



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: WIC DRY INFANT CEREAL REBATE PROGRAM

CONTRACT No.: OT901119

EFFECTIVE DATES: 10/01/18 to 09/30/21

\*Renewal through 09/30/22

The Department of Administrative Services has accepted bids submitted in response to Invitation to Bid No. OT901119 that opened on 07/02/18. 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 [Instructions to Bidders](#) and [Standard Terms and Conditions](#), special contract terms & conditions, any bid addenda, specifications, pricing schedules and any attachments incorporated by reference and accepted by DAS become a part of this Requirements Contract.

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

CONTRACT RENEWAL. This Contract may be renewed after the ending date of the Contract solely at the discretion of the Contracting Agency for a period of one month. Any further renewals will be by mutual agreement between the Contractor and the Contracting Agency for any number of times and for any period of time. The cumulative time of all mutual renewals may not exceed 36 months unless the Contracting Agency determines that additional renewal is necessary.

This Requirements Contract is available to STATE OF 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>

\*Indicates renewal through 09/30/22, per amendment 1.

Signed: \_\_\_\_\_  
Kathleen C. Madden, Director Date

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SPECIAL CONTRACT TERMS AND CONDITIONS

BID OPENING NOTE: Immediately following the bid opening and certification by the State Auditor at 1:00 p.m. EST, July 2, 2018 at the offices of the Ohio Department of Administrative Services, Office of Procurement Services 4200 Surface Road, Columbus, Ohio, in the Oak Conference Room all valid bids will be read aloud. For those interested parties who cannot attend the Bid reading in person a conference phone line will be available beginning at 1:15 p.m. EST, July 2, 2018. The conference call-in number is (614) 230-0229, Meeting ID# 39976#.

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

DESCRIPTIVE LITERATURE: The Bidder may be required to submit descriptive literature of the supplies or services being offered. If requested, the literature will be used in the evaluation process to determine the lowest responsive and responsible bidder. If not provided as part of the bid response, the Bidder must provide said literature within ten (10) 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.

DELIVERY AND ACCEPTANCE: Services will be performed as set forth in the Contract. 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.

EVALUATION: Bids will be evaluated in accordance with Article I-17 of the "Instruction to Bidder". In addition, the State will evaluate the Bids in accordance with WIC Program Regulations. The Bidder will submit its Commercial Wholesale Price Per Ounce for each line. The Commercial Wholesale Price Per Ounce shall be the lowest Commercial Wholesale Price Per Ounce of each variety of infant cereal being offered, as documented by the Manufacturer's nationally published Commercial Wholesale Price List, as of the Bid opening date.

Infant Cereal Rebate Program:

The Bidder must submit a Commercial Wholesale Price Per Ounce for at least three varieties of Infant Cereal, two of which must be Rice and Oatmeal. The third cereal variety must be either Barley, Mixed/Multigrain, or Whole Wheat. Bidder may choose to offer pricing for all available varieties. The State will only evaluate pricing for Rice, Oatmeal, and the lowest Commercial Wholesale Price Per Ounce offered for either Barley, Mixed/Multigrain, or Whole Wheat.

The Bidder shall also submit a Rebate Amount Per Ounce for each variety.

The State will subtract the Rebate Amount Per Ounce from the lowest Commercial Wholesale Price Per Ounce to determine the Net Price Per Ounce.

The Net Price Per Ounce for each variety will be multiplied by the Average Total Monthly Ounces redeemed to arrive at the Monthly Net Price.

Buy American and Buy Ohio are not applicable in the evaluation.

CONTRACT AWARD: The 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 by low lot total.

AUTHORIZED CONTRACT BRAND INFANT CEREAL: For purposes of this Contract, any authorized brand of infant cereal for which the Bidder submits a rebate Bid will be considered a contract brand infant cereal. The State WIC Agency provides no guarantee of the quantity of infant cereal that will be used under a Contract awarded pursuant to this Bid.

SPECIAL TERMS AND CONDITIONS (cont'd)

**ESCALATOR CLAUSE:** Any increase or decrease in the nationally published Commercial Wholesale Price List of a particular category awarded on Contract pursuant to this Bid after the published Bid opening date, or during the term of any pursuant Contract, shall result in a cent-for-cent adjustment in Commercial Wholesale Price Per Ounce of that category to ensure the Net Price Per Ounce of that category is equivalent to the Net Price Per Ounce obtained in this Bid. The adjustment to the Commercial Wholesale Price Per Ounce shall be effective for WIC Nutrition Card Benefits with the first day of use during the month following the month for which the price change was effective. The Office of Procurement Services and the State WIC Agency shall be notified by the Contractor, in writing, at least forty-five (45) calendar days in advance of any change in the Commercial Wholesale Price Per Ounce of the infant cereal. Notification shall consist of a letter to the Office of Procurement Services announcing the price(s) to be changed and shall be accompanied by a copy of the new wholesale price list. In the event that the Contractor fails to provide at least forty-five (45) calendar days' notice of a price increase, the State will determine the effective date of the price adjustment, not to exceed sixty (60) calendar days.

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

**TERMINATION:** Any Contract awarded pursuant to this Bid may be terminated by either party upon at least one hundred and eighty (180) days advance written notice to the other party, subject to the following limitations. The Contractor shall not terminate any Contract awarded pursuant to this Bid prior to March 31, 2021. Failure to provide services in accordance with the requirements of any Contract awarded pursuant to this Bid may be cause for immediate termination by the State WIC Agency. In this case, the State WIC Agency agrees to provide at least thirty (30) days written notice to the Contractor to resolve the problem. Satisfactory resolution of the problem shall be determined by the State WIC Agency. In its notice, the State WIC Agency will specify what "satisfactory resolution of the problem" means.

Failure of the State WIC Agency to insist on strict performance on any Contract awarded pursuant to this Bid or to terminate any Contract awarded pursuant to this Bid after giving the Contractor the opportunity to resolve problems does not waive the State WIC Agency's right to insist on subsequent strict performance. In addition, any Contract awarded pursuant to this Bid shall automatically terminate under the circumstances specified in the following paragraph (Liquidated Damages). Notice of written termination must be sent to the State WIC Agency or the Contractor by certified mail, return receipt requested or delivered in person, with proof of delivery.

**LIQUIDATED DAMAGES:** In the event that the Contractor fails or refuses to provide services as agreed in any Contract awarded pursuant to this Bid or terminates any Contract awarded pursuant to this Bid at any time during the term of the Contract or any extension of the Contract, the Contractor shall pay to the State WIC Agency monthly payments equal to the rebate amount the State WIC Agency would receive to maintain the net price per ounce of contract brand infant cereal established pursuant to this Bid, as if the Contract were still in effect. The Contractor shall continue to make such payments each month until the date the Contract or extension to the Contract has been scheduled by the State WIC Agency to expire as provided herein, or until the State WIC Agency has executed a Contract with another Contractor to provide substantially the same services as named in any Contract awarded pursuant to this Bid and the term of such Contract has commenced, whichever is sooner. Payments by the Contractor pursuant to this term shall be made in accordance with Section III, Item 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 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:

<https://www.fda.gov/food/guidanceregulation/foodfacilityregistration/default.htm>

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

SPECIAL TERMS AND CONDITIONS (cont'd)

USE OF WIC LOGO AND NAME: Manufacturer acknowledges that the WIC Acronym and the WIC Logo are service marks owned by the United States 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 Manufacturer's goods, services, advertising, or commercial activities, including nutritional message(s), by the WIC Program, USDA, or the State agency 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."

DISCLOSURE OF SUBCONTRACTORS / JOINT VENTURES (See Standard Contract Terms and Conditions, Section (roman numeral) V. General Provisions: Paragraph Q.):

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

_____	_____
_____	_____
_____	_____

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

SPECIFICATIONS AND REQUIREMENTS FOR THE WIC INFANT CEREAL REBATE PROGRAM FOR OHIOI. 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. The infant cereals offered by the Contractor(s) shall be designated to be Ohio's contract brand infant cereal, thereby establishing a Sole Source Rebate System.

## B. Classification

1. Contractor shall provide rebates for the following:
  - a. 8oz. containers of infant cereal redeemed by WIC retail vendors.
    - i. The Bidder must offer at least three types of cereals, two of which must be Rice and Oatmeal.
    - ii. Acceptable types of cereals include Rice, Barley, Oatmeal, Mixed/Multigrain, and Whole Wheat.
    - iii. The Bidder may not exclude any WIC eligible infant cereal from the rebate.
  2. Any other infant cereal 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. "Contract Brand Infant Cereal" means all authorized infant cereals as defined by USDA-FNS, produced by the manufacturer awarded the infant cereal cost containment rebate contract.
- B. "WIC Nutrition Card Benefits" means electronic benefit transfer cards that may be used by a participant for authorized foods including contract brand infant cereal at a WIC retail vendor location.
- C. "Participants" are eligible individuals who are receiving WIC Nutrition Card Benefits under the WIC Program.
- D. "Redeemed" means the transacted WIC Nutrition Card Benefits submitted by the WIC retail vendor for payment.
- E. "State WIC Agency" means the Ohio Department of Health.
- F. "Valid period" is the duration of time that a WIC Nutrition Card Benefits may properly be exchanged by a participant for authorized foods.
- G. "WIC retail vendors" are authorized by the State WIC Agency to exchange WIC Nutrition Card Benefits for WIC authorized Foods.
- H. "Commercial Wholesale Price Per Ounce" is the Wholesale Price Per Ounce for foods in the category being offered, as documented by the nationally published Commercial Wholesale Price List.
- I. "Rebate Amount Per Ounce" is the amount the Bidder is submitting. This amount will be subtracted from the Commercial Wholesale Price Per Ounce to determine the Net Price Per Ounce.
- J. "Net Price Per Ounce" is the result of subtracting the Rebate Amount Per Ounce from the Commercial Wholesale Price Per Ounce.

SPECIFICATIONS AND REQUIREMENTS FOR THE WIC INFANT CEREAL REBATE PROGRAM FOR OHIO (cont'd)

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. 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, two of which must be Rice and Oatmeal
  - a. Acceptable types of cereals include Rice, Barley, Oatmeal, Mixed/Multigrain, and Whole Wheat.
  - 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. 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. The Contractor will be required to pay a rebate on all authorized contract brand infant cereal redeemed by WIC retail vendors.
3. Infant cereal 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).
4. The rebate amount per ounce or the Commercial Wholesale Price Per Ounce may be adjusted, if applicable, in accordance with the Escalator Clause of this agreement.
5. Ohio's rebate eligible infant cereal must be available to all retailers statewide. By the signature affixed to this Bid, the manufacturer guarantees that infant foods are available statewide at the beginning of the contract term.

C. Contract Brand Infant Cereal 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 cereal 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 redeemed.
3. The rebate amount applied to the infant cereal shall be the amount effective during the month of the first day of use of the WIC Nutrition Card Benefits (i.e. benefits 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 identified as redeemed and paid in the preceding month through the regular WIC payment system.

SPECIFICATIONS AND REQUIREMENTS FOR THE WIC INFANT CEREAL REBATE PROGRAM FOR OHIO (cont'd)

5. The State WIC Agency shall also produce a monthly report specifying the amount of infant cereal redeemed through the State WIC Agency exception payment process.
6. The State WIC Agency shall submit an invoice based on paragraphs 4 and 5 above and a copy of the reports to the Contractor within forty-five (45) calendar days after the end of the month for which the State WIC Agency is invoicing the Contractor for payment. The invoice shall contain the methodology and all data used to calculate the monthly rebate payment owed by the Contractor.
7. For each WIC Nutrition Card Benefit that is redeemed during the month for which a rebate is invoiced and that includes Contract brand infant cereal, 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 WIC Nutrition Card Primary Account Number (PAN)
  - b. The Issue Date of WIC Nutrition Card Benefits
  - c. The WIC Nutrition Card Benefits Valid Begin Date
  - d. The number of ounces redeemed of the Contract brand infant cereal.
  - e. The dollar amount of contract brand infant cereal redeemed.
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 C, 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 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 or State Agency occasionally approves payment of WIC Nutrition Card claims that may be outside the normal submission period. The Contractor agrees that infant cereal identified on WIC Nutrition Cards 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 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. 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 prorated penalty. The penalty shall be equal to the number of days late divided by 30, multiplied by one percent (1%) of the outstanding balance.



SPECIFICATIONS AND REQUIREMENTS FOR THE WIC INFANT CEREAL REBATE PROGRAM FOR OHIO (cont'd)

D. 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	Ms. Jennifer Snyder Program Analysis Manager Ohio Department of Health 246 N. High Street Columbus, OH 43215 Telephone: 614-728-2877 Fax: 614-564-2470 E-mail: <a href="mailto:Jennifer.Snyder@odh.ohio.gov">Jennifer.Snyder@odh.ohio.gov</a>

E. Record Keeping

1. The Contractor shall allow the State WIC Agency, the United States Department of Agriculture's Food and Nutrition Service, the Comptroller General of the United States, or any of their duly authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to any Contract awarded pursuant to this Bid, for the purpose of making audits, examinations, excerpts, or transcriptions.
2. The Contractor shall retain for three and 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 E, Part 2, the records must be retained until all issues arising out of the audit, litigation, or action are resolved.

SPECIFICATIONS AND REQUIREMENTS FOR THE WIC INFANT CEREAL REBATE PROGRAM FOR OHIO (cont'd)

IV. CONTRACTOR RESPONSIBILITIES

The Contractor shall perform in compliance with Section III, Items A through E of any Contract awarded pursuant to this Bid.

The Contractor shall guarantee that sufficient quantities of Contract brand infant cereals, 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 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 issued to participants. Before issuing a non-contract brand infant cereal, the State will first provide an alternative Contractor product that meets the authorized food requirements as specified by Federal nutrition requirements.

The Contractor shall provide to the State WIC Agency advance notice of any changes in product packaging size, 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, except in the case of changes to wholesale price, which will be provided forty-five (45) calendar days prior to the effective date of the wholesale price change.

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 Commercial Wholesale Price Per Ounce minus Rebate Price Per Ounce (Net Price Per Ounce) for that category.

V. CONFIDENTIALITY

Due to federal confidentiality requirements, the Manufacturer may not have access to actual or copies of WIC Nutrition Cards or other client records which identify WIC participants.

States are prohibited from disclosing confidential Vendor information to the Manufacturer.

VI. STATE WIC AGENCY'S RESPONSIBILITIES

The State WIC Agency shall perform in compliance with any Contract award pursuant to this Bid.

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 have access to the WIC vendor's name, address, email/website, telephone number, store type, and authorized status.

The State WIC Agency's 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 the state's legislative body. If Ohio's General Assembly 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 Agency's exclusive right to determine which brands of infant cereal, including those of the Contractor, are USDA authorized WIC Program approved brands for distribution to WIC Program participants in the retail vendor system.

In the performance of its 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 the State WIC Program administrative rules contained in, as they exist now or may be amended.

The State WIC Agency 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.

SPECIFICATIONS AND REQUIREMENTS FOR THE WIC INFANT CEREAL REBATE PROGRAM FOR OHIO (cont'd)

VII. STATE WIC AGENCY AND CONTRACTOR JOINT RESPONSIBILITIES

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.

VIII. BIDDER DOCUMENTATION

Documentation specified below in paragraphs A. through D.\* should be submitted with the Bidder's Bid Response. If documentation is not submitted with the Bidder's Bid Response, the Office of Procurement Services may request it during Bid evaluation. If not submitted with the Bid, Bidder will have seven (7) calendar days after request to provide the requested documentation. Failure to provide documents requested by the deadline provided may deem the bid not responsive with no further consideration for award.

Documentation specified below in paragraph E. is required to be submitted with the Bidder's Bid Response.

- 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.
- D. Pursuant to the State WIC Agency and Contractor Joint Responsibility clause above, the Bidder should provide a Contractor's Contact with the Bid Response comprised of the name, address, telephone number and email address of the company representative who will be the Contractor's contact for any Contract awarded pursuant to this Bid.
- E. Bidders shall submit their Manufacturer's National Commercial Wholesale Price Lists for each of the varieties of infant cereals covered by this Bid.

IX. PROCEDURAL NOTES

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

SPECIFICATIONS AND REQUIREMENTS FOR THE WIC INFANT CEREAL REBATE PROGRAM FOR OHIO (Cont'd)

- B. During the term of any Contract issued pursuant to this Bid, if the Contractor discontinues the production of the Contract brand infant cereal, the Contractor may, in writing to the State WIC Agency, offer a replacement for the infant cereal. 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 and meets the Federal WIC definition for an infant cereal, (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. To be appropriate, the offered infant cereal must, at a minimum:

1. Be a cereal approved by the United State Department of Agriculture, Food and Nutrition Service to be used as an infant cereal by meeting the Federal WIC definition for infant cereal.
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.

If the State WIC Agency adds a new or replacement infant cereal, the change will take effect within one hundred twenty (120) days of written notification by the State WIC Agency of the addition or replacement.

PRICE SCHEDULE

Infant Cereal Rebate Program

UNSPSC CODE: 50193000

OAKS ITEM NUMBER: 14720  
COMPANY

BIDDER: GERBER PRODUCTS

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	9.90	29,156	288,679

\*Averages are based on September 2017 through February 2018 Participants issued Infant Food.

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

	E		F	G	H	I
Cereal Varieties Offered (8oz)	Manufacturer's Brand Name:	Average Total Monthly Ounces Redeemed (Column D above)	Commercial Wholesale Price Per Ounce in \$USD (In Effect as of the Bid Opening Date)	Rebate Amount Per Ounce in \$USD	Net Price Per Ounce in \$USD	Monthly Net Price in \$USD
Calculation					F - G	H x 288,679
RICE	Gerber	288,679	\$0.2725	\$0.0545	\$0.2180	\$62,932.02
OATMEAL	Gerber	288,679	\$0.2725	\$0.0545	\$0.2180	\$62,932.02
BARLEY	Gerber	288,679	\$0.2725	\$0.0545	\$0.2180	\$62,932.02
MIXED/MULTIGRAIN	Gerber	288,679	\$0.2725	\$0.0545	\$0.2180	\$62,932.02
WHOLE WHEAT	Gerber	288,679	\$0.2725	\$0.0545	\$0.2180	\$62,932.02

Additional Information:

1. If there is an error in the numbers provided by the Bidder, the Bidder is bound by the Net Price Per Ounce calculated by the State as indicated in the Contract Award paragraph.
2. Pricing must include Rice, Oatmeal, and one other variety. Please mark varieties being offered.
3. Bidders must submit all bids in United States Dollars (\$USD)
4. The Rebate Amount Per Ounce must be the same for all varieties of infant cereal and must be rounded to no more than four (4) decimal places.

CONTRACTOR INDEX

CONTRACTOR TERMS:

0000160934  
Gerber Products Company  
\*1812 N. Moore St.  
FL 26  
Arlington, VA 22209

\*CONTRACTOR'S CONTACT: Tina Ewing

BID CONTRACT.: OT901119

TERMS: Net 30 Days

DELIVERY: As Offered

Telephone: (571) 457-5663  
Email: [tina.ewing@us.nestle.com](mailto:tina.ewing@us.nestle.com)

SUMMARY OF AMENDMENTS

Amendment Number	Effective Date	Description
1	10/01/21	This amendment is issued to notify that as a result of mutual agreement between the State of Ohio and the Contractor, this contract is renewed for an additional twelve (12) months, effective 10/01/21 through 09/30/22. Additionally, this amendment is issued to repaginate and update the contractor's contact and address.

## ATTACHMENTS

Attachment One: Copies of Ohio WIC Rebate Invoices – September 2017 through February 2018

[LINK TO Sept 2017 through Feb 2018 Ohio WIC Infant Cereal Rebate Invoices](#)

Attachment Two: Ohio Department of Health Currently Authorized Infant Cereals as effective October 1, 2017

[LINK TO Ohio WIC Authorized Infant Foods effective October 1, 2017.pdf](#)

\*Indicates repagination, per amendment 1.