

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.: OT900717

EFFECTIVE DATES: 10/01/16 to 09/30/19

The Department of Administrative Services has accepted bids submitted in response to Invitation to Bid No. OT900717 that opened on 06/29/16. 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](#) (Revised 10/2013), special contract terms & conditions, any bid addenda, specifications, pricing schedules and any attachments incorporated by reference and accepted by DAS become a part of this Requirements Contract.

This Requirements Contract is effective beginning and ending on the dates noted above unless, prior to the expiration date, the Contract is renewed, terminated or cancelled in accordance with the Contract Terms and Conditions.

This Requirements Contract is available to OHIO DEPARTMENT OF HEALTH, 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.

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

**BID OPENING NOTE:** Bid pricing will be read aloud at bid opening date and time after the bids are certified by the State Auditor.

**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.

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

**DESCRIPTIVE LITERATURE:** The Bidder 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 "TAB 1" (page 15), the bidder shall enter product name of each physical form of formula in Column B, the UPC Code in Column C, and the standard size container for its powder formula product in Column D. The bidder will enter the Reconstituted Ounces per Unit for each formula type in Column E, the lowest Wholesale Price per Unit in Column F and the Rebate Bid per Unit in Column G. Subtracting Column G from Column F yields the Net Cost per Unit (Column H). Dividing Column F by Column G yields the percentage discount as shown in Column I. These numbers will be used in the Infant Formula Rebate Information and Bid Evaluation Worksheet found on "TAB 2" (page 16). The bid will be awarded to the bidder with lowest monthly total cost listed in Column M on "TAB 2" (page 16). The lowest monthly cost is calculated by multiplying the Total Monthly Units (Column I) for each formula type times the Net Cost per Unit (Column L). The Total Monthly Units is calculated by dividing the Total Reconstituted Monthly Ounces (Column H) by Reconstituted Ounces per Unit (Column B). 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. The evaluation will be based on the lowest total monthly net price for the primary contract infant formula. The contract covers all other infant formula including milk- and soy-based formulas as indicated in the specifications and the requirements.

**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 "TAB 2" (page 16) under Column M. 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 "Primary Contract Brand Infant Formula," as the infant formula of first choice. Ohio only issues primary 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.

SPECIAL CONTRACT TERMS AND CONDITIONS (CONT.'D)

**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 WIC Nutrition Cards 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 three hundred and sixty-five (365) 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, 2017. 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.

**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.fda.gov/food/guidanceregulation/foodfacilityregistration/default.htm>

The bidder certifies that they or their supplier complies with this requirement.

**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."

SPECIAL CONTRACT TERMS AND CONDITIONS (CONT.'D)

TERMINATION, SANCTION, DAMAGES:

If Contractor or any of its subcontractors perform services under this Contract outside of the United States, the performance of such services shall be treated as a material breach of the Contract. The State is not obligated to pay and shall not pay for such services. If Contractor or any of its subcontractors perform any such services, Contractor shall immediately return to the State all funds paid for those services. The State may also recover from the Contractor all costs associated with any corrective action the State may undertake, including but not limited to an audit or a risk analysis, as a result of the Contractor performing services outside the United States.

The State may, at any time after the breach, terminate the Contract, upon written notice to the Contractor. The State may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Contract and costs associated with the acquisition of substitute services from a third party.

If the State determines that actual and direct damages are uncertain or difficult to ascertain, the State in its sole discretion may recover a payment of liquidated damages in the amount of 1% of the value of the Contract.

The State, in its sole discretion, may provide written notice to Contractor of a breach and permit the Contractor to cure the breach. Such cure period shall be no longer than 21 calendar days. During the cure period, the State may buy substitute services from a third party and recover from the Contractor any costs associated with acquiring those substitute services.

Notwithstanding the State permitting a period of time to cure the breach or the Contractor's cure of the breach, the State does not waive any of its rights and remedies provided the State in this Contract, including but not limited to recovery of funds paid for services the Contractor performed outside of the United States, costs associated with corrective action, or liquidated damages.

ASSIGNMENT / DELEGATION:

The Contractor will not assign any of its rights, nor delegate any of its duties and responsibilities under this Contract, without prior written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.

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 the six-month (Jul-15 to Dec-15) average monthly infant participation of 50,652 fully bottle fed infants and 2,551 partially breastfed infants; these number does not include 6,578 exclusively breastfeeding infants or 10,004 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 1, 2016 through September 30, 2019, with the first payment to be made for the month of October 2016. 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 twelve (12) 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. "Primary 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 is the formula of first choice and 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 iron-fortified, milk-based and soy-based formulas produced by other manufacturers are not authorized in Ohio.<sup>1</sup>
- D. "State WIC Agency" is the State of Ohio, Department of Health, Bureau of Health 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 receive a WIC Nutrition Card 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 accept the WIC Nutrition Card for WIC authorized foods and infant formulas; and
  - 3. Are currently under contract with the State WIC Agency.
- J. "WIC Nutrition Cards" is an Electronic Benefits Transfer (EBT) Cards issued by the State WIC Agency or Local WIC Agency that:
  - 1. Lists or contains authorized foods and brand specific infant formula to be provided to participants or alternate shoppers and verifies receipt of same by confirmation of the participant or alternate shopper; and
  - 2. May be 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 WIC Nutrition Card may properly be exchanged by a participant for authorized foods and infant formula. The valid period in Ohio is one calendar month.
- L. "Redeemed" shall mean that the infant formula was listed on a WIC Nutrition Card is purchased by a participant for infant formula and submitted for processing and paid by the State WIC Agency.

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<sup>1</sup> As defined in the Ohio WIC Policy and Procedures Manual

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 and is suitable for routine issuance to the majority of generally healthy, full-term infants.
2. All infant formula shall contain at least ten (10) milligrams of iron per liter of formula at the label specified dilution.
3. 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. Note: there are currently two milk-based, contract formulas authorized in Ohio that supply nineteen (19) kilocalories per fluid ounce, as allowed by USDA.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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).
9. \* The rebate amount per unit for the milk-based infant formulas listed in Column B of the Rebate Bid Sheet on "TAB 1" (page 15) will be the rebate amount per unit bid by the Contractor on the Rebate Bid Sheet (Column G), adjusted, if applicable, by the Fixed Price with Economic Adjustment 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 G), 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 F).
  - 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.

SPECIFICATIONS AND REQUIREMENTS

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 WIC Nutrition Card 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 WIC payment system. There are 3 recent invoice reports attached in Appendix A.
5. The State WIC Agency shall submit an invoice based on Section III, Item B, paragraph 4 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.
6. 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.
7. 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 6 and 8. 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.
8. 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.
9. Because WIC retail vendors have 48 hours to submit WIC Nutrition Card purchases for claims processing after the valid period, the total exchanges for any given month may include claims from previous months. In addition, USDA occasionally approves payment of WIC Nutrition Card claims that may be outside the normal submission period.
10. 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.
11. 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.
12. All disputes of any invoice during a federal fiscal year must be resolved by the first day of February in the following fiscal year.
13. 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.

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 currently rounds 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 and Contact Information

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.

Mailing Address: Treasurer, State of Ohio c/o Ohio Department of Health Bureau of Health Services P.O. Box 15278 Columbus, OH 43215-0278	Program Contact Person: Mr. Bob Parker Program Analysis Unit Supervisor Bureau of Health Services Ohio Department of Health 246 N. High Street Columbus, OH 43215 Telephone: 614-728-2877 Fax: 614-564-2470 E-mail: <a href="mailto:robert.parker@odh.ohio.gov">robert.parker@odh.ohio.gov</a>
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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.

SPECIFICATIONS AND REQUIREMENTS (CONT'D)

- 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.
- 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.

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 funds 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.

STATE WIC AGENCY RESPONSIBILITIES (CONT'D)

- 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.

VI. CONTRACTOR QUALIFICATIONS

- A. The Contractor shall be registered with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C.321 et seq.).
- 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.

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, 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.

SPECIFICATIONS AND REQUIREMENTS (CONT'D)

Notice: Documentation for Section VII, Items A thru F, as specified above, 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 five (5) business days of verbal request. Failure to submit documentation as specified will deem your bid not responsive and further consideration for award will not be given.

VIII. NOTES

- A. If the State WIC Agency adds more types of infant formulas 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, net price per ounce, is the same percentage discount, 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 11);
  - 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, website, email address, and authorization status.

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: GERBER PRODUCTS COMPANY d/b/a NESTLE INFANT NUTRITION - 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	Gerber® Good Start® Gentle	12.7	90.0	\$14.800	\$14.860	-\$0.060	100.405%
Liquid Concentrate	Gerber® Good Start® Gentle	12.1	24.2	\$4.430	\$4.430	\$0.000	100.000%
Ready-To- Feed	Gerber® Good Start® Gentle	33.8	33.8	\$6.230	\$6.230	\$0.000	100.000%

CONTRACTOR INDEX

CONTRACTOR AND TERMS:

160934  
Gerber Products Company  
12 Vreeland Rd.  
Florham Park, NJ 07932

BID CONTRACT NO.: OT900717-1

TERMS: N/A

CONTRACTOR'S CONTACTS:

Susan Eberhart, Sr. Regulatory Specialist

Telephone: (973) 593-7500

Telephone: (973) 593-7787

Fax: (480) 379-4724

E-Mail: [susan.eberhart@us.nestle.com](mailto:susan.eberhart@us.nestle.com)

## **Appendix A: Recent Invoices (November 2015 to January 2016)**

Double click on PDF link icon below to open Appendix A documents:

[Rebate Invoices.pdf](#)

### **Attached documents**

[Min. Stocking Requirements](#)

[Jan 2016 Invoice Rebate](#)

[Formula Redemption Rates](#)

[Form for 19 Calorie Formula](#)

[EBT and Coupon Infant Formula Participants](#)

[Authorized Vendors List](#)

[Dec 2015 Formula Issued and Redeemed by Age and BF Category](#)