

INVITATION TO BID

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

The Original Signed Bid must be submitted to the Office of Procurement Services to receive consideration for award.		BIDDER NAME	
BID NUMBER <u>OT904914</u>	OPENING DATE (1:00 p.m.) <u>NOVEMBER 22, 2013</u>	STREET ADDRESS <input type="checkbox"/> Check if remit address is different and list on separate sheet	
General Services Division Office of Procurement Services 4200 Surface Road Columbus, OH 43228-1395 Attn: Bid Desk		CITY STATE ZIP	
		COUNTY	MBE/EDGE CERTIFICATE NUMBER
		TELEPHONE NO. ()	TOLL FREE NO. 1 - ()
		CONTACT PERSON	FAX NO. ()
REQ./INDEX NO. DOH077	BID NOTICE DATE 10/23/13	CONTRACTOR'S E-MAIL ADDRESS	
SELECT YOUR PREFERRED METHOD OF RECEIVING PURCHASE ORDERS AND ENTER THE E-MAIL OR FAX NUMBER INFORMATION (ONLY SELECT ONE METHOD) <input type="checkbox"/> E-Mail <input type="checkbox"/> Fax			
In addition to the standard terms for payment, the payment terms for state agency(ies) will be 2%, 10 Days, Net 30 Days unless otherwise stated in the following space. If no discount is offered, bidder should circle "Net 30 Days". _____%, _____Days, Net 30 Days			
<u>PARTICIPATING AGENCY(IES):</u> OHIO DOH/WIC, INDIANA, MICHIGAN, NEVADA, ITCN AND WISCONSIN WIC PROGRAMS			
ADDENDUM FOR CHANGE ADDENDUM NO.: 3 REVISION DATE: 11/04/13			
<u>THE DEPARTMENT OF ADMINISTRATIVE SERVICES, OFFICE OF PROCUREMENT SERVICES IS SOLICITING BIDS FOR:</u> WIC DRY INFANT CEREAL AND WIC INFANT FOODS REBATE PROGRAMS			
Attached are pages 1, 5, 7-16, 18 and 22-24 to this Invitation to Bid. Remove the corresponding pages from the existing bid and replace with the attached.			
As indicated herein this addendum is issued to add Inter Tribal Council of Nevada (ITCN) throughout the bid document and to add and remove language throughout the bid document.			

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<u>TERM OF CONTRACT:</u> This Invitation to Bid is to establish a requirements contract to procure the described supplies or services on behalf of the above participating agency(ies). The agency(ies) may place orders against the Contract beginning 12/01/13 or upon the date when DAS signs the Contract, whichever is later in time. The Contract will expire 03/31/17 unless DAS terminates the Contract based upon reasons set forth in Article I-C of the Standard Contract Terms and Conditions. No agencies may place purchase orders against the Contract beyond the expiration date unless DAS renews the Contract by amendment. The Contractor may begin performance under the Contract only upon receipt of a valid order from a participating state agency.			
<u>INSTRUCTIONS TO BIDDERS AND CONTRACT TERMS AND CONDITIONS,</u> Revised 09/2012, are a part of this Invitation to Bid. Copies may be downloaded by clicking on this link: Instructions: Terms and Conditions for Bidding, Standard Contract Terms and Conditions, and Supplemental Contract Terms and Conditions. All prior versions of Instructions to Bidders, Contract Terms and Conditions are null and void.			
By submitting this Invitation to Bid, the Contractor certifies that Contractor has truthfully disclosed the location(s) where all services are to be performed; the location(s) where all applicable State contract data is to be maintained or made available; and the principal location of business for the Contractor and all subcontractors. The Contractor further certifies and acknowledges that Contractor will not change the country of the location(s) where services are performed and will not change the country of the location(s) where data is maintained or made available without prior written consent of the State.			
Any questions or clarifications regarding this Invitation to Bid should be directed to the Office of Procurement Services through the Internet at www.procure.ohio.gov/ All questions should be submitted a minimum of ten (10) working days prior to the bid opening date.			
PRINTED/TYPED SIGNATURE		AUTHORIZED SIGNATURE (ORIGINAL SIGNATURE ONLY) (Please sign in blue ink)	DATE

The ORIGINAL signed Bid must be submitted to the Office of Procurement Services by 1:00 o'clock p.m., on the above listed opening date to receive consideration for award. It is requested that the Bidder NOT sign their bid in BLACK ink. BIDDER CERTIFIES, by signature affixed to its bid, that the information provided by it in its bid including the certified statements, is accurate and complete. Bidder declares to have read and understood and agrees to be bound by all of the instructions, terms, conditions and specifications of this Invitation to Bid and agrees to fulfill the requirements of any awarded contract at the prices bid.

SPECIAL CONTRACT TERMS AND CONDITIONS cont'd

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

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

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

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

*WESTERN STATES CONTRACTING ALLIANCE - NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (WSCA-NASPO) PROGRAM:

The National Association of State Procurement Officials (NASPO) has developed a program, the WSCA-NASPO Cooperative Purchasing Program, that is made up of signatory states throughout the United States. That program is an outgrowth of the Western States Contracting Alliance (WSCA), that previously conducted cooperative procurements since 1993. The program is facilitated by the WSCA-NASPO Cooperative Purchasing Organization LLC, a 501(c)(3) nonprofit wholly owned by NASPO.

**ADDITIONAL TERMS AND CONDITIONS: Included as attachments to this Bid are documents that present the Standard Terms and Conditions and the Rebate Procedures specific to Indiana, Michigan, Nevada, ITCN and Wisconsin. The laws of the State of Ohio in accordance with the Ohio Revised Code as adopted by the State of Ohio shall govern this procurement and any resulting Contract. However, the laws of each participating state shall govern for purchases made by each respective participating state.

USE OF WIC LOGO AND NAME: The WIC acronym and the WIC logo are registered service marks of the United States Department of Agriculture (USDA) and may not be used by the vendor in a way that will likely cause confusion in regard to their involvement with the WIC program. Vendors may not use in the official name in which the vendor is registered or in the name under which it does business the WIC acronym or a similar acronym or logo that would give the impression that the business is affiliated with or sponsored by the WIC program.

* Denotes removal of language with Addendum 3.

** Denotes the addition of Inter Tribal Council of Nevada (ITCN) with Addendum 3.

*SPECIFICATIONS AND REQUIREMENTS
FOR THE WIC INFANT CEAREAL AND INFANT FOOD REBATE PROGRAM FOR OHIO, INDIANA,
MICHIGAN, NEVADA, ITCN AND WISCONSIN

I. SCOPE AND CLASSIFICATION

A. **Scope

The Federal Government requires states to examine cost containment measures in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program). The purpose of this Bid is to secure a rebate contract for authorized infant cereal and infant foods (fruits, vegetable, meats, and poultry). The infant cereals and foods offered by the Contractor(s) shall be designated to be Ohio, Indiana, Michigan, Nevada, ITCN and Wisconsin's contract brand infant cereal or infant foods, thereby establishing a Sole Source Rebate System.

B. Classification

1. Contractor shall provide rebates for the following:

a. 8oz. and 16oz. containers of infant cereal redeemed by WIC retail vendors.

- i. The Bidder must offer at least three types of cereals, one of which must be Rice.
- ii. Acceptable types of cereals include Rice, Barley, Oatmeal, and Mixed/Multigrain, Whole Wheat and Corn.
- iii. The Bidder may not exclude any WIC eligible infant cereal from the rebate.

b. All authorized infant foods (fruits & vegetables, meats & poultry) redeemed by WIC retail vendors.

2. Any other infant cereal and/or infant food produced by the Contractor and authorized by the State WIC Agency during the contract including any extensions shall receive rebate. State agencies may independently determine if new products will be authorized.

II. DEFINITIONS

- A. "Alternate Shoppers" are individuals designated by the participants to transact Food Instruments on behalf of the participant.
- B. "Contract Brand Infant Cereal" means all authorized infant cereals produced by the manufacturer awarded the infant cereal cost containment rebate contract.
- C. "Contract Brand Infant Foods" means all authorized infant foods as defined by USDA-FNS, (fruits & vegetables, meats & poultry) produced by the manufacturer awarded the infant food cost containment rebate contract.
- D. "Food Instruments", checks, vouchers, electronic benefit transfer cards or other documents that may be exchanged/used by a participant or alternate shopper for authorized foods and primary brand specific infant cereal and infant foods at a WIC retail vendor location.
- E. "Participants" are eligible individuals who are receiving Food Instruments under the WIC Program.
- F. "Redeemed" means the transacted Food Instrument submitted by the WIC retail vendor for payment.
- G. ***"State WIC Agency" means the Ohio Department of Health, the Indiana State Department of Health, Michigan Department of Community Health, Nevada Department of Health and Human Services, ITCN and the Wisconsin Department of Health Services.

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- H. "Valid period" is the duration of time that a Food Instrument may properly be exchanged by a participant for authorized foods.
- I. "WIC retail vendors" are authorized by the State WIC Agency to exchange Food Instruments for WIC authorized Foods.
- J. "Average Commercial Wholesale Price Per Ounce" is the average of the Wholesale Price Per Ounce for foods in the category being offered, as documented by the nationally published Commercial Wholesale Price List.
- K. "Rebate Amount Per Ounce" is the amount the Bidder is submitting. This amount will be subtracted from the Average Commercial Wholesale Price Per Ounce to determine the Net Price Per Ounce.
- L. "Net Price Per Ounce" is the result of subtracting the Rebate Amount Per Ounce from the Average Commercial Wholesale Price Per Ounce.

III. PROGRAM REQUIREMENTS

A. Infant Cereal

1. Infant cereal shall be manufactured under and comply with all applicable provisions of the Federal Food, Drug and Cosmetic Act, as amended, and all regulations promulgated there under.
2. Infant cereal shall be sold at the retail level in 8oz. and 16oz. containers as authorized by the state agency.
3. Infant cereal shall be nutritionally complete, not requiring the addition of any ingredient other than water.
 - a. Infant cereal shall be dry type without added fruit, fruit flakes or infant formula. Not allowed: added DHA, prebiotics, or organic.
 - b. The cereal must be plain, dry infant cereal, not wet-packed (jarred).
4. The cereals shall contain a minimum of 45 milligrams of iron per 100 grams of dry cereal (i.e. iron content per ½ ounces of cereal = 45% U.S. RDA for infants).
5. The Bidder must offer at least three varieties of cereals, one of which must be rice.
 - a. Acceptable types of cereals include Rice, Barley, Oatmeal, and Mixed/Multigrain, Whole Wheat and Corn.
 - b. All varieties must meet USDA regulatory requirements for use in the WIC Program.
6. Current Federal program regulations allow a maximum of 24 ounces of cereal to be prescribed for each infant each month. This is a maximum amount that may be prescribed to all infants. It is not guaranteed that all infants will be prescribed infant cereal nor is it guaranteed that all prescribed quantities will be purchased. Food packages generally include infant cereal, when the infant turns six months of age.

B. Infant Food

1. Infant food shall be manufactured under and comply with all applicable provisions of the Federal Food, Drug and Cosmetic Act, as amended, and all regulations promulgated there under.
2. *Infant fruits and vegetables shall be sold at the retail level in accordance with authorized commercial wholesale pricelist. Ohio, Indiana, Michigan, Nevada, ITCN and Wisconsin are currently sold in 4oz. containers.
 - a. Not allowed: added sugars, starches (e.g., cereal), salt or meat; added DHA/ARA; or baby food desserts (e.g. peach cobbler or tutti frutti).

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FOR THE WIC INFANT CEAREAL AND INFANT FOOD REBATE PROGRAM FOR OHIO, INDIANA,
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3. Infant meat and poultry shall be sold at the retail level in 2.5oz. containers, strained with gravy or broth only.
 - a. Not allowed: added sugars or salt; added DHA/ARA; infant food combinations (e.g. chicken and green beans), or dinners (e.g. spaghetti and meatballs).
4. All varieties must meet current and future USDA regulatory requirements for use in the WIC Program. Please see WIC Interim Rule at <http://www.fns.usda.gov/wic/regspublished/wicfoodpkginterimrulepdf.pdf>

C. General Program Requirements

1. All products offered as infant cereal shall be under the same manufacturer/brand name. Co-branding with another manufacturer/brand is allowed.
2. All products offered as infant food shall be under the same manufacturer/brand name.
3. The Contractor will be required to pay a rebate on all authorized contract brand infant cereal and infant food redeemed by WIC retail vendors.
4. Infant cereal and infant foods for rebate specified in this Bid are being bid as brand specific, which signifies that no alternates will be accepted for an award. This is in accordance with the Ohio Administrative Code 123:5-1-10(I).
5. The rebate amount per ounce or the Average Commercial Wholesale Price Per Ounce may be adjusted, if applicable, in accordance with the Escalator Clause of this agreement.
6. * **Each state's (i.e. Ohio, Indiana, Michigan, Nevada, ITCN and Wisconsin) rebate eligible infant cereal must be available to all retailers statewide.

D. Contract Brand Infant Cereal/Food Rebate Procedure

Reference Attachments for the rebate procedures and Terms and Conditions specific to Indiana, Michigan, Nevada, and Wisconsin.

1. For the term of any Contract awarded pursuant to this Bid, the Contractor shall, in exchange for single supplier status, rebate monthly, a fixed amount per ounce of Contract brand infant cereal and/or infant foods calculated by multiplying the rebate amount for that item by the number of ounces redeemed during the valid period by WIC retail vendors.
2. Payments due to the State shall be based on the number of ounces of infant cereal and/or infant foods redeemed.
3. The rebate amount applied to the infant cereal and/or infant foods shall be the amount effective during the month of the first day of use of the Food Instrument (i.e. coupons issued on or after the start date of the rebate program).
4. The State WIC Agency shall produce a monthly report specifying the amount of infant cereal and/or infant foods identified as redeemed and paid in the preceding month through the regular WIC payment system.
5. The State WIC Agency shall also produce a monthly report specifying the amount of infant cereal and/or infant foods redeemed through the State WIC Agency exception payment process.
6. The State WIC Agency shall submit an invoice based on Section III, Item D, 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.

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7. For each Food Instrument that is redeemed during the month for which a rebate is invoiced and that includes Contract brand infant cereal and/or infant foods, the State WIC Agency shall provide, at the Contractor's request, the following data that will enable the Contractor to verify the invoiced amount:
 - a. The Food Instrument ID
 - b. The Issue Date of Food Instrument
 - c. The Food Instrument Valid Begin Date
 - d. The number of ounces redeemed of the Contract brand infant cereal and/or infant foods
8. The Contractor must notify the State WIC Agency of any dispute or error in the invoice within ninety (90) calendar days after receipt of the invoice. If the Contractor does not notify the State WIC Agency of a discrepancy in the invoice within ninety (90) calendar days after receipt of the invoice, the invoice will be determined to be accurate and the Contractor shall waive the right to dispute the invoice.
9. In the event that the invoice submitted to the Contractor for payment is determined by the State WIC Agency to be inaccurate, a revised invoice will be submitted and the Contractor shall pay the State WIC Agency in accordance with Section III, Item D, paragraphs 8 and 10. If the Contractor identifies a discrepancy on the invoice, the State WIC Agency will respond to the Contractor with an answer or an update as to the status of their investigation into the discrepancy within twenty (20) State working days, although final resolution may take longer. All disputes of any invoice during a federal fiscal year must be resolved by the first day of February in the following fiscal year. The Contractor shall not withhold any rebate payments to the State WIC Agency.
10. The Contractor shall pay the State WIC Agency the amount indicated on the invoice specified above within thirty (30) calendar days after receipt of the invoice. Invoice accuracy shall solely be determined by the State WIC Agency, based on appropriate documentation provided by the State WIC Agency.

Because WIC retail vendors have thirty (30) days to submit Food Instruments for processing after the Food Instrument's valid period, the total exchanges for any given month may include Food Instruments from at least two issue months. In addition, USDA occasionally approves payment of coupons that may be expired at the time of submission. The Contractor agrees that infant cereal and/or infant foods identified on Food Instruments issued with a first day of use during the term of this Agreement, but not redeemed until after the date of expiration or termination of this Agreement, shall be rebate eligible.
11. The Contractor shall pay rebates on infant cereal and/or infant foods issued with a first day of use while any Contract issued pursuant to this Bid is in effect and redeemed, even though the Contract may have been terminated or may have expired when the rebate amount is paid.
12. Each State WIC Agency shall have the option of requesting from the Contractor up to one (1) prepayment of the monthly rebate amount owed per calendar year. The prepayment invoice will be based on the amount of infant cereal and/or infant foods redeemed from the most recent invoice paid by the Contractor. The State WIC Agency will submit a notice of request for a prepayment at least thirty (30) calendar days prior to the requested payment date. The notice shall specify the month to which prepayment shall be applied. The Contractor may deduct from the prepayment up to one percent (1%) of the total prepayment invoice. Once the actual amount of infant cereal delivered and redeemed is determined for the month for which the prepayment was requested, over and/or under adjustments shall be made. The adjustment shall treat any deduction up to one percent (1%) made by the Contractor as though the Contractor made the prepayment without making such deduction. The State WIC Agency shall not be required to pay interest on overpayments made by the Contractor.
13. In the event the Contractor has not issued payment to the State within thirty (30) calendar days of receipt of invoice, for any outstanding balance for any month during the Contract term, the Contractor shall be assessed and shall pay, in addition to the outstanding balance due, a penalty equal to one percent (1%) of the outstanding balance.

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*SPECIFICATIONS AND REQUIREMENTS cont'd.
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E. State Agency Payment and Contact Information

As applicable, the Contractor shall issue rebate payment checks payable to:

Mailing Address:	PROGRAM Contact Person:
Treasurer, State of Ohio c/o Ohio Department of Health Bureau of Nutrition Services P.O. Box 15278 Columbus, OH 43215-0278	Mr. Bob Parker Program Analysis Unit Supervisor Bureau of Nutrition Services Ohio Department of Health 246 N. High Street Columbus, OH 43215 Telephone: 614-728-2877 Fax: 614-564-2470 E-mail: robert.parker@odh.ohio.gov
Indiana WIC Program Division of Finance c/o Indiana State Department of Health Section 2c 2 North Meridian Street Indianapolis, IN 46204	Ms. Erin Czajkowski IN WIC Finance Specialist Indiana State Department of Health Division: Operational Services Telephone: 317-234-3536 E-mail: eczajkowski@isdh.in.gov
Michigan WIC Program Michigan Department of Community Health 320 So. Walnut St. Lansing, MI 48913	Stan Bien, Director WIC Division Michigan Department of Community Health 320 So. Walnut St. Lansing, MI 48913 biens@michigan.gov Telephone: 517-335-8448 Fax: 517-335-8835
State of Nevada WIC Nevada State WIC Program Division of Public and Behavioral Health 4126 Technology Way, Suite 102 Carson City, NV 89706	Michelle Walker, RD, Health Program Manager State of Nevada WIC Nevada State WIC Program Division of Public and Behavioral Health 4126 Technology Way, Suite 102 Carson City, NV 89706 Telephone: 775.684.4236 Fax: 775.684.4246 E-mail: mwalker@health.nv.gov
*Inter Tribal Council of Nevada 680 Greenbrae Drive, Suite 265 Sparks, NV 89431	Ms. Theresa Carsten Acting WIC Director Toll Free: 888-612-1130 Telephone: 775-355-5210 ext.152 Fax: 775-355-5217 E-mail: wic@itcn.org
Department of Health Services Wisconsin Division of Public Health 1 West Wilson Street PO Box 1668 Madison, WI 53701-1668	Ms. Kersten Knauf Nutrition Fiscal Manager Wisconsin Department of Health Services Telephone: 608-266-3891 E-mail: kerstenk.knauf@dhs.wisconsin.gov

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F. Record Keeping

1. The Contractor shall allow the State WIC Agency, the United States Department of Agriculture's Food and Nutrition Service, the Comptroller General of the United States, or any of their duly authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to any Contract awarded pursuant to this Bid, for the purpose of making audits, examinations, excerpts, or transcriptions.
2. The Contractor shall retain for three and one half (3.5) years, after the final rebate payment is made, all records directly related to any Contract awarded pursuant to this Bid.
3. If any audit, litigation, or other action involving the records is commenced before the end of the retention period specified in Section III, Item F, Part 2, the records must be retained until all issues arising out of the audit, litigation, or action are resolved.

IV. CONTRACTOR RESPONSIBILITIES

- A. The Contractor shall perform in compliance with Section III, Items A through F of any Contract awarded pursuant to this Bid.
- B. The Contractor shall guarantee that sufficient quantities of Contract brand infant cereals and/or infant foods, offered on their Bid Response and awarded on any Contract awarded pursuant to this Bid, to meet State WIC Agencies participant demand, shall be made available for purchase by authorized WIC retail vendors. In the event the Contractor cannot make available the Contract brand infant cereals and/or infant foods to WIC retail vendors in one or more counties, for more than five (5) consecutive days for instances not covered under force majeure, the Contractor shall pay a rebate, at the same percentage discount under the terms of this Contract, on another brand of similar infant cereal and/or infant foods issued to participants. Before issuing a non-contract brand infant cereal and/or infant foods, the State will first provide an alternative Contractor product that meets the authorized food requirements as specified by Federal nutrition requirements.
- C. The Contractor shall provide to the State WIC Agencies advance notice of any changes in product packaging size, retail price, product labeling including UPC, or product reformulation. The notice shall be provided at least one hundred and twenty (120) calendar days prior to the effective date of such changes.
- D. If the Contractor produces new infant food/infant cereal products or new container sizes that are eligible for the WIC Program, the Contractor will provide that same Average Commercial Wholesale Price Per Ounce minus Rebate Price Per Ounce (Net Price Per Ounce) for that category.

V. CONFIDENTIALITY

- A. Due to federal confidentiality requirements, the Manufacturer may not have access to actual or copies of food instruments or other client records which identify WIC participants.
- B. States are prohibited from disclosing confidential Vendor information to the Manufacturer.

VI. STATE WIC AGENCIES RESPONSIBILITIES

- A. The State WIC Agencies shall perform in compliance with any Contract award pursuant to this Bid.
- B. **The State WIC Agencies shall make available to the Contractor or the Contractor's designated representative all necessary reports pertaining to the redemption and billing process of the Sole Source Rebate System. The Contractor may have access to the WIC vendor's name, address, email/website, telephone number, store type, and authorized status.

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- C. The State WIC Agencies' obligations under any Contract awarded pursuant to this Bid are contingent upon the grant of funds by the federal government, specifically the United States Department of Agriculture and appropriation of funds by each state's legislative body. If each state's legislative body fails at any time to fund the State WIC Agency, any Contract awarded pursuant to this Bid shall terminate on the date the funding expires without further obligation to the State WIC Agency. The State WIC Agency's obligations under any Contract awarded pursuant to this Bid are subject to O.R.C. Section 126.07. Nothing in any Contract awarded pursuant to this Bid shall be construed to alter the State WIC Agencies' exclusive right to determine which brands of infant cereal and/or infant foods, including those of the Contractor, are USDA authorized WIC Program approved brands for distribution to WIC Program participants in the retail vendor system.
- D. In the performance of their duties under any Contract awarded pursuant to this Bid, the State WIC Agencies shall abide by all applicable State and Federal regulations concerning the WIC Program including the regulations developed by the Food and Nutrition Service, United States Department of Agriculture contained in 7 CFR Part 246, and the State WIC Program administrative rules contained in, as they exist now or may be amended.
- E. The State WIC Agencies agrees to provide the Contractor with reasonable notification regarding changes to State WIC Program administrative rules which affect the Contractor's obligations under any Contract awarded pursuant to this Bid.

VII. CONTRACTOR QUALIFICATIONS

The Contractor shall be in compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967, and as supplemented in the United States Department of Labor regulations.

VIII. BIDDER DOCUMENTATION

- A. The Bidder shall certify to the state of Ohio that their company is in compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967, and as supplemented in the United States Department of Labor regulations.
- B. The Bidder shall certify to the state of Ohio that their company is in compliance with all applicable standards, orders, or requirements issued under 33 USC 1368, Executive Order 11738, and 40 CFR Part 32, and any applicable standards and policies related to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. This certification may be included in the same letter as that specified in Section VIII, Item A.
- C. The Bidder shall certify to the state of Ohio that:
 - 1. The rebates offered in this Bid Response have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such rebate with any manufacturer or with any competitor.
 - 2. Unless otherwise required by law, the rebates, which have been offered, have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to the award directly or indirectly to any other manufacturer or to any competitor.
 - 3. No attempt has been or will be made by the Bidder to induce any other person or firm to submit or not submit a Bid Response for the purpose of restricting competition.
 - 4. This certification may be included in the same letter as that specified in Section VIII, Item A.
- D. The Bidder shall provide with the Bid Response the name, address, and telephone number of company representative to be Contractor's contact for any Contract awarded pursuant to this Bid, as specified in Section IX, Item E.

Notice: Documentation for Section VIII, Items A thru C, as specified above, should be attached to the Bid Response. If documentation is not attached to Bid Response, the Office of Procurement Services may request it during Bid evaluation. Documents will be requested during evaluation and given a deadline of five (5) business days provided for submission. Failure to provide documents requested by the deadline provided will deem the bid not responsive and no further consideration will be given.

* Denotes the addition of Inter Tribal Council of Nevada (ITCN) with Addendum 3.

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

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

IX. PROCEDURAL NOTES

- A. This solicitation is for infant cereal and infant foods. However, if the State WIC Agency adds more types of infant cereals and infant foods produced by the Contractor to its approved list during the term of the Contract, the Contractor must pay a rebate. To determine the rebate amount, the State will use the per ounce rebate from the Rebate Bid Page and Contractor's published national wholesale price per ounce at the time the infant cereals and/or infant foods are approved by the State WIC Agency.
- B. During the term of any Contract issued pursuant to this Bid, if the Contractor discontinues the production of the Contract brand infant cereal and/or infant foods, the Contractor may, in writing to the State WIC Agency, offer a replacement for the infant cereal and/or infant foods. The Contractor must include in the written offer for the replacement: (1) the reason for the offer, (2) the wholesale price per ounce, (3) the net price per ounce, (4) documentation that the offered product is a USDA approved WIC infant cereal or infant food and meets the Federal WIC definition for an infant cereal or infant food, (5) the formulation of the offered product, and (6) an explanation of how the offered product will serve the same population served by the product being replaced.
- C. The State WIC Agency reserves the sole discretion to determine if a product offered by the Contractor under Section IX, Item B is appropriate as a replacement of the Contract brand infant cereal or infant food. To be appropriate, the offered infant cereal and/or infant food must be at a minimum:
1. Be a cereal and/or food approved by the United State Department of Agriculture, Food and Nutrition Service to be used as an infant cereal or infant food by meeting the Federal WIC definition for infant cereal or infant food.
 2. Be offered at the same net price per ounce as the Contracted product, and
 3. Be necessary because the manufacturer is discontinuing production of the Contract brand infant cereal and/or infant foods.
- D. If the State WIC Agency adds a new or replacement infant cereal and/or infant food, the change will take effect within one hundred twenty (120)days of written notification by the State WIC Agency of the addition or replacement.
- E. Representative:

Both the State WIC Agency and the Contractor shall appoint a representative to assist in the administration of any Contract awarded pursuant to this Bid. All required notices pursuant to any Contract awarded pursuant to this Bid by either party shall be sent to the other party's representative. In the event that either party designates a different representative after the term of any Contract awarded pursuant to this Bid had begun, notice of that individual's name, address, and telephone number shall be furnished to the other party, in writing, within fifteen (15) calendar days after the designation.

* Denotes the addition of Inter Tribal Council of Nevada (ITCN) with Addendum 3.

BID PRICE PAGE

* Line 1 – Infant Cereal Rebate Program

OAKS ITEM NO.: _____

BIDDER: _____

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

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

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

- (1) If there is an error in the numbers provided by the Bidder, the Bidder is bound by the Net Price Per Ounce indicated in Column H.
- (2) The Net Price Per Ounce is applicable to all participating states.
- (3) Pricing must include Rice and not less than two other varieties.
- (4) The Rebate Amount Per Ounce must be the same for all varieties of infant cereal.

* Denotes addition of Line 1 language with Addendum 3.

** Denotes change in column F title with Addendum 3.

BID PRICE PAGE cont'd

*Line 2 – Infant Foods Rebate Program

OAKS ITEM NO.: _____

BIDDER: _____

**

A	B	C	D
State Program	Average Monthly Redeemed (ounces) per Infant *	Average Monthly Infant Participation	Average Total Monthly Ounces Redeemed
Ohio WIC	117.52 oz. – Fruits & vegetables	26,641	3,130,850
	58.39 oz. – Meats & Poultry	1,513	88,344
Indiana WIC	122.56 oz. – Fruits & vegetables	14,477	***1,774,301
	73.23 oz. – Meats & Poultry	815	62,942
Wisconsin WIC	126.36 oz. – Fruits & vegetables	9,221	1,165,316
	65.46 oz. – Meats & Poultry	642	***42,025
Michigan WIC	125.01 oz. – Fruits & vegetables	28,638	3,580,036
	65.80 oz. – Meats & Poultry	2,261	148,774
Nevada WIC	155.38 oz. – Fruits & vegetables	8,817	***1,369,985
	77.5 oz. – Meats & Poultry	1,886	146,165
ITCN WIC	156.44 oz. – Fruits & vegetables	117	18,304
	77.5 oz. – Meats & Poultry	16	1,240

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

- (1) If there is an error in the numbers provided by the Bidder, the Bidder is bound by the Net Price Per Ounce indicated in Column H.
- (2) The Net Price Per Ounce is applicable to all participating states.

FOOD VARIETIES OFFERED: _____

* Denotes addition of Line 2 language with Addendum 3.
 ** Denotes addition of column headers A, B, C, and D with Addendum 3.
 *** Denotes change in some numbers in column D with Addendum 3.
 @ Denotes change in column F title with Addendum 3.

EXHIBIT ONE

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

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

1. The Specifications and Requirements in the IFB;
2. The remainder of the IFB, including any Participating Entity terms and conditions attached as exhibits or attachments; and
- *3. Language removed with Addendum 3.
- *4. Language removed with Addendum 3.
5. A Purchase Order issued against the Master Agreement;
6. Contractor's response to the Solicitation.

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

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

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

4. *CANCELLATION. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, rights to receipt of rebates, and rights attending any warranty or default in performance in association with any order. Cancellation of the Master Agreement due to Contractor default may be immediate.

5. CONFIDENTIALITY, NON-DISCLOSURE AND INJUNCTIVE RELIEF

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

* Denotes removal of language with Addendum 3.

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

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

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

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

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

20. PARTICIPANTS. WSCA-NASPO Cooperative Purchasing Organization LLC is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the WSCA/NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the organized US territories. Obligations under this Master Agreement are limited to those Participating States who have signed a Participating Addendum. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) are permissive.

21.* ENTITY PARTICIPATION. Removed with addendum 3

22. PAYMENT. Payment for completion of a contract order is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

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

24. RECORDS ADMINISTRATION AND AUDIT.

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

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

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

* Denotes removal of language with Addendum 3.

25. *REPORTS and ADMINISTRATIVE FEES.

Removed with Addendum 3.

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

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

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

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

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

30. WARRANTY. [NOT USED]

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

* Denotes removal of language with Addendum 3.

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

32. **Definitions**

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

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

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

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

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

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

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

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

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

* Denotes removal of language with Addendum 3.