents will be requested during evaluation and given a deadline of five (5) business days provided for submission. Failure to provide documents requested by the deadline provided will deem the bid not responsive and no further consideration will be given.

- E. The Bidder shall provide with the Bid Response a copy of the nationally published Commercial Wholesale Price List for each infant cereal and/or infant foods produced and/or subcontracted. Price list shall be that which is in effect on the published opening date of the Bid.

VI. PROCEDURAL NOTES

- A. This solicitation is for infant cereal and infant foods. However, if the State WIC Agency adds more types of infant cereals and infant foods 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 and/or infant foods are approved by the State WIC Agency.

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- B. During the term of any Contract issued pursuant to this Bid, if the Contractor discontinues the production of the Contract brand infant cereal and/or infant foods, the Contractor may, in writing to the State WIC Agency, offer a replacement for the infant cereal and/or infant foods. 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 or infant food and meets the Federal WIC definition for an infant cereal or infant food, (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 IX, Item B is appropriate as a replacement of the Contract brand infant cereal or infant food. To be appropriate, the offered infant cereal and/or infant food must be at a minimum:
1. Be a cereal and/or food approved by the United State Department of Agriculture, Food and Nutrition Service to be used as an infant cereal or infant food by meeting the Federal WIC definition for infant cereal or infant food.
 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 and/or infant foods.
- D. If the State WIC Agency adds a new or replacement infant cereal and/or infant food, the change will take effect within one hundred twenty (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 had 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.

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BID PRICE PAGE

OAKS ITEM NO.: _____

BIDDER: _____

A	B	C	D
State Program	Average Monthly Redeemed (ounces) Per Infant	Average Monthly Infant Participation Receiving Cereal	Average Monthly Total Ounces Redeemed
Ohio WIC	17.89	22,357	399,967
Indiana WIC	24	11,741	281,784
Wisconsin WIC	24	7,525	180,600
Michigan WIC	22.91	28,636	656,051
Nevada WIC	24	8,817	211,608
ITCN WIC	24	117	2,808

Twenty-four ounces is the maximum amount allowed by WIC Program Regulations (7CFR section 246.10) Issued amounts may be less.

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

- (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.

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BID PRICE PAGE cont'd

OAKS ITEM NO.: _____

BIDDER: _____

State Program	Average Monthly Redeemed (ounces) per Infant *	Average Monthly Infant Participation	Average Total Monthly Ounces Redeemed
Ohio WIC	117.52 oz. – Fruits & vegetables	26,641	3,130,850
	58.39 oz. – Meats & Poultry	1,513	88,344
Indiana WIC	122.56 oz. – Fruits & vegetables	14,477	1,846,686
	73.23 oz. – Meats & Poultry	815	62,942
Wisconsin WIC	126.36 oz. – Fruits & vegetables	9,221	1,165,316
	65.46 oz. – Meats & Poultry	642	42,023
Michigan WIC	125.01 oz. – Fruits & vegetables	28,638	3,580,036
	65.80 oz. – Meats & Poultry	2,261	148,774
Nevada WIC	155.38 oz. – Fruits & vegetables	8,817	1,369,984
	77.5 oz. – Meats & Poultry	1,886	146,165
ITCN WIC	156.44 oz. – Fruits & vegetables	117	18,304
	77.5 oz. – Meats & Poultry	16	1,240

E		F	G	H	I
Manufacturer's Brand Name:		Commercial Wholesale	Rebate Amount	Net Price Per Ounce	Monthly Net Price
		Price Per Ounce		(1) (2)	
		In Effect as of the Bid Opening Date	Per Ounce	(F-G)	(D x H)
2.5 oz	4 oz		\$		
		\$		\$	\$
		\$		\$	\$
		\$		\$	\$
		\$		\$	\$
		\$		\$	\$
		\$		\$	\$
		\$		\$	\$
		\$		\$	\$
		\$		\$	\$

- (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.

FOOD VARIETIES OFFERED: _____

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BID ATTACHMENTS

ATTACHMENT ONE

[LINK TO PDF FOR INDIANA INFANT CEREAL REBATE PROCEDURE](#)
[LINK TO PDF FOR INDIANA INFANT FOOD REBATE PROCEDURE](#)

ATTACHMENT TWO

[LINK TO PDF FOR INDIANA TERMS AND CONDITIONS](#)

ATTACHMENT THREE

[LINK TO PDF FOR WISCONSIN REBATE PROCEDURE](#)

ATTACHMENT FOUR

[LINK TO PDF FOR WISCONSIN TERMS AND CONDITIONS](#)

ATTACHMENT FIVE

[LINK TO PDF FOR MICHIGAN REBATE PROCEDURE](#)

ATTACHMENT SIX

[LINK TO PDF FOR MICHIGAN TERMS AND CONDITIONS](#)

ATTACHMENT SEVEN

[LINK TO PDF FOR NEVADA REBATE PROCEDURE](#)

ATTACHMENT EIGHT

[LINK TO PDF FOR NEVADA TERMS AND CONDITIONS](#)

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EXHIBIT ONE

Western States Contracting Alliance, National Association of State Procurement Officials (WSCA-NASPO)
Master Agreement Terms and Conditions**1. AGREEMENT ORDER OF PRECEDENCE:**

Orders and Participating Addenda shall be governed by the Cooperative Contract and these terms and conditions (collectively referred to in these terms and conditions as the "Master Agreement"). The Master Agreement shall consist of the following documents:

1. The Specifications and Requirements in the IFB;
2. The remainder of the IFB, including any Participating Entity terms and conditions attached as exhibits or attachments; and
3. WSCA-NASPO Master Agreement Terms & Conditions;
4. A Participating Entity's Participating Addendum ("PA");
5. A Purchase Order issued against the Master Agreement;

6. Contractor's response to the Solicitation.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

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

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

4. CANCELLATION. Except with respect to participation by the states of Ohio, Indiana, and Wisconsin, this Master Agreement may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, except for the states of Ohio, Indiana, and Wisconsin, any Participating State or other Participating Entity may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the applicable Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, rights to receipt of rebates, and rights attending any warranty or default in performance in association with any order. Cancellation of the Master Agreement due to Contractor default may be immediate.

5. CONFIDENTIALITY, NON-DISCLOSURE AND INJUNCTIVE RELIEF

5.1 Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing the Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity's or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (a) any Purchasing Entity's records, (b) personnel records, and (c) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (d) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (e) is disclosed with the written consent of Purchasing Entity or; (f) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

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5.2 Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State Contract Administrator immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

5.3 Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

5.4 Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

6. 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. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State Contract Administrator.

7. DEFAULTS & REMEDIES

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- i. Nonperformance of contractual requirements; or
- ii. A material breach of any term or condition of this Master Agreement; or
- iii. Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement proves to be untrue or materially misleading; or
- iv. Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- v. Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, Lead State Contract Administrator shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State Contract Administrator shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State Contract Administrator, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

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c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and Lead State Contract Administrator shall have the right to exercise any or all of the following remedies:

- i. Exercise any remedy provided by law; and
- ii. Terminate this Master Agreement and any related Contracts or portions thereof; and
- iii. Impose liquidated damages as provided in this Master Agreement; and
- iv. Suspend Contractor from being able to respond to future bid solicitations; and
- v. Suspend Contractor's performance; and
- vi. Withhold payment until the default is remedied.

d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

8. DELIVERY. The prices are the delivered price to any 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 Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount, if any, 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.

9. FORCE MAJEURE. Neither party to this Master 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 Contract Administrator may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

10. GOVERNING LAW AND VENUE

The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State Contract Administrator (in most cases also the Lead State). The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State Contract Administrator. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, and award if named as a party or an intervener; the state serving as the WSCA-NASPO Administrator if a named party or intervener (for other claims); the Participating State if a named party or intervener; the Participating Entity state if a named party or intervener; or the Purchasing Entity state if a named party or intervener.

11. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State and Participating Entities, Purchasing Entities, and the Lead State Contract Administrator, along with their officers, agencies, and employees as well as any person or entity for which they may be liable, from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

* This addendum is issued to add page 11 and repaginate pages 11-25 of this invitation to bid.

12. INDEMNIFICATION – INTELLECTUAL PROPERTY. [NOT USED]

13. INDEPENDENT CONTRACTOR. The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State Contract Administrator, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

14. INDIVIDUAL CUSTOMER. Except to the extent modified by a Participating Addendum, each Participating Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State Contract Administrator has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Except as explicitly agreed in the terms of a Participating Addendum, no entities other than the states of Ohio, Indiana, or Wisconsin are committee to a requirements contract. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

15. INSURANCE. Unless otherwise agreed in the Master Agreement or a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

- a) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal industry (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Purchasing Entity and Participating Entity by the Contractor.

Prior to commencement of performance, Contractor shall provide to the Lead State Contract Administrator a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State Contract Administrator that (i) names the Participating Entities identified in the IFB as additional insureds, (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating Entity has been given at least thirty (30) days prior written notice, and (iii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating Entity as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, the Participating Entities rights and Contractor's obligations are the same as those specified in the first sentence of this subsection. Before performance of any Purchase Order issued after execution of a Participating Addendum authorizing it, the Contractor shall provide to a Purchasing Entity or Participating Entity who requests it the same information described in this subsection.

Contractor shall furnish to the Lead State Contract Administrator, Participating Entity, and, on request, the Purchasing Entity copies of certificates of all required insurance within thirty (30) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Purchase Order's effective date and prior to performing any work. The insurance certificate shall provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in all states); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of the requirement for notice of cancellation. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at sole option of the Lead State Contract Administrator, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

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16. 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.

17. LICENSE OF PRE-EXISTING INTELLECTUAL PROPERTY. [NOT USED]

18. NO WAIVER OF SOVEREIGN IMMUNITY. In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of a Lead State or a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

19. ORDER NUMBERS. Master Agreement order and Purchase Order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

20. PARTICIPANTS. WSCA-NASPO Cooperative Purchasing Organization LLC is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the WSCA/NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the organized US territories. Obligations under this Master Agreement are limited to those Participating States who have signed 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 award(s) are permissive.

21. ENTITY PARTICIPATION. Use of specific WSCA-NASPO cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

22. PAYMENT. Payment for completion of a contract 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. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

23. PUBLIC INFORMATION. This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

24. RECORDS ADMINISTRATION AND AUDIT.

The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder.

Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for an overpayments inconsistent with the terms of the Master Agreement or orders or underpayment of fees found as a result of the examination of the Contractor's records.

The rights and obligations herein right exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State Contract Administrator to review compliance with those obligations.

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25. REPORTS and ADMINISTRATIVE FEES.

The Contractor shall submit quarterly sales reports directly to WSCA-NASPO using the WSCA-NASPO Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under the contract shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than 30 day following the end of the calendar quarter (as specified in the reporting tool).

The Contractor shall pay WSCA-NASPO Cooperative Purchasing Organization, or its assignee, an Administrative Fee of one-quarter of one percent (0.25%) no later than 60 days following the end of each calendar quarter. The WSCA-NASPO Administrative Fee shall be submitted quarterly and is based on sales of products and services (less any charges for taxes or shipping). The WSCA-NASPO Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with the bid.

Additionally, some states may require an additional fee be paid directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements may not affect the WSCA-NASPO Administrative Fee or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

26. STANDARD OF PERFORMANCE AND ACCEPTANCE. The Standard of Performance applies to all Product(s) purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in the solicitation or the Participating Addendum, starting from the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If

the Product does not meet the Standard of Performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the Standard of Performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the Standard of Performance issue(s). If after the cure period, the Product still has not met the Standard of Performance Purchasing Entity may, at its option: (1) declare Contractor to be in breach and terminate the Order; (2) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (3) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be accepted and no charges shall be paid until the Standard of Performance is met. The warranty period will begin upon Acceptance.

27. SYSTEM FAILURE OR DAMAGE. In the event of system failure or damage caused by the Contractor or its Product, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

28. TITLE OF PRODUCT. Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.

29. WAIVER OF BREACH. Failure of the Lead State Contract Administrator, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State Contract Administrator, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State Contract Administrator or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

30. WARRANTY. [NOT USED]

31. ASSIGNMENT OF ANTITRUST RIGHTS. Contractor irrevocably assigns to a Participating Entity any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

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Contractor shall require any subcontractors hired to perform any of Contractor's obligations, under this Master Agreement or Participating Addendum, to irrevocably assign to a Participating Entity, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

32. Definitions

Acceptance - means a written notice from a purchasing entity to Contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a product for which acceptance testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the product, unless the Purchasing Entity provides a written notice of rejection to Contractor.

Acceptance Testing - means the process for ascertaining that the Product meets the standards set forth in the section titled Standard of Performance and Acceptance, prior to Acceptance by the Purchasing Entity.

Contractor - means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

Intellectual Property – means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

Lead State - means the State conducting this cooperative procurement, evaluation, and award. The Lead State conducting this cooperative procurement usually is the Lead State Contract Administrator, the term used in these Master Agreement Terms and Conditions to refer to the state centrally administering any resulting Master Agreement with the permission of the Signatory States.

Master Agreement – means the underlying agreement executed by and between the WSCA-NASPO contract administrator, normally the Lead State, acting on behalf of WSCA-NASPO, and the Contractor, as now or hereafter amended.

Order or Purchase Order - means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

Participating Addendum - means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

Participating Entity - means a state, or other legal entity, properly authorized by a state to enter into a Participating Addendum.

Purchasing Entity – means a state, city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, who issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

WSCA-NASPO -is the WSCA-NASPO Cooperative Purchasing Program, facilitated by the WSCA-NASPO Cooperative Purchasing Organization LLC, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of WSCA-NASPO. The WSCA-NASPO Cooperative Purchasing Organization facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states and the District of Columbia.

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