

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

MANDATORY USE CONTRACT FOR: INFANT FORMULA REBATE FOR THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)

CONTRACT No.: OT900012

EFFECTIVE DATES: 10/01/11 to 09/30/14

The Department of Administrative Services has accepted bids submitted in response to Invitation to Bid No. OT900012 that opened on 03/14/11. 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 the Ohio Department of Health, Bureau of Nutrition Services, 245 North High Street, 6th Floor, Columbus, OH 43215, as applicable.

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

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

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

Janice Fitzpatrick, CPPB
janice.fitzpatrick@das.state.oh.us

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

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

Signed: _____
Robert Blair, Director Date

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SPECIAL CONTRACT TERMS AND CONDITIONS

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

DESCRIPTIVE LITERATURE: The Bidder may be required to submit descriptive literature of the supplies or services being offered. If requested, the literature will be used in the evaluation process to determine the lowest responsive and responsible bidder. If not provided as part of the bid response, the Bidder must provide said literature within seven (7) calendar days after request/notification by the Office of Procurement Services to do so. Any references, that may appear in the descriptive literature, that may alter the terms and conditions and specifications of the bid (e.g. 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 either as part of their bid response or within the time specified herein will deem the bidder not responsive.

EVALUATION: Bids will be evaluated in accordance with Article I-17 of the "Instructions to Bidders". In addition, the state will evaluate in accordance with WIC Program Regulations (7CFR section 246.16a). The Bidder must submit a rebate on milk-based concentrated liquid, ready-to-feed/use and powder infant formula and supply a soy-based infant formula in each of the three forms (concentrated liquid, ready-to-feed/use, and powder) at a rebate proportionate to each of the respective forms of milk-based infant formula. The Contract shall be awarded to the responsive bidder offering the lowest total monthly net price for all milk-based infant formula (concentrated liquid, ready-to-feed/use, and powder).

On Page 15, the bidder shall enter product name of each physical form of formula in Column B and the standard size container for its powder formula product in Column C. The bidder will enter the Reconstituted Ounces per Unit for each formula type in Column D, the Wholesale Price per Unit in Column E and the Rebate Bid per Unit in Column F. Subtracting Column F from Column E yields the Net Cost per Unit (Column G). These numbers will be used in the Infant Formula Rebate Information and Bid Evaluation Worksheet found on Page 15. The bid will be awarded to the bidder with lowest monthly total cost listed in Column O on Page 16. The lowest monthly cost is calculated by multiplying the Total Monthly Units (Column K) for each formula type times the Net Cost per Unit (Column N). The Total Monthly Units is calculated by dividing the Total Reconstituted Monthly Ounces (Column J) by Reconstituted Ounces per Unit (Column I). If awarded the contract, the prices submitted in the Contractor's bid for milk-based infant formula shall serve as the basis in calculating the percentage discount to be used for all other contract brand infant formulas.

CONTRACT AWARD: A contract will be awarded to the lowest responsive and responsible bidder meeting all bid specifications and requirements listed herein offering the lowest Monthly Net Price of infant formula to the state of Ohio as determined on Infant Formula Rebate Information and Bid Evaluation Worksheet found on page 16 under Column O. 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, the State will issue the "primary contract infant formula" (by physical form), as defined in the definitions section under "Contract Brand Infant Formula," as the infant formula of first choice. Ohio only issues contract infant formula and exempt infant formula; it does not issue non-contract infant formula (see Definitions Section for contract and exempt formulas). The State WIC Agency provides no guarantee of the quantity, type, or physical forms that will be used under a contract awarded pursuant to this bid.

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

CANCELLATION AND TERMINATION: Any contract awarded pursuant to this bid may be canceled 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 cancel any contract awarded pursuant to this bid prior to October 1, 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.

USAGE REPORTS: Every twelve (12) months the contractor must submit a report (written or on disk) indicating sales generated by this contract. The report shall list usage by customer, by line item, showing the quantities/dollars generated by this contract. The report shall be forwarded to the Office of Procurement Services, 4200 Surface Road, Columbus, OH 43228-1395, Attn: Janice Fitzpatrick.

Bid Automobile Liability Checklist:

Contractor will indicate, by checking the appropriate box(es) below, which mode of transportation will apply to this contract.

- Bidder/Broker ("The Contractor") or their Sub Contractor will make delivery or be performing services using a vehicle that is owned, leased or rented. Provide Certificate of Insurance documenting automobile liability with a Combined Single Limit of \$500,000.00.
- Goods/Services will be delivered via common carrier.
- No employee or representative of the contractor will have cause to be on state property to make deliveries or to perform services.

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/~furlis/ovffreq.html>

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

NOTICE ON THE USE OF SOCIAL SECURITY NUMBERS AS FEDERAL TAX IDENTIFICATION NUMBERS

The Department of Administrative Services (Department) requires vendors and contractors wishing to do business with the State to provide their Federal Taxpayer Identification Number to the Department. The Department does this so that it can perform statutorily required "responsibility" analyses on those vendors and contractors doing business with the State and, under limited circumstances, for tax reporting purposes. If you are a vendor or contractor using your Social Security Number as your Federal Taxpayer Identification Number, please be aware that the information you submit is a public record, and the Department may be compelled by Ohio law to release Federal Taxpayer Identification Numbers as a public record. If you do not want to have your Social Security Number potentially disclosed as a Federal Taxpayer Identification Number, the Department encourages you to use a separate Employer Identification Number (EIN) obtained from the United States Internal Revenue Service's to serve as your Federal Taxpayer Identification Number.

USE OF WIC LOGO AND NAME: Manufacturer acknowledges that the WIC Acronym and the WIC Logo are service marks owned by the Department of Agriculture (USDA), and that all rights therein and goodwill pertaining thereto belong exclusively to USDA. Manufacturer shall not use these service marks in any manner on its goods or their containers or packaging or on tags or labels affixed thereto. Manufacturer also shall not use the WIC Logo in advertising or other promotional materials (collectively: "advertising"). Manufacturer shall not use the WIC Acronym in advertising in any manner that is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Manufacturer with the WIC Program, or as to the sponsorship or approval of Manufacturer's goods, services, advertising, or commercial activities, including nutritional message(s), by the WIC Program, USDA, or the State agency. Manufacturer shall include the following statement with any use of the WIC Acronym in advertising: "WIC is a registered service mark of the U.S. Department of Agriculture for USDA's Special Supplemental Nutrition Program for Women, Infants and Children."

CONTRACTOR DISCLOSURE CERTIFICATION

DISCLOSURE OF SUBCONTRACTORS / JOINT VENTURES (See Standard Contract Terms and Conditions, Section (Roman numeral) V. General Provisions:, Paragraph Q.): [For Supplies only Bids]:

List names of subcontractors who will be performing work under the Contract.

By the signature affixed to Page 1 of this Bid, Bidder hereby certifies that the above information is true and accurate. The Bidder agrees that no changes will be made to this list of subcontractors or locations where work will be performed or data will be stored without prior written approval of DAS. Any attempt by the Bidder/Contractor to change or otherwise alter subcontractors or locations where work will be performed or locations where data will be stored, without prior written approval of DAS, will be deemed as a default. If a default should occur, DAS will seek all legal remedies as set forth in the Terms and Conditions which may include immediate cancellation of the Contract. Failure to complete this page may deem your bid not responsive.

DISCLOSURE OF SERVICE PROVIDERS (See Standard Contract Terms and Conditions, Section [Roman Numeral] V. General Provisions:, Paragraph G.): [For Services Contracts]

Bidders seeking to enter into a service contract shall disclose the following:

a) Principal location of business for the contractor (Name/City/State/Country)

b) Principal location of all subcontractors (Name/City/State/Country)

c) Location where services will be performed (Name/City/State/Country)

d) Location where any State data, applicable to the Contract, will be maintained or made available (Name/City/State/Country)

By the signature affixed to Page 1 of this Bid, Bidder hereby certifies that the above information is true and accurate. The Bidder agrees that no changes will be made to this list of subcontractors or locations where work will be performed or data will be stored without prior written approval of DAS. Any attempt by the Bidder/Contractor to change or otherwise alter subcontractors, locations where services will be performed or locations where data will be stored, without prior written approval of DAS, will be deemed as a default. If a default should occur, DAS will seek all legal remedies as set forth in the Terms and Conditions which may include immediate cancellation of the Contract. Failure to complete this page may deem your bid not responsive.

SPECIFICATIONS AND REQUIREMENTS
FOR INFANT FORMULA REBATE FOR THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM
FOR WOMEN, INFANTS AND CHILDREN (WIC)

I. SCOPE AND CLASSIFICATION

A. Scope

The Federal government has mandated that states examine cost containment measures in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program), including infant formula rebates. The purpose of this bid is to obtain a contractor among authorized infant formula manufacturers to provide a rebate on infant formula provided by the Ohio WIC Program and to be State WIC's single supplier of same. The State WIC Agency operates a retail vendor system (purchases by WIC participants from authorized WIC retail vendors). The infant formulas offered by the contractor shall be designated to be the Ohio WIC Program's contract brand infant formulas, thereby establishing a Sole Source Rebate System, as authorized by 42 United States Code (USC) section 1786, which is intended to increase participation in the WIC Program. The contract brand infant formulas shall be prescribed for all participants of the Ohio WIC Program, with the exception of exclusively breastfed infants and participants for whom the contract brand infant formula is medically contraindicated, as determined and documented on an individual participant basis, according to State WIC Agency prescribed policies and procedures. Infant formula rebates shall apply to contract brand infant formulas provided through the retail system. Estimates of the amounts of each type of infant formula to be provided on a monthly basis are provided on the Ohio Rebate Bid page. These figures are based on average monthly infant participation of 58,951; this number does not include exclusively breast feeding infants or infants issued exempt infant formula. These figures should not be construed to be guaranteed numbers of the amount of infant formula to be provided. The amount of infant formula provided will fluctuate, with the availability of federal funds, caseload, food cost increase/decrease, outreach efforts, and infant formula prescription policies. Any term contract issued pursuant to this bid shall be for a term of three (3) years, from October 01, 2011 through September 30, 2014, with the first payment to be made for the month of October 2011. 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, with agreement notice to the Department of Administrative Services no later than nine (9) months prior to expiration of the current contract. The cumulative total of all extensions shall not exceed 24 months.

B. Classification

Contractor shall provide rebates for the following:

1. Infant formula, milk-based, iron-fortified
 - a. Concentrate
 - b. Ready-to-Feed/Use
 - c. Powder
2. Infant formula, soy-based, iron-fortified
 - a. Concentrate
 - b. Ready-to-Feed/Use
 - c. Powder
3. Any other infant formula produced by the Contractor other than exempt formula that is at the sole discretion and authorized by the State WIC Agency.

SPECIFICATIONS AND REQUIREMENTS

II. DEFINITIONS

For the purposes of any term contract awarded pursuant to this bid,

- A. "Infant Formula" is a food that meets the definition of an infant formula in section 201 (z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)) and that meets the requirements for an infant formula under section 412 0 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a) and the regulations at 21 CFR parts 106 and 107.
- B. "Exempt Infant Formula" is an infant formula that meets the requirements for an exempt infant formula under section 412(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a(h)) and the regulations at 21 CFR parts 106 and 107. In Ohio, Exempt Formula is referred to as "Special Formula."
- C. "Contract Brand Infant Formula" is all infant formulas (except exempt infant formula) produced by the manufacturer awarded the infant formula cost containment rebate contract and approved by the State WIC Agency. This also includes soy-based infant formulas and all infant formula (except exempt infant formula) introduced after the contract is awarded and approved by the State WIC Agency. The "Primary contract infant formula" means the specific iron-fortified, milk-based infant formula for which manufacturers submit a bid to a State agency in response to the rebate solicitation and for which a contract is awarded by the State agency as a result of that bid. Non-contract standard iron-fortified, milk-based and soy-based formulas produced by other manufacturers are not authorized in Ohio.¹
- D. "State WIC Agency" is the State of Ohio, Department of Health, Bureau of Nutrition Services.
- E. "Local WIC Agencies" are agencies that have contracts with the State WIC Agency to assess the nutritional needs and to certify participants for participation in the WIC Program within a specified area.
- F. "Clinics" are health or human services facilities where applicants for WIC services are certified eligible for the WIC Program.
- G. "Participants" are pregnant, postpartum, or breastfeeding women, or infants and children who are receiving Food Instruments under the WIC Program, and the breastfed infants of participating breastfeeding women.
- H. "Alternate Shoppers" are individuals designated by the participants to receive and transact Food Instruments on behalf of the participant in the retail vendor system.
- I. "WIC retail vendors" are individuals or business entities that:
 - 1. Operate one or more grocery stores, pharmacies, or other businesses;
 - 2. Are authorized by the State WIC Agency to exchange Food Instruments for WIC authorized foods and infant formulas; and
 - 3. Are currently under contract with the State WIC Agency.
- J. "Food Instruments" are WIC coupons or Electronic Benefit Transfer (EBT) Cards² issued by the State WIC Agency or Local WIC Agency that:
 - 1. List or contain authorized foods and brand specific infant formula to be provided to participants or alternate shoppers and verifies receipt of same by signature of the participant or alternate shopper;
 - 2. May be exchanged / used by a participant or alternate shopper for authorized foods and brand specific infant formula at a WIC retail vendor location.
- K. "Valid period" is the duration of time that a Food Instrument may properly be exchanged by a participant for authorized foods and infant formula.
- L. "Redeemed" shall mean that the infant formula was listed on a Food Instrument exchanged by a participant for infant formula and submitted for processing and paid by the State WIC Agency.
- M. "Bid Opening" date and time are listed on page one (1), the date and time; the bid must be received by 1:00 PM, Eastern Standard Time (EST), and in accordance with the "Instructions, Terms and Conditions for Bidding".

¹ As defined in the Ohio WIC Policy and Procedures Manual

² Ohio WIC currently uses paper coupons but expects EBT implementation within five (5) years.

SPECIFICATIONS AND REQUIREMENTS

III. REQUIREMENTS

A. INFANT FORMULA

- * 1. Infant formulas shall be nutritionally complete, not requiring the addition of any ingredient other than water prior to being served in a liquid state. Infant formulas shall meet the requirements under 7 CFR 246.10(e)(1)(iii) and 7 CFR §246.10(e)(2)(iii) which describes formula requirements and is suitable for routine issuance to the majority of generally healthy, full-term infants.
1. All infant formula shall contain at least ten (10) milligrams of iron per liter of formula at the label specified dilution.
 2. All infant formula shall supply sixty-seven (67) kilocalories per one hundred (100) milliliters (twenty (20) kilocalories per fluid ounce) of infant formula at the label specified dilution.
 3. Formula shall be manufactured under and comply with all applicable provisions of the Federal Food, Drug and Cosmetic Act, as amended, including the Infant Formula Act of 1980, and all regulations promulgated there-under.
 4. All products offered within the categories of milk-based and soy-based infant formulas shall be the same manufacturer/brand name for each of these categories unless as specified in Section III, Item A, paragraph 7. Same brand name shall be construed, for purposes of this bid, to indicate the same infant formula in three (3) different forms. The forms shall be: 1) concentrate requiring the addition of water, 2) ready-to-feed/use requiring no additional preparation, and 3) powder requiring the addition of water.
 5. The Contractor will be required to pay a rebate on all contract brand infant formulas using the same percentage discount used for each form of the milk based contract brand infant formulas it produces, as calculated in Section III, Item A, paragraph 9.
 6. If the Contractor does not manufacture soy-based infant formula, the Contractor must contract with another manufacturer to supply the soy-based infant formula. The Contractor will be required to pay a rebate on the contracted soy-based infant formula using the same percentage discount used for each form of the milk-based infant formulas it produces, as calculated in Section III, Item A, paragraph 9.
 7. Infant formulas for rebate specified in this bid are being bid as brand specific, which signifies that no alternates will be accepted for an award. This is in accordance with the Ohio Administrative Code 123:5-1-10(1).
 8. The rebate amount per unit for the milk-based infant formulas listed in Column B of the Rebate Bid Sheet on page 15 will be the rebate amount per unit bid by the Contractor on the Rebate Bid Sheet (Column F), adjusted, if applicable, by the escalator clause. The rebate amount per unit for other contract brand infant formulas will be determined as follows:
 - a. The State will calculate the percentage discount for each physical form (concentrated liquid, ready-to feed/ use, and powder) of the milk-based contract brand infant formula. The percentage discount will be calculated by dividing the Rebate per Unit for the milk-based contract brand infant formula Rebate Bid (Column F), by the Contractor's published wholesale full truckload price per unit, as of the date of the bid opening and indicated in the Rebate Bid Sheet (Column E).
 - b. Unless otherwise specified in this contract, the rebate amount per ounce for each type and form of all other contract brand infant formulas will be calculated by multiplying the percentage discount for each physical form of the milk-based contract brand infant formula (as determined in 9a, above) by the Contractor's published wholesale full truckload price per ounce for each of the other contract brand infant formulas, as of the date of the bid opening.
 - c. The rebate amount per ounce may be adjusted, if applicable, in accordance with the Escalator Clause of this agreement.

* To indicate a correction to the Federal Regulation Code referenced.

** To indicate a clarification that escalator clause is the "Fixed Price with Economic Adjustments" on page 2.

SPECIFICATIONS AND REQUIREMENTS (CONT'D)

B. CONTRACT BRAND INFANT FORMULA REBATE PROCEDURE

1. For the term of any contract awarded pursuant to this bid, the Contractor shall, in exchange for single supplier status, rebate monthly, a fixed amount per ounce of contract brand infant formula calculated by multiplying the rebate amount for that item, as determined according to Section III, Item A, paragraph 9, by the number of ounces redeemed during the valid period by WIC retail vendors located in WIC retail counties.
2. Payments due to the State shall be based on the number of ounces of infant formula redeemed.
3. The rebate amount applied to the infant formula shall be the rebate amount effective for that infant formula during the month of the first day of use of the Food Instrument on which the infant formula is specified.
4. The State WIC Agency shall produce a monthly report specifying the amount of infant formula identified as redeemed in the preceding month through the regular WIC payment system. There are 3 recent invoice reports attached in Attachment Two. A link is provided for Invoices for June, July, August, December, 2010 and January 2011.
5. The State WIC Agency shall also produce a monthly report specifying the amount of infant formula redeemed through the State WIC Agency exception payment process.
6. The State WIC Agency shall submit an invoice based on Section III, Item B, paragraphs 4 and 5 and a copy of the reports to the Contractor within forty-five (45) calendar days after the end of the month for which the State WIC Agency is invoicing the Contractor for payment. The invoice shall contain the methodology and all data used to calculate the monthly rebate payment owed by the Contractor.
7. 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 formula. 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 cans statewide that were contained on the WIC coupons redeemed in the prior month to obtain a total statewide can 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:

Cans of formula issued on the WIC coupon = 7
Amount State WIC Agency paid on the WIC coupon = \$30.00
State average for this formula = \$6.00

The formula looks like this with the values added:

Partial cans = 7 cans issued – Round-up ($\$30.00 / \6.00)
This equates to 2 partial cans 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.

SPECIFICATIONS AND REQUIREMENTS (CONT'D)

8. For each Food Instrument that is redeemed during the month for which a rebate is invoiced and that includes contract brand infant formula, the State WIC Agency shall provide, to the Contractor, the following data that will enable the Contractor to verify the invoiced amount and the amount of partially redeemed cans:
 - a. The Food Instrument ID;
 - b. The Issue Date of Food Instrument;
 - c. The Food Instrument Valid Begin Date;
 - d. The specific contract brand infant formula redeemed;
 - e. The number of cans of contract brand infant formula redeemed, as printed on the Food Instrument;
 - f. The Food Instrument Process Date;
 - g. The dollar amount of the Food Instrument as submitted by the WIC retail vendor for redemption;
 - h. The actual amount paid to the WIC retail vendor for the redeemed Food Instrument.
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 B, paragraphs 9 and 11. 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. 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 WIC Coupons for processing after the Food Instrument's valid period, the total exchanges for any given month may include WIC Coupons from at least two issue months. In addition, USDA occasionally approves payment of coupons that may be expired at the time of submission. The Manufacturer agrees that infant formula identified on WIC Coupons 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.
13. The Contractor shall issue rebate payment checks payable to, "Treasurer, State of Ohio". Checks shall be mailed to the following address: Ohio Department of Health, P.O. Box 15278, Columbus, OH 43215-0278.
14. 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.
15. All disputes of any invoice during a federal fiscal year must be resolved by the first day of February in the following fiscal year.
16. The Contractor shall pay rebates on contract infant formula issued and redeemed during the contract, even though the contract may have been terminated or may have expired when the rebate amount is paid.
17. The State WIC Agency shall have the option of requesting from the Contractor up to three (3) prepayments of the monthly rebate amount owed per calendar year. The prepayment invoices will be based on the amount of infant formula redeemed from the most recent invoice paid by the Contractor. The State WIC Agency will submit a notice of request for a prepayment at least thirty (30) calendar days prior to the requested payment date. The notice shall specify the month to which prepayment shall be applied. The Contractor may deduct from the prepayment up to one percent (1%) of the total prepayment invoice. Once the actual amount of infant formula delivered and redeemed is determined for the month for which the prepayment was requested, over and / or under adjustments shall be made. The adjustment shall treat any deduction up to one percent (1%) made by the Contractor as though the Contractor made the prepayment without making such deduction. The State WIC Agency shall not be required to pay interest on overpayments made by the Contractor.

SPECIFICATIONS AND REQUIREMENTS (CONT'D)

C. Rounding up to the next whole can

The State WIC Agency's current policy allows infants a monthly quantity of infant formula that does not exceed the maximum ounces allowed for each type and form of infant formula issued, as specified in 7CFR 246.10(e)(1) through (e)(3) and (e)(9). In addition, the State WIC Agency will, if necessary to provide the full nutrition benefit, use the methodology outlined in 246.10(h). For all types and forms of contract brand infant formula, if the maximum quantity allowed is not perfectly divisible by the container size of contract brand infant formula, the State WIC Agency does not round up to the next whole can of infant formula. However, the State WIC Agency's policy regarding rounding up to the next whole can is subject to change.

D. Record Keeping

1. The Contractor shall allow the State WIC Agency, the USDA 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 a contract awarded pursuant to this bid, for the purpose of making audits, examinations, excerpts, or transcriptions.
2. The Contractor shall retain for three (3) years after the final rebate payment is made all records directly related to any contract awarded pursuant to this bid.
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, paragraph 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 formulas, offered on their bid response and awarded on any contract awarded pursuant to this bid, to meet State WIC Agency participant demand, shall be made available for purchase by authorized WIC retail vendors. In the event the Contractor cannot make available to one or more counties any one or more of the physical forms of the contract brand formulas 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 milk-based infant formula issued to participants. The Contractor shall notify in writing (i.e., email or facsimile transmission) the State WIC Agency within twenty four (24) hours once it has identified a shortage exists (including recalls). The Contractor shall verify the State WIC Agency has received such notice within twenty four (24) hours or first business days after said notification was sent. The State WIC Agency and the Contractor agree that the first choice of formula issuance for a product shortage shall be the contract infant formula in a different physical form. The second choice shall be within the same product line or non-contract, FDA approved concentrate, powder, and ready-to-feed formulas. The Contractor agrees to pay a rebate that yields the same net cost per ounce as the contract formula for a replacement formula in the product line or non-contracted, FDA approved concentrate, powder, and ready-to-feed formulas (not to exceed the established usage rate for the contracted formula) issued through the State WIC Agency until the agreed upon end date of the product shortage.
- C. The Contractor shall provide to the State WIC Agency advance notice of any changes in product packaging size, product labeling, or product reformulation. The notice shall be provided at least one hundred twenty (120) calendar days prior to the actual launch date of such changes. The State WIC Agency will disclose no proprietary information for the first 30 days of this period.
- D. All activities under any contract awarded pursuant to this bid shall be conducted in accordance with Title VI and VII of Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Title IX of the Educational Amendments of 1972, the Age Discrimination Act of 1975, the United States Department of Agriculture regulations on nondiscrimination, 7 Code of Federal Regulations (CFR) Part 15, Food and Nutrition Service instructions, and the Americans with Disabilities Act of 1990.

SPECIFICATIONS AND REQUIREMENTS (CONT'D)

- E. In the performance of their duties under any contract awarded pursuant to this bid, the Contractor shall abide by all applicable State and Federal regulations concerning the WIC Program including the regulations developed by the Food and Nutrition Service, United States Department of Agriculture contained in 7 CFR Part 246, and State WIC Program administrative rules contained in 3701-42 of the Ohio Administrative Code, as they exist now or may be amended.
- F. The Contractor must have a business continuity plan in place. The Contractor must test and update the IT disaster recovery portion of its business continuity plan at least annually. The plan must address procedures for response to emergencies and other business interruptions. Part of the plan must address backing up and storing data at a location sufficiently remote from the facilities at which the Contractor maintains the State's data in case of loss of that data at the primary site. The plan also must address the rapid restoration, relocation, or replacement of resources associated with the State's data in the case of a disaster or other business interruption. The Contractor's business continuity plan must address short- and long-term restoration, relocation, or replacement of resources that will ensure the smooth continuation of operations related to the State's data. Such resources may include, among others, communications, supplies, transportation, space, power and environmental controls, documentation, people, data, software, and hardware. The Contractor also must provide for reviewing, testing, and adjusting the plan on an annual basis.

V. STATE WIC AGENCY RESPONSIBILITIES

- A. The State WIC Agency shall perform in compliance with any contract awarded pursuant to this bid.
- B. Within thirty (30) days, the State WIC Agency will provide the Contractor with a list that indicates the infant formulas authorized as contract brand infant formulas, the percentage discount, rebate amount, and the net price per ounce for each physical form of contract brand infant formula calculated in accordance with Section III, Item A, paragraph 9.
- C. The State WIC Agency 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 not have access to any records identifying participants by name and/or address. The Contractor may not have access to any information about a WIC retail vendor that individually identifies the WIC retail vendor, except for the WIC retail vendor's name, address and authorization status. Further, the State WIC Agency 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 formula.
- D. The State WIC Agency shall abide by WIC Program Federal regulations and Ohio WIC policies and procedures pertaining to the monitoring of authorized WIC retail vendors for compliance with applicable program participation requirements and employ sanctions, if necessary.
- E. The State WIC Agency's obligations under any contract awarded pursuant to this bid are contingent upon the granting of funds by the Federal government, specifically the United States Department of Agriculture, and appropriation of funds by the Ohio General Assembly. If the Ohio General Assembly fails at any time to appropriate fund to the State WIC Program, 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 R.C. Section 126.07. Nothing in any contract awarded pursuant to this bid shall be construed to alter the State WIC Agency's exclusive right to determine which brands of infant formula, including those of the Contractor, are WIC Program approved brands for distribution to WIC Program participants in the retail vendor system.
- F. In the performance of their duties under any contract awarded pursuant to this bid, the State WIC Agency shall abide by all applicable State and Federal regulations concerning the WIC Program including the regulations developed by the Food and Nutrition Service, United States Department of Agriculture contained in 7 CFR Part 246, and State WIC Program administrative rules contained in 3701-42 of the Ohio Administrative Code, as they exist now or may be amended.
- G. The State WIC Agency agrees to provide the Contractor with reasonable notification regarding changes to State WIC Program administrative rules adopted by the Ohio Department of Health, which affect the Contractor's obligations under any contract awarded pursuant to this bid.

SPECIFICATIONS AND REQUIREMENTS (CONT'D)

VI. CONTRACTOR QUALIFICATIONS

- A. The Contractor shall be registered under the Federal Food, Drug and Cosmetic Act as required by 42 USC section 1786(f)(15) and that that its products are in compliance with Federal regulations issued pursuant to P.L. 100-137.
- B. 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.
- * C. The Contractor shall be in compliance with all applicable standards, orders, and 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. Refer to <http://www.gsa.gov/portal/content/101588>.

VII. 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 the infant formulas offered are manufactured and comply with all applicable provisions of the Federal Food, Drug and Cosmetic Act, as amended, including the Infant Formula Act of 1980, and all regulations promulgated there under. 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, E-mail 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.
- F. The Bidder shall provide with the bid response a copy of the nationally published commercial wholesale full truckload price list for each infant formula produced and/or subcontracted. Price list shall be that which is in effect on the published opening date of the bid.

* To indicate reference of GSA Web site.

SPECIFICATIONS AND REQUIREMENTS (CONT'D)

G. Documentation requested with the Bid Response:

1. W-9 Form and Vendor Information Form. The Offeror must complete Federal Form W-9, Request for Taxpayer Identification Number and Certification form and the Vendor Information Form (OBM-5657) in their entirety. At least one (1) original of each form (signed in blue ink) is to be submitted in the "original" copy of the Bid. If a subsidiary company is involved, Offerors are to have an original W-9 and OBM-5657 for both the parent and subsidiary companies. These documents and directions can be found on the OBM Web site under the heading "Vendor Forms" at: <http://www.ohiosharedservices.ohio.gov/Vendors.aspx>.
2. Affirmative Action. Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be completed using: <http://das.ohio.gov/Divisions/EqualOpportunity/AffirmativeActionProgramVerification/tabid/133/Default.aspx>. Approved Affirmative Action Plans can be found by going to the Equal Opportunity Department's Web site: <http://eodreporting.oit.ohio.gov/searchAffirmativeAction.aspx>. Copies of approved Affirmative Action plans shall be supplied by the Offeror as part of its Response or inclusion of an attestation to the fact that the Offeror has completed the process and is pending approval by the EOD office.
3. Current Certificate of Insurance with required endorsements, and copy of current Workers' Compensation Certificate
4. Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization (DMA). The bidder being awarded this Contract must:
 - a. Review the Terrorist Exclusion List at http://www.publicsafety.ohio.gov/links/terrorist_exclusion_list.pdf
 - b. Complete the Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization (DMA) form at: <http://www.publicsafety.ohio.gov/links/HLS0038.pdf> and submit this with your bid response.

Failure to complete the Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization (DMA) form may result in the bidder being deemed not responsive and/or may invalidate any Contract award. If not submitted with the response, the Offeror will have seven (7) calendar days, after notification, to submit the form.

5. Registration with the Secretary of State. By the signature affixed to this Offer, the Offeror attests that the Offeror is:
 - a. An Ohio corporation that is properly registered with the Ohio Secretary of State; or
 - b. A foreign corporation, not incorporated under the laws of the state of Ohio, but is registered with the Ohio Secretary of State pursuant to Ohio Revised Code Sections 1703.01 to 1703.31, as applicable.
Any foreign corporation required to be licensed under Sections 1703.01 to 1703.31 of the Ohio Revised Code, which transacts business in the state of Ohio, without being so licensed, or when its license has expired or been canceled, shall forfeit not less than \$250 nor more than ten thousand dollars. No officer of a foreign corporation shall transact business in the state of Ohio, if such corporation is required by Section 1703.01 to 1703.31 of the Revised Code to procure and maintain a license, but has not done so. Whoever violates this is guilty of a misdemeanor of the fourth degree.

Offeror attests that it is registered with the Ohio Secretary of State.

The Offeror's Charter Number is: _____.

Questions regarding registration should be directed to (614) 466-3910 or visit the Web site at <http://www.sos.state.oh.us>

Notice: Documentation for Section VII, Items A thru G, as specified, should be attached to the bid response. If documentation is not attached to bid response, the Office of State Purchasing may request it during bid evaluation. If requested during evaluation, documentation shall be provided within seven (7) 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.

SPECIFICATIONS AND REQUIREMENTS (CONT'D)

VIII. NOTES

- * A. If the State WIC Agency adds more types of infant formulas (excluding exempt infant formula) produced by the Contractor to its approved list during the term of the contract, the Contractor shall pay a rebate calculated in accordance with Section III, Item A, paragraph 9, except, to determine the rebate amount, the State will use the Contractor's published wholesale truckload price per ounce at the time the infant formula is approved by the State WIC Agency.
- *** B. During the term of any contract issued pursuant to this bid, if the Contractor discontinues the production of the primary contract brand infant formula, the Contractor may, in writing to the State WIC Agency, offer a replacement for the infant formula. The Contractor must include in the written offer for the replacement: The reason for the offer, the wholesale full truckload price per ounce, the net price per ounce, documentation that the offered product is a WIC approved formula and meets the Federal WIC definition for an infant formula, the formulation of the offered product and an explanation of how the offered product will serve the same population served by the product being replaced.
- C. The State WIC Agency reserves the sole discretion to determine if a product offered by the Contractor under Section VIII, Item B is appropriate as a replacement of the contract infant formula. To be appropriate, the offered contract brand infant formula must at a minimum:
1. Be a formula approved by the United States Department of Agriculture, Food and Nutrition Service to be used as an infant formula by meeting the Federal definition for infant formula (see Requirement section on page 7);
 2. Be offered at the same net price per ounce as the contracted product, or if the replacement infant formula is formulated so that a different number of ounces is necessary to meet the same nutritional needs being met by the contracted product, offer the replacement product at a net price per ounce that is equivalent to the net price per ounce as the contracted product; and
 3. Be necessary because the manufacturer is discontinuing production of the contract infant formula.
- D. If the State WIC Agency adds a new or replacement infant formula, the change will take effect within 90 days of written notification by the State WIC Agency of the addition or replacement.
- E. Representative:
- Both the State WIC Agency and the Contractor shall appoint a representative to assist in the administration of any contract awarded pursuant to this bid. All required notices pursuant to any contract awarded pursuant to this bid by either party shall be sent to the other party's representative. In the event that either party designates a different representative after the term of any contract awarded pursuant to this bid has begun, notice of that individual's name, address, and telephone number shall be furnished to the other party, in writing, within fifteen (15) calendar days after the designation.
- F. Market research activities and/or correspondence with WIC Vendors or WIC participants must be done with the prior approval of the State WIC Agency.
- G. Contractor may not have access to any records identifying participants by name and/or address. Contractor may not have access to any information about a vendor that individually identifies the vendor, except for vendor's name, address and authorization status.

* To indicate addition of "excluding exempt infant formula".

** To indicate addition of link to "Exempt Formula Can Count and Participation.

*** To indicate the addition of "primary" in VIII.B.

PRICE SCHEDULE
OHIO WIC INFANT FORMULA REBATE PROGRAM

REBATE AMOUNT OFFERED: The Contractor agrees to pay to the State WIC Agency the bid rebate amounts per ounce, for which the State WIC Agency will invoice the Contractor.

CONTRACTOR/MANUFACTURER: ABBOTT NUTRITION, ABBOTT LABORATORIES - MILK BASED INFANT FORMULA

UNSPSC CODE: 42231800

OAKS: Orders are not entered into OAKS as payment is not made to a Contractor.

Physical Form	Brand Name	Unit Size (In Ounces)	Reconstituted Oz. Per Unit	Wholesale Price Per Unit	Rebate Per Unit	Net Cost Per Unit	Percent of Rebate
Powdered	Similac ® Advance	12.4	90.0	\$12.230	\$10.915	\$1.315	89.2%
Liquid Concentrate	Similac ® Advance	13.0	26.0	\$3.910	\$3.599	\$0.311	92.0%
Ready-To- Feed	Similac ® Advance	32.0	32.0	\$5.200	\$1.820	\$3.380	35.0%

CONTRACTOR INDEX

CONTRACTOR AND TERMS:

85835
Abbott Nutrition, Abbott Laboratories, Inc.
3300 Stelzer Road
Columbus, OH 43219

BID CONTRACT NO.: OT900012 (09/30/14)

TERMS: Net 30 Days

CONTRACTOR'S CONTACTS:

Andrew Z. Deister, Director Government Operations
Contractor's Primary Contact

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E-Mail: andrew.deister@abbott.com

Kori Stenzel; Manager, Government Operation
Primary Liaison with State WIC Personnel

Telephone: (614) 624-5816
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Faith A. Davis, WIC Contract Specialist
Primary Contact for WIC invoice submissions

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Shanin Bechstein, WIC Financial Analysis
Financial support to State WIC Personnel

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