IDAHO

State of Idaho

Participating Addendum

Purchase Order Summary

Purchase Order Number:	PADD16200472
Account Number:	AC-1
Purchase Order Date:	November 16, 2015
Service Start Date:	October 28, 2015
Service End Date:	September 30, 2018
Payment Method:	Invoice
Payment Terms:	No Payment Terms specified
Currency	USD
FOB Instruction:	Destination
Attachment(s):	

Supplier

Susan Eberhart
Gerber Products Company
12 Vreeland Road
Florham Park, NJ 07932
Phone: 973-593-7787

Fax:

Email: susan.eberhart@us.nestle.com

Buyer Contact

Chelsea Cameron
Tel:208-332-1607
Fax: 208-327-7320
chelsea.cameron@adm.idaho.gov

Contract Number:

Bill To Address

DOP - Prog Mgr
Dept of Administration
Division of Purchasing
650 West State St Rm B-15
PO Box 83720
Boise, Idaho 83720

Phone: 208-332-1600
Fax: 208-327-7320
Email: purchasing@adm.idaho.gov
Mail Stop: DOP Program Manager

Ship To Address

DOP - Prog Mgr
Dept of Administration
Division of Purchasing
650 West State St Rm B-15
PO Box 83720
Boise, Idaho 83720

Phone: 208-332-1600
Fax: 208-327-7320
Email: purchasing@adm.idaho.gov
Mail Stop: DOP Program Manager

Instructions

NOTICE OF STATEWIDE CONTRACT (PADD) AWARD

This Contract for is for Infant Soy Formula Rebate and NASPO ValuePoint Master Price Agreement (Washington Contract Number 02715). The contract is for the benefit of State of Idaho Agencies, institutions, and departments and eligible political subdivisions or public agencies as defined by Idaho Code, Section 67-2327. The Division of Purchasing or the requisitioning agency will issue individual releases (delivery or purchase orders) against this Master Contract on an as needed basis.

Contract Title:..... Infant Soy Formula Rebate

Contract Usage Type:.....Optional Use

Public Agency Clause: .....Yes

Contract Administration:....Chelsea Cameron

---Phone Number:..... 208-332-1607

---Fax Number:..... 208-327-7320

---E-Mail:..... .....chelsea.cameron@adm.idaho.gov

Contractor's Primary Contacts

---Attn:..... Susan Eberhart

---Address:.....12 Vreeland Road, Box 697

---City, State, Zip:..... Florham Park, NJ 07932-0697

Phone Number:..... 973-593-7787

E-Mail:..... susan.eberhart@us.nestle.com

CONTRACTOR: Ship to the FOB DESTINATION point and BILL DIRECTLY to the ORDERING AGENCY. DO NOT MAIL INVOICES TO THE DIVISION OF PURCHASING. Notating the Contract Award Number on any invoices/statement will facilitate the efficient processing of payment.

QUANTITIES: The State of Idaho, Division of Purchasing can only give approximations of quantities and will not be held responsible for figures given in this document.

For ordering and payment information see the above contact information

THIS CONTRACT, (including any files attached), CONSTITUTES THE STATE OF IDAHO'S ACCEPTANCE OF YOUR SIGNED BID, QUOTATION, OR OFFER (including any electronic bid submission), WHICH SUBMISSION IS INCORPORATED HEREIN BY REFERENCE AS THOUGH SET FORTH IN FULL.

In the event of any inconsistency, unless otherwise provided herein, such inconsistency shall be resolved by giving precedence in the following order:

1. This Statewide Blanket Purchase Order document.
2. The state of Washington's original solicitation document.
3. The Contractor's signed bid, quotation, or offer.

	Items				
Supplier Part Number	**Quantity**	**Back Order**	**Unit**	**Unit Price**	**Total**
	3	0	ANN	$83,333.33	$249,999.99
Item Description	#1				

Delivery Date:	November 16, 2015
Shipping Method:	Delivery
Shipping Instructions:	
Ship FOB:	Destination
Attachment(s)	
Special Instructions:	

Sub-Total (USD)	$249,999.99
Estimated Tax (USD)	$0.00
TOTAL: (USD)	$249,999.99

Note: If there is a next to an item's unit price, that indicates that the price has been discounted.

Signature : Chelsea Cameron

Signed By : Chelsea Cameron

PARTICIPATING ADDENDUM
NASPO VALUEPOINT COOPERATIVE PURCHASING ORGANIZATION
WIC Infant Formula Rebate
Administered by the State of Washington (hereinafter "Lead State")

Gerber Products Company dba Nestle Infant Nutrition
Master Agreement No: 02715
(hereinafter "Contractor")

And

State of Idaho Department of Administration Division of Purchasing
(hereinafter "Participating State/Entity")

1. Scope: This addendum covers the *WIC Infant Formula Rebate* led by the State of Washington (Master Agreement No. 02715) for use by state agencies and other entities located in the State of Idaho, as provided below.

2. Participation: Use of NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

This PADD is for the benefit of State of Idaho agencies, institutions and departments; as well as eligible political subdivisions or other "Public Agencies," as defined by Idaho Code, Section 67-2327. The Ordering Entity will issue individual releases (orders) against this PADD on an as needed basis for the period noted above. "Public Agency" means any city or political subdivision of the state, including, but not limited to counties; school districts; highway districts; port authorities; instrumentalities of counties; cities or any political subdivision created under the laws of the State of Idaho.

3. Participating State Modifications or Additions to Master Agreement:
Notwithstanding any provisions in the Master Agreement to the contrary, the following shall apply to this PADD:

3.1 Assignment: No contract or order or any interest therein shall be transferred by the Contractor to whom such contract or order is given to any other party, without the approval in writing of the Administrator of the Division of Purchasing. Transfer of a contract without approval shall cause the annulment of the contract so transferred, at the option of the State. All rights of action, however, for any breach of such contract by the contracting parties are reserved to the State (Idaho Code Section 67-5726(1)).

3.2 Amendments: Amendments to the Master Agreement will automatically be incorporated in this PADD unless the State elects not to incorporate an amendment by providing written notification to Contractor; which notice must be provided within 10 calendar days of the date of the amendment, in order to be effective.

3.3 Governing Law: Notwithstanding any provision to the contrary, the state of Idaho's PADD and all orders issued under the PADD by Ordering Entities within the state of Idaho, shall be construed in accordance with and governed by the laws of the state of Idaho. Any action to enforce the provisions of this PADD shall be brought in state district court in Ada County, Boise, Idaho. In the event any term of this PADD is held to be invalid or unenforceable by a court, the remaining terms of this PADD will remain in full force and effect.

4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Susan Eberhart, Sr. Regulatory Specialist
Address	Gerber Products Company dba Nestle Infant Nutrition 12 Vreeland Road, Box 697 Florham Park, NJ 07932-0697
Telephone	(973) 593-7787
Fax	
E-mail	Susan.eberhart@us.nestle.com

Participating Entity

Name	Chelsea Cameron
Address	650 W. State Street, B-15
Telephone	208-3321607
Fax	208-327-7320
E-mail	chelsea.cameron@adm.idaho.gov

6. Orders: Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order. All orders issued by purchasing entities within the state of Idaho must include the Participating State contract number: **PADD 16200xxx** as well as the Lead State Master Agreement No. **02715**.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State:	Contractor: Gerber Products Company dba Nestlé Infant Nutrition
By: Chelsea Cameron	By:
Name: CHELSEA CAMERON	Name: Matt Reindel
Title: BUYER	Title: Chief Financial Officer
Date: 10/28/2015	Date: 10/21/15

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Washington State Department of
Enterprise Services

State of Washington
Department of Enterprise Services
Contracts, Procurement & Risk Management (CPRM)
1500 Jefferson St SE
Olympia, Washington 98501

Contract No. 02715
NASPO ValuePoint Contract
for
Soy Infant Formula Rebates

with

Gerber Products Company d/b/a Nestle Infant Nutrition

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DEFINITIONS

Amendment means a change to a legal document. For the purposes of a Solicitation document, an amendment shall be a unilateral change issued by the State, at its sole discretion. All other Amendments shall be mutually agreed to by the State and Contractor.

Apparent Successful Bidder is the Bidder identified by the State, after evaluation of Responses, who is recommended for Award.

Authorized Representative means an individual designated by the Bidder or Contractor to act on its behalf and with the authority to legally bind the Bidder or Contractor to the terms and conditions set forth in the Solicitation and Contract documents.

Award means the official act of the State of accepting the offer to enter into a Contract as contained in the Bidder(s) Response.

Bid means a sealed written offer to perform a Contract to provide materials, supplies, services, and/or equipment in reply to an Invitation for Bid (IFB).

Bidder means a vendor who submits a Bid or Proposal in reply to a Solicitation.

Business Day means Monday through Friday, 8:00 a.m. to 5:00 pm., Pacific Time, except for holidays observed by the state of Washington.

Calendar Day means consecutive days of the year including weekends and holidays, each of which commence at 12:00:01 a.m. and end at Midnight, Pacific Time. When "days" are not specified, Calendar Days shall prevail.

Contract means an agreement, or mutual assent, between two or more competent parties with the elements of the agreement being offer, acceptance, and consideration.

Contractor means an individual, company, corporation, firm, or combination thereof with which the State develops a Contract for the procurement of materials, supplies, services, and/or equipment. It shall also include any Subcontractor retained by Contractor as permitted under the terms of the Contract.

Contract Specialist means the individual authorized by the State who is responsible for conducting a specific Solicitation and/or administration of resulting Contract (see also Procurement Coordinator).

Exempt Infant Formula means an infant formula that meets the exempt specifications under section 412(h) of the federal Food, Drug and Cosmetic Act (21 U.S.C. 350 a(h)) and the regulations of 21 CFR parts 106 and 107.

Food Instruments (FI) means documents such as checks, drafts, vouchers, coupons or electronic benefits transfer cards (EBT), used by WIC participants to obtain WIC supplemental foods. Federal regulations allow a WIC FI to be valid up to ninety (90) days after the date the FI was issued to a WIC participant. Some Participating State Agencies use a shortened time period (e.g. 60 days).

Infant Formula means a food that meets the definition of an infant formula in Section 201(z) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(z)) and the requirements for an infant formula under section 412 of the federal Food, Drug and Cosmetic Act (21 U.S.C. 350a) and the regulations of 21 CFR parts 106 and 107.

Intent to Award is a notice of the recommendation for Award for a specific Solicitation.

Invitation for Bid (IFB) is the form utilized to solicit Bids in the formal, sealed Bid procedure and any amendments thereto issued in writing by the State. Specifications and qualifications are clearly defined.

Milk-Based Contract Infant Formula means all milk-based infant formulas (except exempt infant formulas) produced by the manufacturer awarded the milk-based rebate contract. This includes lactose reduced and protein modified formulas.

Participating Entity is an eligible organization participating in this WSCA solicitation and Contract for infant formula Rebates. The states and eligible organizations participating are Alaska, American Samoa, Arizona, Common wealth of the Northern Marianna Islands (CNMI), Delaware, District of Columbia, Guam, Hawaii, Idaho, Inter Tribal Council of Arizona (ITCA), Inter Tribal Council of Nevada (ITCN), Kansas, Maryland, Montana, Navajo Nation, Nevada, Oregon, Utah, Virgin Islands, Washington, West Virginia, and Wyoming.

Percent Discount means the percent discount is the "rebate per unit" divided by the "wholesale price" as displayed on Bid Price Sheets D. A percent discount is established for each physical form of the Primary Contract Infant Formulas. The percent discount is then applied to the bidder's soy-based contract infant formulas (except exempt infant formulas) by physical form to establish the rebate amount for each of the bidder's products.

Primary Contract Infant Formula means the soy-based infant formula for which a bid was submitted and a contract awarded. There is one primary soy-based contract infant formula under the contract. They are the first choice for issuance to WIC infants.

Procurement Coordinator means the Contracts Specialist designated by CPR to act on behalf of the State of Washington in conjunction with this IFB and Contract.

Proposal means a sealed written offer to perform a Contract to supply materials, supplies, services, and/or equipment in reply to a Request For Proposal (RFP).

Purchaser means the authorized user of the Contract, as identified in the Solicitation, who may or actually does make purchases of material, supplies, services, and/or equipment under the resulting Contract.

State means the Contracts Procurement and Risk Management Division within the Department of Enterprise Services (DES) or an Agency authorized by law to conduct acquisition of materials, supplies, services, and/or equipment or delegated that authority by DES.

Rebate as defined in 7 CFR 246 means the amount of money refunded under cost containment procedures to any State agency from the manufacturer of the particular food product as the result of the purchase of the supplemental food with a voucher or other purchase instrument by a participant in each State's agency program. Such rebates shall be payments made subsequent to the exchange of a food instrument for food.

Soy-Based Contract Infant Formula means all soy-based infant formulas (except exempt infant formulas) produced by the manufacturer awarded this rebate contract.

Total Monthly Net Price equals the sum of the Bidder's individual Monthly Net Price for each unit size and physical form of the Bidders soy-based Primary Contract Infant Formula as specified in Appendix D. Lowest net price is based on the manufacturers' lowest national wholesale price per unit for a full truckload on the date of bid submittal and opening.

Unit means a container, generally a can or bottle, which holds liquid concentrate, powdered concentrate and/or ready-to-feed infant formula.

Vendor is the definition ascribed in 7 CFR 246.

WIC-Eligible Medical Foods are enteral products that are formulated to provide nutritional support for individuals with a diagnosed medical condition, when the use of conventional foods is precluded, restricted or inadequate. WIC-Eligible Medical Foods may be nutritionally complete or incomplete, but they must serve the purpose of a food, provide a source of calories and one or more nutrients, and be designed for enteral digestion via an oral or tube feeding. WIC-Eligible Medical Foods include many, but not all, products that meet the definition of medical food in section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360 ee (b)(3)).

Wholesale Price is the bidder's dated and nationally published best full truckload wholesale price for a unit of the Bidder's milk-based and/or soy-based Primary infant formula offered as a Rebate under this IFB and Contract.

1. CONTRACT INFORMATION

1.1 PARTIES

This Contract ("Contract") is entered into by and between the state of Washington, acting by and through the Department of Enterprise Services (DES), an agency of Washington State government ("State") located at 1500 Jefferson Street SE, Olympia, WA 98501, and **Gerber Products Company d/b/a Nestle Infant Nutrition** ("Contractor") located at 12 Vreeland Road, Florham Park, NJ 07932a corporation licensed to conduct business in the state of Washington.

1.2 CONTRACT PURPOSE, SCOPE AND INTENT

The purpose of this Contract is to provide ***per unit rebates*** for all physical forms (concentrated liquid, powder and Ready To Feed (RTF)) of ***soy-based infant formula*** that meet the requirements under 7 CFR 246.10(e) (i) (iii) and (2) (iii), and are suitable for the routine issuance to infants by Participating Entities defined above. Such rebates shall be provided in accordance with Appendices A – *Statement of Work*, and D - Contractor's completed *Bid Price Sheet Submittal* of record, attached hereto and incorporated by reference.

As required by federal law and the specifications and requirements outlined in Appendix A, *Statement of Work*, attached hereto and incorporated herein, the soy-based formula specified by Contractor is the first choice of issuance to infants utilizing soy-based formula. Rebate is for Contractor's entire soy product line; the same percent discount by physical form awarded for their Primary Contract Infant Formula will be applied. Contractor agrees to pay rebates on any additional soy-based infant formula added to the Contract by future Amendment.

The Participating Entities will purchase and/or distribute infant formula through their existing retail food delivery systems. Participating Entities will provide guidance to local WIC clinic staff regarding policies/protocols, subject to United States Department of Agriculture (USDA), Food and Nutrition Services (FNS) requirements.

1.3 CONTRACT TERM

The term of this Contract is three (3) years, effective October 1, 2015 through September 30, 2018, with no option to extend for additional terms.

1.4 ENTIRE AGREEMENT

This Contract document,, all appendices and attachments, and all subsequently issued amendments comprise the entire agreement between the State and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract.

1.5 INCORPORATED DOCUMENTS

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein:

a. The Contractor's Response to Solicitation Number 02715;

b. The State's Solicitation document (Solicitation No. 02715) with all attachments and exhibits, and all amendments thereto;

- Appendix A -*Statement of Work*
- Appendix B- *Wholesale Price Sheet*
- Appendix D- *Contractor's completed Bid Price Sheet Submittal of record*

(Please see page 27 for the three posted appendices listed above)

c. All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to affect the sale of the Product to the Purchaser; and

d. Any other provision, term, or materials incorporated into the Contract by reference, to include any State accepted clarifications and any award letter that details the award provisions.

1.6 ORDER OF PRECEDENCE, CONFLICT AND CONFORMITY

1.6.1 ORDER OF PRECEDENCE

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

a. Applicable federal and state of Washington statutes and regulations.

b. Mutually agreed written amendments to this Contract.

c. This Contract (No.02715), including all documents incorporated herein and any State accepted clarifications, to include an award letter that details the award provisions.

d. Appendix A *Statement of Work*

e. Solicitation No. 02715

f. Contractor's response to Solicitation No. 02715

1.6.2 CONFLICT

To the extent possible, the terms of this Contract shall be read consistently.

1.6.3 CONFORMITY

If any provision of this Contract violates federal or state of Washington statute or rule of law, it is considered modified to conform to that statute or rule of law.

1.7 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, via facsimile or by electronic mail, to the parties at the addresses and fax numbers, e-mail addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Contractor at:	To Contracts Procurement and Risk Management (CPRM) at:
Nestle' Nutrition U.S	State of Washington Department of Enterprise Services
Attn: Susan Eberhart Sr. Regulatory Specialist	Attn: Legal Notice - Chief Procurement Officer
Address: 12 Vreeland Road Box 697 Florham Park, New Jersey 07932-0697	Address: 1500 Jefferson Street SE P.O. Box 41017 Olympia, WA 98504-1017
Phone: (973) 593-7787	Phone: (360) 407-9410
E-mail: susan.eberhart@us.nestle.com	E-mail: tim.shay@des.wa.gov

Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Contractor or State, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and State further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

1.8 AUTHORITY TO BIND

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

1.9 COUNTERPARTS

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

2. CONTRACT ADMINISTRATION

2.1 CONTRACT ADMINISTRATOR

The State shall appoint a single point of contact that will be the Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The Contract Administrator will be the principal contact for Contractor concerning business activities under this Contract. The State will notify Contractor, in writing, when there is a new Contract Administrator assigned to this Contract.

2.2 AVAILABILITY OF CONTRACT INFORMATION

The Department of Enterprise Services (DES) will maintain Contract information including products available, rebate structures and product pricing and make it available to the Purchasing Entities.

2.3 CONTRACTOR SUPERVISION AND COORDINATION

Contractor shall:

a. Competently and efficiently, supervise and coordinate the implementation and completion of all Contract requirements specified herein.

b. Identify the Contractor's Representative, who will be the principal point of contact for the State concerning Contractor's performance under this Contract.

c. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's Representative assigned to this Contract.

d. Be bound by all written communications given to or received from the Contractor's Representative.

2.4 CONTRACT MANAGEMENT

Upon award of this Contract, the Contractor shall:

a. Review the impact of the award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.

b. Ensure that those who endeavor to utilize this contract are authorized Purchasers under this Contract.

2.5 MISCELLANEOUS EXPENSES

Expenses related to day-to-day performance under any Contract, including but not limited to, travel, lodging, meals, incidentals will not be reimbursed to the Bidder.

2.6 CHANGES

The State reserves the right to modify this Contract (including but not limited to adding or deleting products, services, or delivery locations) by mutual agreement between the State and the Contractor, so long as such modification is substantially within the scope of the original Contract.

Alterations to any of the terms, conditions, or requirements of this Contract shall only be effective upon written issuance of a written, mutually agreed Contract Amendment by the Contract Administrator. However, changes to point of contact information may be updated without the issuance of a mutually agreed Contract Amendment.

2.7 SALES & SUBCONTRACTOR REPORTS

Contractor shall provide a Sales and Subcontractor Report to CPR on a quarterly basis in the electronic format provided by Contracts Procurement and Risk (CPR). Reports must be submitted electronically within thirty (30) days after the end of the calendar quarter, i.e., no later than April 30, July 31, October 31 and January 31. Quarterly rebate reports shall be submitted in the format provided in the format provided by CPR. Total rebate for each Participating Entity is to be shown separately.

2.8 OTHER REQUIRED REPORT(S)

All reports required under this contract must be delivered to the Contract Administrator. Contractor may be required, upon reasonable advance notice, to provide a detailed annual contract sales history report that may include but is not limited to products description, part number, per unit quantities sold, contract price in an electronic format that can be read by MS Excel. Other required reports will be designed and approved by mutual agreement of the parties to this Contract.

2.9 WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS)

Contractor shall be registered in the Contractor registration system, Washington's Electronic Business Solution (WEBS) maintained by the Washington State Department of Enterprise Services. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with WEBS and maintain an accurate Contractor profile in WEBS.

3. CONTRACTOR QUALIFICATIONS AND REQUIREMENTS

3.1 ESTABLISHED BUSINESS

Prior to commencing performance, or prior to that time if required by the State, law or regulation, Contractor must be an established business firm with all required licenses, fees, bonding, facilities, equipment and trained personnel necessary to meet all requirements and

perform the work as specified in the Solicitation. Contractor shall maintain compliance with these requirements throughout the life of this contract.

The State reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

3.2 STAFF QUALIFICATIONS

If at Contract award or any time thereafter, any specifically named individual(s) identified in the Response to work on this engagement are not available, State has the right to approve or reject any change in Contractor's personnel. The State agrees that any requests for staffing changes by the Contractor will not be unreasonably withheld. Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW.

3.3 USE OF SUBCONTRACTORS

In accordance with Solicitation requirements, Contractor agrees to take complete responsibility for all actions of such Subcontractors as related to performance under this contract.

Prior to performance, Contractor shall identify all subcontractors who will perform services in fulfillment of contract requirements, including their name, the nature of services to be performed, address, telephone, facsimile, email, federal tax identification number (TIN), and anticipated dollar value of each subcontract.

The State reserves the right to approve or reject any and all Subcontractors that identified by the contractor. Any Subcontractors not listed in the Bidder's Response, who are engaged by the Contractor, must be pre-approved, in writing, by the State.

Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW.

3.4 SUBCONTRACTS AND ASSIGNMENT

Contractor shall not Subcontract, assign, or otherwise transfer its obligations under this Contract without the prior written consent of the Contract Administrator. Contractor shall provide a minimum of thirty (30) calendar days advance notification of intent to Subcontract, assign, or otherwise transfer its obligations under this Contract. Violation of this condition may be considered a material breach establishing grounds for Contract termination. The Contractor shall be responsible to ensure that all requirements of the Contract shall flow down to any and all Subcontractors. In no event shall the existence of a Subcontract operate to release or reduce the liability of Contractor to the state for any breach in the performance of the Contractor's duties.

3.5 CONTRACTOR AUTHORITY AND INFRINGEMENT

Contractor is authorized to sell under this Contract, only those materials, supplies, services and/or equipment as stated herein and allowed for by the provisions of this Contract. Contractor shall not represent to any Purchasers that they have the contract authority to sell any other materials, supplies, services and/or equipment. Further, Contractor may not intentionally infringe on other established State Contracts.

3.6 MATERIALS AND WORKMANSHIP

The Contractor shall be required to furnish all materials, supplies, equipment and/or services necessary to perform Contractual requirements. Materials, supplies and workmanship used in the construction of equipment for this Contract shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

4. DELIVERY REQUIREMENTS

4.1 TAXES, FEES AND LICENSES

After award of Contract, and prior to commencing performance under the Contract, the Contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for Contract performance. It is the Contractor's sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this Contract.

4.2 MINORITY AND WOMEN'S BUSINESS ENTERPRISE (MWBE) PARTICIPATION

With each invoice for payment and within thirty (30) days of Purchaser's request, Contractor shall provide Purchaser an Affidavit of Amounts Paid. The Affidavit of Amounts Paid shall either state the Contractor still maintains its MWBE certification, or state that its Subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE Subcontractor under this Contract. Contractor shall maintain records supporting the Affidavit of Amounts Paid in accordance with this Contract's Retention of Records requirements.

4.3 AUDITS

The state reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced.

5. QUALITY ASSURANCE

5.1 CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

5.1.1 Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

5.1.2 WARRANTIES

Contractor warrants that all materials, supplies, services and/or equipment provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any materials, supplies, service and/or equipment, and inspection incidental thereto, by the Purchaser shall not alter or affect the obligations of the Contractor or the rights of the Purchaser.

5.1.3 COST OF REMEDY

Cost of Remedying Defects: All defects, indirect and consequential costs of correcting, removing or replacing any or all of the defective materials or equipment will be charged against the Contractor.

5.2 STATE COMMITMENTS, VENDOR AUTHORIZATION, MONITORING AND COMPLIANCE

5.2.1 Under 7 CFR 246, the State has sole responsibility for authorizing and monitoring Vendors in the WIC program. State warrants that it will adequately consider the Business integrity (as defined in 7 CFR 246) of any Vendor applicant. Contractor has no ability to independently monitor and verify Vendor activity or substantiate invoices sent by the State as the identity of all Vendors is confidential to the States. In the event a Vendor is disqualified from the WIC program for trafficking Food instruments or other fraudulent activity, the State shall promptly notify the Contractor and shall reimburse Contractor for any Rebates paid to the State for redemptions made by the offending Vendor minus any receipts or records that indicate the Vendor actually purchased infant formula products from the State agency's list.

6. INFORMATION AND COMMUNICATIONS

6.1 ADVERTISING

Contractor shall not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from the Contract Administrator.

6.2 PROPRIETARY OR CONFIDENTIAL INFORMATION

To the extent consistent with Chapter 42.56 RCW, the Public Disclosure Act, the State shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, the State will notify Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, the State will release the requested information on the date specified.

The Purchasing Authority's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Contractor of any request(s) for disclosure for so long as the State retains Contractor's information in the State records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are exempt from disclosure.

6.3 NON-ENDORSEMENT AND PUBLICITY

Neither the State nor the Purchasers are endorsing the Contractor's Products or Services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to the State, any Purchaser or the state of Washington in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of the State.

6.4 PROTECTION OF CONFIDENTIAL AND PERSONAL INFORMATION

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either Chapter 42.56 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

"Personal information" including, but not limited to, "Protected Health Information" (PHI) under Health Insurance Portability And Accountability Act (HIPAA), individuals' names, addresses, phone numbers, birth dates, and social security numbers collected, used, or acquired in connection with this Contract shall be protected against unauthorized use, disclosure, modification or loss.

HIPAA establishes national minimum standards for the use and disclosure of certain health information. The Contractor must comply with all HIPAA requirements and rules when determined applicable by the Purchaser. If Purchaser determines that (1) Purchaser is a "covered entity" under HIPAA, and that (2) Contractor will perform "business associate" services and activities covered under HIPAA, then at Purchaser's request, Contractor agrees to execute Purchaser's business associate Contract in compliance with HIPAA.

Contractor shall ensure its directors, officers, employees, Subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Agency or as otherwise required by law.

Any breach of this provision may result in termination of the Contract and demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the State of Washington and the Purchaser for any damages related to both: (1) the Contractor's

unauthorized use of personal information and (2) the unauthorized use of personal information by unauthorized persons as a result of Contractor's failure to sufficiently protect against unauthorized use, disclosure, modification, or loss.

Contractor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Contractor's records shall be subject to inspection, review or audit in accordance with Retention of Records.

Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Immediately upon expiration or termination of this Contract, Contractor shall, at Purchaser's option: (i) certify to Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Contractor to protect Purchaser's Confidential Information.

7. GENERAL PROVISIONS

7.1 GOVERNING LAW/VENUE

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

7.2 SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

7.3 SURVIVORSHIP

All transactions executed for Products and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of any sections titled Overpayments to Contractor; Ownership/Rights in Data; Contractor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Retention of Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes; and Limitation of Liability shall survive the termination of this Contract.

7.4 INDEPENDENT STATUS OF CONTRACTOR

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW, or Title 51 RCW.

7.5 GIFTS AND GRATUITIES

Contractor shall comply with all state laws regarding gifts and gratuities, including but not limited to: RCW 39.26 , RCW 43.19.1939, RCW 42.52.150, RCW 42.52.160, and RCW 42.52.170 under which it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business or contract activities.

Under RCW 39.26 and the Ethics in Public Service Law, Chapter 42.52 RCW state officers and employees are prohibited from receiving, accepting, taking or seeking gifts (except as permitted by RCW 42.52.150) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

7.6 IMMUNITY AND HOLD HARMLESS

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries, death or damage to property arising out of or resulting from the performance of the contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor shall be required to indemnify, defend, and hold harmless the State only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

Contractor waives its immunity under Title 51 to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

7.7 PERSONAL LIABILITY

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Washington when executing their official duties in good faith, be in any way personally liable or responsible for any agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

7.8 INSURANCE

7.8.1 GENERAL REQUIREMENTS

Contractor shall, at their own expense, obtain and keep in force insurance as follows until completion of the Contract. Upon Award, Contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Washington that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, will result in Contract cancellation.

In lieu of providing a certificate of insurance coverage, Contractor has the option of providing evidence of self-insurance that is acceptable to the State.

Contractor shall include all Subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each Subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.

7.8.2 SPECIFIC REQUIREMENTS

a. Employers Liability (Stop Gap)

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than $1,000,000.00. The State of Washington will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this Contract.

b. Commercial General Liability Insurance

The Contractor shall at all times during the term of this Contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this Contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants.

The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the Contractor's premises/operations, independent Contractors, products/completed operations, personal injury and advertising injury, and contractual liability (including the tort liability of another assumed in a business Contract), and contain separation of insured's (cross liability) conditions.

Contractor waives all rights against the State of Washington for the recovery of damages to the extent they are covered by general liability or umbrella insurance.

The limits of liability insurance shall not be less than as follows:

General Aggregate Limits (other than products-completed operations)	$2,000,000
Products-Completed Operations Aggregate	$2,000,000
Personal and Advertising Injury Aggregate	$1,000,000
Each Occurrence (applies to all of the above)	$1,000,000
Fire Damage Limit (per occurrence)	$ 50,000
Medical Expense Limit (any one person)	$ 5,000

7.8.3 BUSINESS AUTO POLICY (BAP)

In the event that services delivered pursuant to this Contract involve the use of vehicles, or the transportation of clients, automobile liability insurance shall be required. The coverage provided shall protect against claims for bodily injury, including illness, disease, and death; and property damage caused by an occurrence arising out of or in consequence of the performance of this service by the Contractor, Subcontractor, or anyone employed by either.

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit not less than $1,000,000 per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

Contractor waives all rights against the State of Washington for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

7.8.4 ADDITIONAL INSURANCE PROVISIONS

All above insurance policies shall include, but not be limited to, the following provisions:

a. Additional Insured: The State of Washington and all authorized Purchasers shall be named as an additional insured on all general liability, umbrella, excess, and property insurance policies. All policies shall be primary over any other valid and collectable insurance.

b. Notice of Policy Cancellation/Non-renewal: For insurers subject to Chapter 48.18 RCW (Admitted and regulated by the Washington State Insurance Commissioner) a written notice shall be given to the director of purchasing or designee forty-five (45) calendar days prior to cancellation or any material change to the policy as it relates to this Contract. Written notice shall include the affected Contract reference number.

c. Surplus Lines: For insurers subject to Chapter 48.15 RCW (Surplus Lines) a written notice shall be given to the director of purchasing or designee twenty (20) calendar days prior to cancellation or any material change to the policy as it relates to this Contract. Written notice shall include the affected Contract reference number.

d. Cancellation for Non-payment to Premium: If cancellation on any policy is due to non-payment of premium, a written notice shall be given the director of purchasing or designee ten (10) calendar days prior to cancellation. Written notice shall include the affected Contract reference number.

e. Identification: Policy and Certificates of Insurance shall include the affected Contract reference number.

f. Insurance Carrier Rating: The insurance required above shall be issued by an insurance company authorized to do business within the State of Washington. Insurance is to be placed with a carrier that has a rating of A- Class VII or better in the most recently published edition of Best's Reports. Any exception must be reviewed and approved by the Risk Manager for the State of Washington, by submitting a copy of the Contract and evidence of insurance before Contract commencement. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and Chapter 284-15 WAC.

7.8.5 EXCESS COVERAGE

The limits of all insurance required to be provided by the Contractor shall be no less than the minimum amounts specified. However, coverage in the amounts of these minimum limits shall not be construed to relieve the Contractor from liability in excess of such limits.

7.8.6 LIMIT ADJUSTMENTS

The state reserves the right to increase or decrease limits as appropriate.

7.9 INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with the provisions of Title 51 RCW Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the State may terminate this Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from the Contractor.

7.10 NON DISCRIMINATION

During the performance of this Contract, the Contractor shall comply with all applicable federal and state nondiscrimination laws, regulations and policies, including, but not limited to, Title VII of the Civil Rights Act, 42 U.S.C. section 12101 et. seq; the Americans with Disabilities Act (ADA); and, Chapter 49.60 RCW, Discrimination – Human Rights Commission.

7.11 OSHA AND WISHA REQUIREMENTS

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Administration (OSHA) and, if manufactured or stored in the State of Washington, the Washington Industrial Safety and Health Act (WISHA) and the standards and regulations issued there under, and certifies that all items furnished and purchased will conform to and comply with said laws, standards and regulations. Contractor further agrees to indemnify and hold harmless State and Purchaser from all damages assessed against Purchaser as a result of Contractor's failure to comply with those laws, standards and regulations, and for the failure of the items furnished under the Contract to so comply.

7.12 WAIVER

Failure or delay of the State or Purchaser to insist upon the strict performance of any term or condition of the Contract or to exercise any right or remedy provided in the Contract or by law;

or the State's or Purchaser's acceptance of or payment for materials, supplies, services and/or equipment, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the provision of this Contract shall be construed, expressly or by implication, as a waiver by the State or Purchaser of any existing or future right State or Purchaser to insist upon the strict performance of the entire agreement by the Contractor. In the event of any claim for breach of Contract against the Contractor, no and/or remedy available by law.

8. DISPUTES AND REMEDIES

8.1 PROBLEM RESOLUTION AND DISPUTES

Problems arising out of the performance of this Contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. If a problem persists and cannot be resolved, it may be escalated within each organization.

In the event a bona fide dispute concerning a question of fact arises between State or the Purchaser and Contractor and it cannot be resolved between the parties through the normal escalation processes, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.

The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Both parties agree to be bound by the determination of the Dispute Resolution Panel.

Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.

State, the Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by Purchaser for materials, supplies, services and/or equipment being provided by Contractor, Contractor shall continue providing materials, supplies, services and/or equipment pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and

places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

8.2 ADMINISTRATIVE SUSPENSION

When it is in the best interest of the state, the State may at any time, and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days per event by written notice from the Contract Administrator to the Contractor's Representative. Contractor shall resume performance on the next business day following the 30th day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the Contractor can be demanded and required to resume performance within the 30 day suspension period by the Contract Administrator providing the Contractor's Representative with written notice of such demand.

8.3 FORCE MAJEURE

The term "force majeure" means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure.

Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by Contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.

Rights Reserved: The State reserves the right to authorize an amendment to this Contract, terminate the Contract, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the State.

8.4 ALTERNATIVE DISPUTE RESOLUTION FEES AND COSTS

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

8.5 NON-EXCLUSIVE REMEDIES

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

8.6 LIMITATION OF LIABILITY

The parties agree that neither Contractor, State nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Retention of Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

Neither the Contractor, the State nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the Contractor, the State or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than the State or the Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Contractor, the State or the Purchaser, or their respective Subcontractors.

If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

8.7 FEDERAL RESTRICTIONS ON LOBBYING

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

8.8 FEDERAL DEBARMENT AND SUSPENSION

Contractor certifies, that neither it nor its "principals" (as defined in 49 CFR. 29.105 (p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Please reference Appendix H Debarment Certificate (see Part One, IFB document).

9. CONTRACT TERMINATION

9.1 MATERIAL BREACH

A Contractor may be terminated for cause by the State, at the sole discretion of the Contract Administrator, for failing to perform a contractual requirement or for a material breach of any term or condition. Material breach of a term or condition of the Contract may include but is not limited to:

a. Contractor failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Contract;

b. Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the contract;

c. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;

d. Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Contractor's proper performance hereunder;

e. Appointment of any receiver, trustee, or similar official for Contractor or any of the Contractor's property and such appointment endangers the Contractor's proper performance hereunder;

f. A determination that the Contractor is in violation of federal, state, or local laws or regulations and that such determination renders the Contractor unable to perform any aspect of the Contract.

9.2 OPPORTUNITY TO CURE

In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the State may issue a written cure notice. The Contractor may have a period of time in which to cure. The State is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely within the discretion of the State. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, or otherwise affects any other remedies available against Contractor under the Contract or by law.

If the breach remains after Contractor has been provided the opportunity to cure, the State may do any one or more of the following:

a. Exercise any remedy provided by law;

b. Terminate this Contract and any related Contracts or portions thereof;

c. Procure replacements and impose damages as set forth elsewhere in this Contract;

d. Impose actual damages;

e. Suspend or bar Contractor from receiving future Solicitations or other opportunities; and

f. Require Contractor to reimburse the state for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Contract.

9.3 TERMINATION FOR CAUSE

In the event the Contract Administrator, in its sole discretion, determines that the Contractor has failed to comply with the conditions of this Contract in a timely manner or is in material breach, the Contract Administrator has the right to suspend or terminate this Contract, in part or in whole. The Contract Administrator shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days or as otherwise specified by the Contract Administrator, or if such corrective action is deemed by the Contract Administrator to be insufficient, the Contract may be terminated. The Contract Administrator reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by the Contract Administrator to terminate the Contract.

In the event of termination, the State shall have the right to procure for all Purchasers any replacement materials, supplies, services and/or equipment that are the subject of this Contract on the open market. In addition, the Contractor shall be liable for damages as authorized by law including, but not limited to, any price difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

If it is determined that: (1) the Contractor was not in material breach; or (2) failure to perform was outside of Contractor's or its Subcontractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience". The rights and remedies of the State and/or the Purchaser provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

9.4 TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, the State, at the sole discretion of the Contract Administrator, may terminate this Contract, in whole or in part by giving one hundred eighty (180) calendar days or other appropriate time period written notice beginning on the second day after mailing to the Contractor. If this Contract is so terminated, Purchasers shall be liable only for payment required under this Contract for properly authorized services rendered, or materials, supplies and/or equipment delivered to and Accepted by the Purchaser prior to the effective date of Contract termination. Neither the State nor the Purchaser shall have any other obligation whatsoever to the Contractor for such termination. This Termination for Convenience clause may be invoked by the State when it is in the best interest of the State of Washington.

9.5 TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the State and/or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, the State may terminate this Contract, in whole or in part, by [seven (7) calendar days or other appropriate time period] written notice to Contractor.

9.6 TERMINATION FOR NON-ALLOCATION OF FUNDS

If funds are not allocated to Purchaser(s) to continue this Contract in any future period, State may terminate this Contract by seven (7) calendar days or other appropriate time period written notice to Contractor or work with Contractor to arrive at a mutually acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for materials, supplies,

services and/or equipment including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. State and/or Purchaser agrees to notify contractor in writing of such non-allocation at the earliest possible time.

No penalty shall accrue to the Purchaser in the event this section shall be exercised. This section shall not be construed to permit State to terminate this Contract in order to acquire similar materials, supplies, services and/or equipment from a third party.

9.7 TERMINATION FOR CONFLICT OF INTEREST

State may terminate this Contract by written notice to Contractor if it is determined, after due notice and examination, that any party to this Contract has violated Chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, the State and /or Purchaser shall be entitled to pursue the same remedies against Contractor as it could pursue in the event that the Contractor breaches this Contract.

9.8 TERMINATION PROCEDURE

In addition to the procedures set forth below, if the State terminates this Contract, Contractor shall follow any procedures the Contract Administrator specifies in the termination notice.

Upon termination of this Contract and in addition to any other rights provided in this Contract, Contract Administrator may require the Contractor to deliver to the Purchaser any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Purchaser shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service(s) Accepted by the Purchaser, and the amount agreed upon by the Contractor and the Purchaser for (i) completed materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which are Accepted by the Purchaser, and (iv) the protection and preservation of property, unless the termination is for cause, in which case the State and the Purchaser shall determine the extent of the liability of the Purchaser. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Purchaser may withhold from any amounts due the Contractor such sum as the Contract Administrator and Purchaser determine to be necessary to protect the Purchaser against potential loss or liability.

The rights and remedies of the State and/or the Purchaser provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a termination notice, and except as otherwise expressly directed in writing by the Contract Administrator, the Contractor shall:

a. Stop all work, order fulfillment, shipments, and deliveries under the Contract on the date, and to the extent specified, in the notice;

b. Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to the Contract except as is necessary to complete or fulfill such portion of the Contract that is not terminated;

c. Complete or fulfill such portion of the Contract that is not terminated in compliance with all contractual requirements;

d. Assign to the Purchaser, in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Purchaser has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

e. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator and/or the Purchaser to the extent Contract Administrator and/or the Purchaser may require, which approval or ratification shall be final for all the purposes of this clause;

f. Transfer title to the Purchaser and deliver in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser any property which, if the contract had been completed, would have been required to be furnished to the Purchaser;

g. Take such action as may be necessary, or as the Contract Administrator and/or the Purchaser may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the State and/or the Purchaser has or may acquire an interest.

9.9 COUNTERPARTS

This Contract may be executed in counterparts, in a single original, or duplicate originals. As applicable, each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments hereunto.

Approved	**Approved**
Gerber Products Company d/b/a Nestlé Infant Nutrition	**State of Washington WA State Department of Enterprise Services Contracts, Procurement & Risk Management**
Signature	**Signature** Jim L. Shay
Print or Type **Name:** Matt Reindel **Date:** 9/10/15	**Print or Type** **Name:** Tim L. Shay **Date:** 9/10/15
Title: Chief Financial Officer	**Title:** Contracts Administrator

Melissa A Cox 9/10/15
DES Procurement Supervisor

Appendix A

Appendix C

Appendix D

APPENDIX A
Infant Formula Rebate
Solicitation No. 02715
Statement of Work

1. SCOPE OF WORK

1.1. Rebates paid to Participating Entities under this Contract are limited to Soy-Based Infant Formula purchased under the federally funded WIC Program with USDA, FNS funds.

1.2. Participating Entities will make decisions affecting this Contract by consensus. A majority vote will be used if consensus cannot be reached.

1.3. Contractor will provide the products offered on Appendix D Bid Sheet and offer a per unit rebate for each unit size and physical form of the Soy-Based Infant Formula it manufactures that meets the specifications below in Section Two.

1.4. Terms are not to be negotiated with respect to the following:

a. Length or number of extension periods:

b. Rebate amounts that will apply to the Contract and any extension periods: and

c. The method by which the rebates will be calculated.

2. SPECIFICATIONS

The Primary Contract Soy-Based Infant Formula for which a Rebate is offered under Contract No. 02715 will meet the following specifications:

2.1 The Soy-Based Infant Formula will meet the definition of an infant formula, as stated in section 201(z) of the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)), the requirements for an infant formula under section 412 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a), and the regulations 21 CFR parts 106 and 107.

2.2 The Soy-Based Infant Formula will satisfy all requirements under 7 CFR 246.10(e)(1)(iii) and 7 CFR 246.10(e)(2)(iii).

2.3 The Soy-Based Infant Formula will contain at least 10 milligrams of iron per liter at standard dilution and supply 67 kilocalories per 100 milliliters (i.e. approximately 20 kilocalories per fluid ounce of infant formula) at standard dilution.

2.4 The Soy-Based Infant Formula will be nutritionally complete not requiring the addition of any ingredients other than water prior to being served in a liquid state.

2.5 The Soy-Based Infant Formula will be available in liquid concentrate, powdered concentrate and ready-to-feed.

2.6 Contractor agrees to supply and pay a "per unit" Rebate on any new Soy-Based Infant Formula it introduces to the marketplace after the Contract is awarded. Contractor agrees to provide the wholesale price of any new products at the time the product is added to the Contract. The rebate for Soy-Based Infant Formula added to the Contract after the start date (new and existing) will be calculated using the Wholesale Price of the formula at the time the formula is approved for issuance by the Participating Entity.

2.7 Within ten (10) days of receipt of the Award notice, the Contractor will furnish the State with a list of their Soy-Based Infant Formulas that meets the FDA requirements for an infant formula. These formulas will be included in the Contract. The list will not include WIC eligible

Exempt Infant Formula or WIC-Eligible Medical Foods. The list will include the Contractor's nationally published best full truckload wholesale price at the time of the Bid opening, for each unit size and physical form of infant formula.

2.8 The Rebate offered for each unit size and physical form of the Soy-Based Infant Formula, as specified on Appendix D Bid Sheet, will be converted to a Percent Discount and used to calculate the Rebate for the corresponding physical form of Soy-Based Contract Infant Formula. The Percent Discount is multiplied by the Bidder's nationally published best full truckload wholesale price to establish the rebate for the Contract Infant formulas.

3. USE OF PRIMARY CONTRACT INFANT FORMULA

Participating Entities will approve the Primary Contract Soy-Based Infant Formula. The Primary Contract Infant Formula will be the first choice of issuance to infants covered by this contract. Participating Entities are not required to approve or issue the manufacturer's entire product line of Soy-Based Infant Formula.

Participating Entities reserve the right to issue non-contract brands of infant formula according to the Participating Entity's agency policy outlined in Appendix P. Participation and usage data provided in the IFB does not necessarily reflect actual issuance and redemption that will occur under the new Contract.

4. CONTRACT INFANT FORMULA AVAILABILITY

4.1 By September 1, 2015, the Soy-Based Infant Formula will be in full statewide distribution. Full statewide distribution means the formula is readily available from wholesale suppliers that supply WIC authorized retail vendors for each Participating Entity.

4.2 The Contractor will manufacture and make available supplies of Soy-Based Infant Formula in sufficient quantity to serve WIC participants of the Participating Entities through their wholesale distribution system.

5. WHOLESALER NOTIFICATION

5.1 By July 1, 2015, the Contractor will contact wholesale suppliers in the geographic service locations of all of the Participating Entities to notify them of the Contract award and the implementation date of the Soy-Based Infant Formula under the Contract. Participating Entities will provide lists and/or mailing labels of wholesale suppliers prior to July 1, 2015, if requested.

6. PRODUCT CHANGES

6.1 Contractor must give Participating Entities at least Ninety (90) calendar days advance written notice of planned changes in formulation, product name, reconstituted amount per unit, product packaging including size, weight and/or label, and discontinuation of their Primary Contract Soy-Based Infant Formula and other Soy-Based Infant Formulas in their product line. The Contractor will provide electronically product labels showing any changes.

6.2 Contractor will cooperate with a Participating Entity to plan and execute a communication strategy regarding product changes when a Participating Entity determines product change

information will be distributed to WIC clinics, authorized retail vendors and/or the medical community.

6.3 Contractor will provide prorated Rebates (i.e. the same Percent Discount as remitted for the Soy-Based Contract Infant Formula be discontinued, reformulated or produced in a different can size, or should any new product be introduced which is designed to take the place of the Soy-Based Contract Infant Formula. If the Contractor discontinues production of the Primary Contract Soy-Based formula, it must provide a rebate that yields the same net cost per ounce for the replacement formula.

7. WHOLESALE PRICE CHANGES

7.1 Contractor will provide written notification to the State and all Participating Entities of wholesale price changes. Notification will be provided at the same time other customers are notified of the change. The notification will include both the effective date and the amount of the change for all products meeting the Primary Contract Soy-Based Infant Formula definition.

7.2 Effective after the Bid opening and throughout the term of the Contract, any increase or decrease in the wholesale price per unit will be matched by a cent-for-cent increase or decrease in the Rebate per unit and be applied the first day of the month following the wholesale price changes. This applies to all products meeting the Soy-Based Contract Infant Formula definition.

7.3 Changes in rebate amounts (other than cent-for-cent adjustments) are prohibited for the full term of this Contract, including any and all Contract extensions, per USDA, FNS regulations.

8 FAILURE TO SUPPLY SUFFICIENT QUANTITIES

8.1 Supply problems are defined as incidents when product is not available to wholesalers and chain store distribution centers.

8.2 A Participating Entity will notify the Contractor within twenty-four (24) hours of any report that the Soy-Based Contract Infant Formula is not available or available in an inadequate supply through a wholesale supplier in their service location. The Contractor will investigate the alleged supply problem and notify the Participating Entity of its findings within forty-eight (48) hours.

8.3 Contractor will notify the State and all Participating Entities immediately of the supply problem. CPR will work with the Contractor to immediately remedy the supply problem through direct shipments of product to affected areas, substitution of another product in the Contractor's product-line, or any other immediate solution approved by CPR.

8.4 If the Contractor is unable to supply sufficient quantities of a contract brand infant formula, Participating Entities will first issue the same brand of Soy-Based Contract Infant Formula in a different physical form to address the shortage as long as supply for that form is sufficiently available.

8.5 If the State is not satisfied with Contractor's remedy proposed in Section 8.3 above, Contractor will pay the contracted rebate amount for alternate FDA approved infant formulas substituted the Participating Entities until the supply problem is resolved.

8.6 Contractor is not responsible for lack of Soy-Based Contract Infant Formula inventory at the retail level due to the failure of individual retail vendors to appropriately order stock from their wholesale supplier.

9 MONTHLY INVOICES AND DOCUMENTATION

9.1 Each Participating Entity will send the Contractor a monthly invoice with supporting documentation. The invoice and documentation will list the number of units that qualify for a Rebate, the Rebate per unit, and the dollar amount due thirty (30) calendar days from the date of the invoice receipt.

9.2 The first monthly invoice will be no earlier than November 15, 2015 reflecting information about Contract Soy-Based Infant Formula that qualified for a Rebate in October 2015.

9.3 Invoices will continue past the Contract termination date to account for all Food Instruments (FI) issued during the term of the Contract. This is necessary because FI may be valid to be paid up to ninety (90) days after the issuance date although some Participating Entities use a shortened time period (e.g. 60 days). For example, FI issued the last day of the Contract (September 30) may be valid to be paid up to ninety (90) days later (December 29).

9.4 The monthly invoice will list the name and address of the person to whom the Rebate payment will be sent. Descriptions of each Participating Entity's method for determining a reasonable estimate or an actual count of the number of units that qualify for a Rebate are in Appendix P.

9.5 Participating Entity documentation used to support the monthly invoice will vary in format due to differences in information systems.

9.6 Participating Entities reserve the right to change the format of the monthly invoice and associated documentation as needed due to informational system changes. Rebate invoices for January through June 2014 will be provided by the Contract Administrator, upon request.

9.7 When possible, Participating Entities will provide an electronic data file to validate the monthly invoice. The minimum information that they will provide is: food instrument number, pseudo vendor identification number, food package identification, product name, number of units authorized to purchase, effective date of food instrument, redemption date of food instrument, and redeemed amount. Participating Entities will work with Contractor regarding available data elements.

10 REBATE PAYMENT

Contractor will make Rebate payments directly to each Participating Entity. The Rebate will be calculated using the Rebate per unit in effect on the first day of the month the FI was paid. Rebate payments are due thirty (30) calendar days from the receipt of invoice.

11 LATE REBATE PAYMENT

Contractor will be assessed a penalty for late payments. The penalty will be one (1) percent of the invoiced amount.

12 INVOICE DISPUTES OR ERRORS

12.1 All invoice disputes will be resolved on a state-by-state basis by the Contractor contacting the Participating Entity.

12.2 All invoice disputes must be settled by closeout of the federal fiscal year in which the dispute occurs.

12.3 The Contractor will notify the Participating Entity of any dispute or believed error within ninety (90) calendar days of receiving the invoice. The notice will be in writing and will describe the specific nature of the dispute or believed error. Failure by the Contractor to notify the Participating Entity within the ninety (90) calendar day period will constitute a waiver and release of any dispute or error.

12.4 The Participating Entity will notify the Contractor of any invoice error in the rebate calculation within sixty (60) calendar days of issuing the invoice. The notice will be in writing and will describe the specific error. Participating Entities agree to resolve errors promptly.

12.5 The Contractor cannot withhold or offset (payment reduction from invoiced amount) rebate payments under any circumstances.

12.6 Participating Entities agree to make every effort to validate billings. The Participating Entity will work with the Contractor to determine the best method of repayment if a refund is due the Contractor.

12.7 If an invoice dispute occurs about which the Participating Entity and Contractor cannot reach agreement, the Participating Entity or Contractor may request an independent review.

13 RECORD RETENTION AND AUDITS

13.1 Contractor and the Participating Entities will maintain documentation relevant to Rebate invoices and payments for six (6) years after the termination of the Contract.

13.2 Contractor's records relevant to rebate invoices and payments will be subject to review or audit, at any reasonable time and upon reasonable notice, by CPR, Participating Entities, the USDA, Office of the Inspector General, Comptroller General of the United States, or their representatives.

13.3 Participating Entity FI data used in the calculation of units that qualify for a rebate and working documents and reports used in the preparation of monthly invoices will be subject to review or audit, at any reasonable time and upon reasonable notice, by the Contractor or their representatives.

13.4 Participating Entity data that is confidential under federal, tribal or state law is not subject to review or audit by the Contractor or their representatives.

14 DEVIATIONS FROM THE SCOPE OF THE CONTRACT

Contractor will not approach a Participating Entity with any offer that deviates in any manner from the scope of the Contract.

15 DISASTER/SUPPLY INTERRUPTION CONTINGENCY PLANS

15.1 Contractor will provide the State with a supply source interruption contingency plan within thirty (30) calendar days of the Contract award. The plan will include a description of how the

Contractor will ensure Soy-Based Contract Infant Formula will be available to WIC authorized retail vendors in the event of a supply source interruption or other circumstance that affects the Contractor's ability to provide the Soy-Based Contract Infant Formula through its normal wholesale delivery system.

15.2 Within forty eight (48) hours of a disaster, when retail food delivery systems may be or are interrupted, state agencies will notify the contractor of the disaster if it is in the geographic areas served by the state agency. Within twenty-four (24) hours of being notified of the disaster and interruption of the retail food delivery system, the contractor will notify the state agency whether it is supplying Primary Contract Soy-Based Infant Formula to any public or private disaster relief organizations in the geographic area of the disaster and the name of the organizations and their primary contact.

16 INFANT FORMULA SAMPLE

Contractor will NOT be required to provide Soy-Based Infant Formula samples to any of the Participating Entities. This provision is made in accordance with USDA, FNS Guidelines.

17 TRANSITION COMMUNICATION PLAN

17.1 Contractor will provide the State with a transition communication plan within thirty (30) calendar days of contract award. The plan will include a description of how the new Contractor will assist Participating Entities with communicating information about the new Contract.

17.2 Contractor will make available advertising art/graphics in suitable electronic format to Participating Entities to be used for the development of materials used to communicate information on the new Contract.

17.3 Participating Entities will work cooperatively with the Contractor to assure written communication occurs with health care providers, hospitals and retailers thirty (30) calendar days prior to Contract start date.

17.4 Food Instruments with a "first day of use" date prior to October 1, 2015 will be rebated under Contract no. 05411. Food Instruments with a "first day of use" date October 1, 2015 or later will be rebated under Contract no. 02715. Contractors should anticipate a transition period with a change to a Primary Contract Soy-Based Infant Formula. The transition process may vary significantly between Participating Entities. It is probable that for some Participating Entities, the number of cans reflected on rebate invoices in the first few months will not be reflective of usage through the term of the Contract.

18 COMMUNICATION AND ADVERTISING

18.1 Contractor will not distribute any written communication connecting the WIC Program and the Soy-Based Contract Infant Formula without prior review and written consent by the Participating Entity(s) in the planned distribution area.

18.2 Contractor will not advertise or publish information concerning this Contract in any form or media without prior review and written consent from CPR.

18.3 Participating Entities will work cooperatively with the Contractor to ensure that documents printed and distributed by WIC Programs are accurate.

18.4 Use of WIC Service Marks:

a. Manufacturer acknowledges that the WIC Acronym and the WIC Logo are service marks owned by the Department of Agriculture (USDA), and that all rights therein and goodwill pertaining thereto belong exclusively to USDA per Supplement Food Policy Division (SFPD) Policy Memo 2009-1, dated December 31, 2008 and FNS Instruction 800-2 dated June 21, 1992.

b. Manufacturers 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").

c. Manufacturer shall not use the WIC Acronym in advertising in any manner that is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Manufacturer with the WIC Program, or as to the sponsorship or approval of Manufacturer's goods, services, advertising, or commercial activities, including nutritional message(s), by the WIC Program, USDA, or the State agency.

d. 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."

19 CONFIDENTIALITY

Contractor will not share or disclose any records identifying WIC participants by name and/or address, per 7 CFR 246.26(d). Contractor will not have access to any information about a retailer that individually identifies the vendor, except for the vendor's name, address, website, email, store type and authorization status per 7 CFR 246.26(e).

20 FULL NUTRITIONAL BENEFIT (FNB)

The Participating Entities will issue infant soy formula in accordance with 7 CFR 246.10(e)(1) through (e)(3) and (e)(9). In addition, the Participating Entities will, if necessary to provide the full nutritional benefit (FNB), use the methodology outlined in 7 CFR 246.10(h) when issuing infant formula. The Participating Entities reserves the right to issue infant formula using this methodology at their discretion.

21 SOVEREIGN IMMUNITY

A Participating Entity does not waive its sovereign immunity by entering into the Contract and fully retains all immunities and defenses provided by law with respect to any action based on the Contract.

The intent of this section is to indicate that a Participating Entity does not waive any sovereign immunity it may otherwise retain, merely by virtue of its participation in this Contract. This Contract does not otherwise attempt to describe or explain what sovereign immunity, if any, may have been retained by any specific Participating Entity.

22 PRODUCT RECALL

If there is a recall of any of the Soy-Based Contract Infant Formulas, the Contractor shall immediately notify the Contract Administrator and one other designee for each Participating Entity by telephone, email and facsimile. This notification shall include the following information for the formula being recalled: the name of the specific formula (formulation), the container size(s), the form (powder, liquid concentrate, and/or ready-to-feed), the lot number(s), the expiration date(s), the inventory code(s), the address where the product should be returned, the specific problem or concern with the product, and the name, phone number and email address of the Contractor's employee who is the contact person with respect to the recall. If WIC participants are unable to exchange recalled formula at the store from which it was purchased. The Contractor shall replace or reimburse the Participating Entities, free of charge, any containers of recalled contract brand infant formula provided to WIC participants through food instruments or free samples.

23 STATE OF MARYLAND SPECIAL PROVISION (REGARDING BISPHENOL-A (BPA)PROHIBITION)

Senate Bill 151 provides:

"(C) except as provided in Subsection G of this section, on or after July 1, 2014:

(1) The state may not purchase infant formula in containers containing more than 0.5 parts per billion of Bisphenol-A and

(2) a person may not manufacture , knowingly sell, or distribute in commerce a container of infant formula containing more than 0.5 parts per billion of Bisphenol-A

(G) if the Secretary certifies that the safety concerns for Bisphenol-A are resolved by additional research or if implementation of subsection C of this section would adversely affect the health or well-being of children or adults, the secretary may suspend implementation of subsection C of this section."

Gerber

Confidential

Infant Formula Wholesale Price List - WIC (and selected other) SKUs

Nestlé | Nutrition

Effective July 2014

Infant Formula Product Name and Net Contents	Product Form	Product Size	Case Pack	Consumer Unit Code	Wholesale List Price (Case)
GERBER® GOOD START® Soy 12.9oz	Powder	12.9oz	6	000 50000 03530 4	$90.60
GERBER® GOOD START® Soy 25.7oz	Powder	25.7oz	4	000 50000 03461 1	$101.16
GERBER® GRADUATES® Soy 24oz	Powder	24 oz	4	000 50000 63021 9	$77.16
GERBER® GOOD START® Soy 12.1 fl oz	Concentrate	12.1 fl oz	12	000 50000 03458 1	$53.16
GERBER® GOOD START® Soy 4x8.45 fl oz	RTF	33.8 fl oz	4	000 50000 35355 2	$24.92
GERBER® GOOD START® Soy Nurser 8x3 fl oz	RTF	24 fl oz	6	000 50000 03534 2	$55.62

Washington State Solicitation Rebid of NAPSO Value Point Contract for Infant Soy Formula Rebate Only
Soy-Based WIC Infant Formula Rebate—Bid Sheet, Page 1 of 2

Revised Appendix D
6/10/15

Instructions:

Enter manufacturer's name, product name, UPC code, unit size, reconstituted ounce per unit, lowest national wholesale price per unit for a full truckload, and rebate bid per unit in the chart below.

Data entry fields are yellow sections.

Calculations will be performed automatically within the spreadsheet in Page 2.

Sign and Notarize this page.

Manufacturer: Gerber Products Company

Physical Form	Product Name Being Bid	UPC Code	Unit Size (In Ounces)	Reconstituted Ounce Per Unit	Lowest Wholesale Full Truckload Price Per Unit	Rebate Bid Per Unit	Net Cost	Percent Rebate
Powdered	GERBER® GOOD START® SOY	000 80000 03330 4	12.9	81.0	15.1000	12.8169	$2.2811	84.8934%
Liquid Concentrate	GERBER® GOOD START® SOY	000 80000 03458 1	12.1	24.2	4.4300	3.7050	$0.7250	83.6343%
Ready-to-Feed	GERBER® GOOD START® SOY	000 80000 25358 2	33.8	33.8	6.2300	1.9205	$4.3095	30.8298%

**No assurance is given as to any minimum or maximum number of infant participants. Likewise, no assurances are provided on the quantity, type, or physical forms that will be issued under the agreement that will become a result of this Invitation to Bid

Certification

The bidder hereby certifies that the company is registered under the Food, Drug and Cosmetic Act with the United States Department of Health & Human Services and its products are in compliance with Federal regulations issued pursuant to P.L. 100-237. Bids for all physical forms of formula must meet the requirements of 246.10 (a) (l)(m) and 246.10(e)(2)(ii) and be suitable for the routine issuance to the majority of generally healthy, full term infants.

Each infant formula product to be supplied under the terms of the contract complies with the Federal Food, Drug, and Cosmetic Act.

The Bidder certifies that the company can and will supply the quantities of infant formula offered to meet one hundred percent (100%) of the WIC Program's needs in all geographic areas.

Signature

6/11/15
Date

Notarized Signature/Seal/Date: Susan C. Eberhart 6/11/15

SUSAN C. EBERHART
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 12/26/2019