

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM
FOR WOMEN, INFANTS AND CHILDREN
OF THE STATES OF Maine, Commonwealth of Massachusetts, New Hampshire,
Connecticut and
Rhode Island

INVITATION FOR BIDS
FOR
A WIC INFANT FOODS REBATE SYSTEM
And
WIC INFANT CEREAL REBATE SYSTEM

Special Bid Conditions and Technical Specifications

I. Introduction

The Special Supplemental Nutrition Programs for Women, Infants and Children (WIC) of Maine, Commonwealth of Massachusetts, New Hampshire, Connecticut, and Rhode Island (referred to herein as the States) are seeking to comply with Interim Rule 7 C.F.R. § 246.16a (g) and to contain the cost of infant foods in order to increase the number of women, infants, and children served by the States' WIC Programs. Be aware that there may be changes when the final rule is adopted which the selected vendor must adhere to. The States have joined together to solicit bids for rebates on infant foods and infant cereal and are requesting proposals for rebates from a single source for two categories of products; infant foods (fruits, vegetables, and meats) and infant cereal. Bids for infant foods and infant cereals are considered separate bids. Therefore, if one bidder provides the lowest net cost per ounce for infant foods, while another bidder provides the lowest net cost per ounce for Infant cereals, the States will award two separate contracts to two separate Manufacturers.

The States will act as a single entity, accepting and implementing the rebate systems. The rebate systems will be initiated simultaneously in all five (5) State Agencies beginning October 1, 2009.

The States' WIC Programs served, in total, approximately 38,864 infants monthly as of October 1, 2008.

The following chart provides the estimates of the Monthly Average Infants ages 6 to 12 months that are fully formula fed and partially breastfed, and eligible to receive a maximum of 128 oz. of infant fruits/vegetables.

Avg. No. of Fully Formula/Partially Breastfed Infants 6-12 Months Old Per Month (Based on June 2008 Caseload)	
Participating States	
Connecticut	7,856
Maine	2,648
Commonwealth of Massachusetts	15,546
New Hampshire	2,101
Rhode Island	2,623
Total:	30,774

The following chart details the average number of fully breastfed infants that will be eligible for a maximum of 256 oz. of infant fruits and vegetables as well as a maximum of 77.5 oz. of infant meat.

Avg. No. of Fully Breastfed Infants 6-12 Months Old Per Month (Based on June 2008 Caseload)	
Participating States	
Connecticut	231
Maine	257
Commonwealth of Massachusetts	823
New Hampshire	236
Rhode Island	157
Total:	1,704

The following chart details the total number of infants that are eligible for a maximum of 24 oz of cereal (both of the above categories combined).

Avg. No. of Total Infants 6-12 Months Old Per Month (Based on June 2008 Caseload)	
Participating States	
Connecticut	8,087
Maine	2,905
Commonwealth of Massachusetts	16,369
New Hampshire	2,337
Rhode Island	2,780
Total:	32,478

II. SPECIAL BID CONDITIONS

A. Administrative Bid Procedures

1. Bid Due Date and Time: Bids must be delivered on or before 2:00 p.m. local time on **February 12, 2009**. The package must contain all of the information identified in section 2.e, below. Packages must be delivered to:

Division of Purchases
Burton M. Cross Building, 4th Floor
111 Sewall Street, 9 State House Station
Augusta, ME 04333-0009

Only bids received and date stamped at the Division of Purchases prior to the 2:00 p.m. deadline will be considered. We will not accept bids by facsimile or email. Late bids will be rejected, without exception.

2. How to Submit a Bid:

- a. All interested parties must submit separate bids for infant foods (fruits/vegetables, and meats) and infant cereal on the bid sheets provided. Due to cost differences, organic or foods with DHA added cannot be bid on. The bid must represent only products manufactured by the bidder or products manufactured to the specification of the bidder. The States will not entertain bids from brokers or representatives who have no part in, or control over, the manufacturing process. Contract packers will be considered part of the bidder if the packing is done to the bidder's specifications and under the bidder's supervision. Specification for the products bid shall be the same for all contract packers of those products. The bidder shall assure the States that the specifications for the product and the packing are equal for all contract packers and that those specifications are at least equal to those used in the bidder's own plants. The bidder must assure that the products proposed for sale in the States are not inferior to the products sold in non-contracting states. Any bidder that does not manufacture all types of these infant foods and/or infant cereal may either form a joint venture with another manufacturer or subcontract with any other manufacturer in order to provide all types. In either event, a complete description of the joint manufacturer or subcontracting arrangement must be provided with the bid in order for the States to determine if such bidder is both responsive and responsible.
- b. Rebate amounts bid must be expressed in dollars and cents per ounce of product and carried to three decimal places as stated on the bid sheet. A bid expressed as a percentage of the retail or wholesale price of the container or as a percentage based on some other bid received

will not be considered.

- c. The bidder shall submit a bid per ounce of the infant food and infant cereal. This bid shall not be based on the container size or type of the product being purchased.
- d. All bidders shall submit a wholesale price list for infant foods and infant cereal products effective Feb 12, 2009, with the bid submission.
- e. Bids shall include a concise description of the bidder's capabilities to satisfy the requirements of this Invitation For Bids. Emphasis shall be on completeness and clarity of content.

The proposal submitted shall contain at least the following sections in the order indicated with each section divided by labeled tabs.

- (i.) Information relating to the bidder's organization, personnel, and experience that would substantiate the bidder's **qualification** to perform the services requested beginning October 1, 2009.
 - (ii.) A copy of the bidder's latest annual **financial report** or other information to show the financial stability of the bidder.
 - (iii.) A brief description of the **products** bid.
 - (iv.) A brief description of the **distribution network** in place or proposed to carry out the tasks requested in this IFB.
 - (v.) Any other **additional information** that the bidder thinks is relevant to the proposal.
 - (vi.) The completed **Bid Sheet(s)**.
- g. Sealed envelopes containing the bids shall be labeled in the following manner:
- (i.) Bid for WIC Infant Foods and Infant Cereal Rebate System for the States of Maine, Commonwealth of Massachusetts, New Hampshire, Connecticut and Rhode Island.
 - (ii.) From: (enter bidder's name, complete address and telephone number, date and time for submitting the bid).
- h. Bids shall be signed by a representative with authority to commit the bidder to the bid.

- i. Terms used in Equation for Evaluating Bids
 - (i.) Wholesale Price is the price contained in the price list submitted by the vendor for the container size which reflects the highest cost per ounce. This will be expressed as a cost per ounce of product.
 - (ii.) Net cost is the cost to the States for an ounce of product. This is found by subtracting the rebate amount per ounce bid from the wholesale price.
- 3. Pre-Bid Questions: Questions about this IFB may be directed in writing to the contact person identified in #7, below. The deadline for written questions is January 19, 2009. Relevant questions and our responses will be sent in writing to all interested parties on or before January 30, 2009.
- 4. Notice of Contract Award: All bidders will be notified of the award decision in writing when that decision has been reached.
- 5. Contract Award(s): Formal Contract document(s) will be forwarded to the successful bidder(s) within seven (7) days of award notification. A blank copy of the contract is attached to this IFB for reference. In addition to the language in the contract document, the IFB and the successful bidders' response will be included as part of the Contract(s) by reference. The order of precedence is the Contract, the IFB, and the Manufacturer's proposal. Successful bidders are required to sign and return the Contract within 14 calendar days from the date the Contract is received, as verified by certified mail with return receipt. Failure to meet this requirement may result in awarding the Contract to another bidder, with liability for decreased rebate amounts being the responsibility of the original awardee.
- 6. Contract Period(s): The agreement (s) shall be effective for thirty-six (36) months beginning October 1, 2009 and ending September 30, 2012, with a unilateral option of the States, either individually or together, to continue the Contract(s) for two additional periods of twelve (12) months each. Due to the administrative burden necessary to rebid the Contract(s), the States will notify the manufacturer(s) six months prior to the end of the initial Contract(s), or any renewals, if the extension option will be exercised. Such notification shall have no effect on the remainder of the contract extension in effect at that time. The States also reserve the unilateral right to order changes and/or to delay initiation of the Contract(s) if necessary and if such changes or delays do not alter the scope of the Contract(s).
- 7. Contact Person: Nora Bowne
Department of Health and Human Services
Maine WIC Nutrition Program
286 Water St, Key Plaza, 6th Floor

Augusta, ME 04330
Fax: 207-287-3993
Nora.Bowne@maine.gov

8. A bidder must submit any request for appeal, in writing, to the final bid award(s) within fifteen (15) days of award notification, as described in Chapter 120 – Rules for Appeal of Contract and Grant Awards (link below).

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<http://www.maine.gov/purchases/policies/chapter120.html>

B. Provision of Bidding

1. The States reserve the right to accept or reject all or any bids, waive minor technicalities, and award the Contract(s) to best serve the interest of the States' WIC Programs. The States will reject bids if implementation costs exceed the benefits received.
2. The offering of a rebate is voluntary and is in no way a payment for concessions or services by the States, but once a contract is entered into, the offer becomes a binding contract.
3. All bids submitted shall remain valid for a period of 180 days from the date of bid opening. Any increase in the wholesale price after February 12, 2009, shall result in a cent-for-cent increase in the rebate price bid. Any decrease in the wholesale price after February 12, 2009 shall result in a cent for cent decrease.
4. The States recognize that there may be a variance between amounts authorized on redeemed drafts and actual amounts purchased. However, the States have no way of accurately calculating the purchased quantities. Potential bidders are expected to recognize this discrepancy and adjust their bids to reflect the anticipated variance between authorized and purchased quantities.

C. Process for Bid Evaluation

1. All envelopes will be opened. The bid(s) providing the lowest net cost per ounce (in dollars and cents) to the States will become the successful bidder(s) and thus the selected provider(s), providing that the accompanying materials satisfy the requirements in Section A (2) (e).
2. In order to determine the lowest net cost, the following calculation will occur: highest wholesale price list cost per ounce - rebate per ounce = net cost per ounce.

3. Bids for infant foods and infant cereals are considered separate bids. Therefore, if one bidder provides the lowest net cost per ounce for infant foods (fruit/vegetable/meat), while another bidder provides the lowest net cost per ounce for Infant cereals, the States will award two separate contracts to two separate Manufacturers. Both contracts will follow the guidelines stated in this IFB.

III. SERVICES TO BE PROVIDED

The bidder(s) awarded a Contract shall:

- A. Provide at the retail level a variety of container sizes which may include a combination of 4 oz containers of infant fruits and vegetables and 2.5 oz containers of infant meats and 8 oz containers (or similar sized containers) of infant cereal meeting the following specifications:
 1. Infant Fruits – Due to current cost differences, organic or foods with DHA added cannot be bid on. Any variety of single ingredient commercial infant food fruit without added sugars, starches, or salt in 4 ounce containers is allowed. Mixtures with cereal or infant food desserts (e.g. peach cobbler) are not authorized; however, combinations of single ingredients (e.g., apple-banana) are allowed. The bidder must provide at least three single ingredient varieties/types of fruits. The three single ingredient fruits must include (at a minimum) Applesauce, Banana, and Pear. All varieties must meet United States Department of Agriculture (USDA) regulatory requirements for use in the WIC Program. If the winning bidder cannot supply such a product, then it shall allow the states to issue to participants, drafts/checks/vouchers for another manufacturer's comparable product(s) with no state agency breach of Contract occurring. Some special cases may require fruits with further restrictions, e.g. kosher foods, for documented dietary or religious reasons. At least one kosher infant fruit product must be offered. Any other infant fruit produced by the Contractor and authorized by the State WIC agency during the contract including any extensions shall receive rebate.
 2. Infant Vegetables: Due to current cost differences, organic or foods with DHA added cannot be bid on. Any variety of single ingredient commercial infant food vegetables without added sugars, starches, or salt in 4 ounce containers is allowed. Combinations of single ingredients (e.g., peas and carrots) are allowed. The bidder must provide at least five varieties/types of single ingredient vegetables. The five single ingredient vegetables must include (at a minimum) Sweet Potato, Squash, Peas, Green Beans, and

Carrots. All varieties must meet USDA regulatory requirements for use in the WIC Program. If the winning bidder cannot supply such a product, then it shall allow the states to issue to participants, drafts/checks/vouchers for another manufacturer's comparable product(s) with no state agency breach of Contract occurring. Some special cases may require vegetables with further restrictions, e.g. kosher foods, for documented dietary or religious reasons. At least one kosher infant vegetable product must be offered. Any other infant vegetable produced by the Contractor and authorized by the State WIC agency during the contract including any extensions shall receive rebate.

3. Infant Meats: Due to current cost differences, organic or foods with DHA added cannot be bid on. Any variety of commercial infant food meat or poultry, as a single major ingredient, with added broth or gravy in 2.5 ounce containers are allowed. Added sugars or salt (i.e. sodium) are not allowed. The bidder must provide at least three varieties/types of meats. The three single major ingredient meats must include (at a minimum) Beef, Chicken, and Turkey. No infant food combinations (e.g. meat and vegetables) or dinners (e.g. spaghetti and meatballs), graduate or toddler foods are allowed. All varieties must meet USDA regulatory requirements for use in the WIC Program. If the winning bidder cannot supply such a product, then it shall allow the states to issue to participants, drafts/checks/vouchers for another manufacturer's comparable product(s) with no state agency breach of Contract occurring. Some special cases may require meats with further restrictions, e.g. kosher foods, for documented dietary or religious reasons. At least one kosher infant meat product must be offered. If the bidder does not produce a kosher meat product, States should have the option to issue non-contract brand kosher meat. Any other infant meat produced by the Contractor and authorized by the State WIC agency during the contract including any extensions shall receive rebate.

Note: Not all meats must be kosher, but states should have the option to issue non-contract brand meats. At least one Kosher product in each food group must be offered.

4. On October 1, 2009 federal program regulations will allow a maximum of 256 oz of infant food fruits and vegetables and 77.5 oz of infant food meat for a fully breastfed infant and 128 oz of infant food fruits and vegetables to be prescribed for each infant that is partially breastfed or fully formula fed each month. This is a maximum amount and it is not guaranteed this quantity will be purchased. Each participating state reserves the right to determine their authorized package sizing and product variety.

- B. Provide at the retail level infant cereal in 8 oz, 16 oz, and 24 oz container. The following specifications must be met:

1. Infant Cereal: Due to current cost differences, organic or foods with DHA added cannot be bid on. The contractor shall provide a rebate for 8 oz, 16 oz and 24 oz container (if manufactured by the contractor) of infant cereal redeemed by WIC retail vendors. The Bidder must offer at least three types of cereals, one of which must be Rice. Acceptable types of cereals include Rice, Barley, Oatmeal, Wheat, and Mixed. Any other infant cereal produced by the Contractor and authorized by the State WIC agency during the contract including any extensions shall receive rebate. Some special cases may require cereals with further restrictions, e.g. kosher foods, for documented dietary or religious reasons.

Infant cereal shall be manufactured under and comply with all applicable provisions of the Federal Food, Drug and Cosmetic Act, as amended, and all regulations promulgated there under.

Infant cereal shall be nutritionally complete, not requiring the addition of any ingredient other than water.

- Infant cereal shall be a dry type without added fruit, fruit flakes, infant formula, or yogurt.
- The cereal must be plain, dry infant cereal, not wet-packed (i.e. jarred).
- Cereal shall contain a minimum of 45 milligrams of iron per 100 grams of dry cereal (i.e. iron content per 1/2 dry ounces = 45% of US RDA for infants.)

2. All infants are eligible to receive 24 oz of infant cereal each month. This is a maximum amount and it is not guaranteed this quantity will be purchased. Each participating state reserves the right to determine their authorized package sizing and product variety.

- C. Guarantee provision of said infant foods and/or infant cereal meeting the specifications to all of the States' authorized WIC retailers through currently utilized or proposed marketing channels and practices.
- D. Contact major wholesalers in the area served by the States and a sufficient number of authorized WIC retail outlets (chains and independent grocers) to assure adequate on-shelf supplies to ensure that there will be sufficient quantities of infant foods and/or infant cereals to supply the number of infants requiring these foods as outlined in Section I of the IFB of the selected brand of infant foods at implementation of this Contract.
- E. Remit to the States' WIC Programs the rebate per ounce as submitted on the attached Bid Sheets, Section II, Rebate Amount. A price increase in the successful bidder's wholesale price of any rebated product shall result in an

automatic rebate increase on a cent-for-cent basis for that product as set forth in the Sample Contract, Section III.C.2. The per ounce rebate will increase effective the first day of the month in which the price was increased. Any decrease in the wholesale price shall result in a cent-for-cent decrease in the rebate amount. The per ounce rebate will decrease effective the first day of the following month in which the price was decreased.

- F. Remit to each of the States' WIC Programs the rebate amount in the manner prescribed in the Sample Contract, Section.
- G. The Contractor shall guarantee sufficient quantities of Contract brand infant fruit, infant vegetable, infant meat, and/or infant cereal (offered on their Bid Response and awarded on any Contract awarded pursuant to this Bid) to meet 100% of State WIC Agencies caseload, shall be made available for purchase by authorized WIC retail vendors during the contract period. In the event the Contractor cannot make available the contract brand infant fruit, infant vegetable, infant meat, or infant cereal to WIC retail vendors in one or more counties, for more than seven (7) days for instances not covered under force majeure, the Contractor shall pay a rebate, at the same percentage discount under the terms of this Contract, on another brand of similar infant fruit, infant vegetable, infant meat, and infant cereal issued to the participants. Before issuing a non-contract brand infant fruit, infant vegetable, infant meat, or infant cereal, the State will first provide an alternative Contractor product that meets the authorized food requirements as specified by Federal nutrition requirements.

Bid Sheet
Due February 12, 2009 by 2:00 PM EST
Infant Foods Rebate System

Bidder's Name: _____

Address: _____

Contact Person and Telephone Number: _____

SECTION I CERTIFICATION

This certifies that this company or companies is (are) able to supply the infant foods as required by this Invitation For Bids. That the person signing this document is authorized to bind the company or companies to the bid. And that all requirements and conditions of the Contract and amendment are acceptable.

SECTION II REBATE AMOUNT (carried to three decimal places)

A. Infant Foods – Fruits/Vegetables

1. The highest wholesale cost of the offered infant fruits for the FIVE (5) States participating is \$_____ per ounce.
2. The rebate amount for infant fruits/vegetables for these states is \$_____per ounce authorized

B. Infant Foods - Meats

1. The highest wholesale cost of the offered infant meats for the FIVE (5) States participating is \$_____ per ounce.
2. The rebate amount for infant meats for these states is \$_____per ounce authorized

Signature, Bidder's Representative	Name and Title	Date
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Bid Sheet
Due February 12, 2009 by 2:00 PM EST
Infant Cereals Rebate System

Bidder's Name:

Address:

Contact Person and Telephone Number: _____

SECTION I CERTIFICATION

This certifies that this company or companies is (are) able to supply the infant foods as required by this Invitation for Bids. That the person signing this document is authorized to bind the company or companies to the bid. And that all requirements and conditions of the Contract and amendment are acceptable.

SECTION II REBATE AMOUNT (carried to three decimal places)

A. Infant Cereals

1. The highest wholesale cost of the offered infant cereal for the FIVE (5) States participating is \$_____ per ounce.
2. The rebate amount for infant cereal for these states is \$_____ per ounce authorized

Signature, Bidder's Representative

Name and Title

Date

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM
FOR WOMEN, INFANTS AND CHILDREN
OF THE STATES OF CONNECTICUT, MAINE, COMMONWEALTH OF
MASSACHUSETTS, NEW HAMPSHIRE AND RHODE ISLAND
SAMPLE INFANT FOODS REBATE CONTRACT

(This sample rebate contract is in the instance one manufacturer wins both the cereal and infant foods rebate. A separate but nearly identical contract would be drafted if two manufacturers are contracted, the only difference being the food items discussed, not the terms.)

This Infant Foods Rebate Contract (hereinafter referred to as the "Contract") is entered into between the States of Connecticut, Maine, and Commonwealth of Massachusetts, New Hampshire, Rhode Island and _____ (hereinafter referred to as the "Manufacturer").

This Contract shall be effective for thirty-six (36) months effective October 1, 2009, with a unilateral option of the States, either individually or together, to continue the Contract for two additional periods of twelve (12) months each. Due to the administrative burden necessary to rebid this Contract, the States will notify the manufacturer six months prior to the end of the initial Contract, or any renewals, if the extension option will be exercised. Such notification shall have no effect on the remainder of the Contract or extension in effect at that time. The States also reserve the unilateral right to order changes and/or to delay initiation of the Contract if necessary and if such changes or delays do not alter the scope of the Contract.

I. THE MANUFACTURER AGREES TO THE FOLLOWING PROVISIONS:

A. PROVISION OF INFANT FOODS AND INFANT CEREALS

The Manufacturer agrees to provide for purchase by all authorized WIC food stores and pharmacies specified infant foods and cereals in sufficient supply through retail outlets to serve 100% of the WIC eligible caseload, and meet WIC's growth needs, in the States and remit to the States' WIC Programs a rebate per ounce of infant foods and infant cereals purchased as set forth in part I.B of this Contract.

B. CONTRACT PAYMENT AMOUNT

The Manufacturer agrees to pay each of the States' WIC Programs a rebate amount for Infant Foods (fruits/vegetables/meats), and Infant Cereal as specified in the bid as follows:

Rebate Amount		Product
\$	Per Ounce Authorized	Infant Fruits/Vegetables
\$	Per Ounce Authorized	Infant Meats
\$	Per Ounce Authorized	Infant Cereal

C. METHOD OF PAYMENT

The Manufacturer(s) shall make such rebate payment by check/wire transfer/EFT (electronic fund transfer), payable to each State, at the determination and request of each State which is a party to the agreement as follows:

Treasurer - State of Connecticut Department of Public Health WIC Program 410 Capitol Avenue MS # 11 WIC PO Box 340308 Hartford CT 06134-0308	Treasurer- State of Maine Maine WIC Nutrition Program Key Plaza, 6 th Floor 11 SHS 286 Water St, Augusta, ME 04330
Commonwealth of Massachusetts Massachusetts Department of Public Health WIC Program 250 Washington Street, 6 th Floor Boston, MA 02108-4619	Treasurer State of New Hampshire Department of Health and Human Services Nutrition & Health Promotion Section 29 Hazen Drive Concord, NH 03301
Security State Bank PO BOX 280 Phone:320-664-7122 Howard Lake, MN 55349	

STATE CONTACT INFORMATION:

John D. Frassinelli, MS, RD Connecticut State Director 410 Capitol Avenue, MS #11HLS Hartford CT 06134 Phone: 860.509.8084 Fax: 860.509.8391 John.Frassinelli@ct.gov	Nora Bowne, Director Department of Health and Human Services Maine WIC Nutrition Program 286 Water St, Key Plaza, 6th Floor Augusta, ME 04330 Phone: 207-287-5342 Fax: 207-287-3993 Nora.Bowne@maine.gov
Beverly Andrew-Simon Director, Fiscal & Administration WIC Nutrition Program Massachusetts Department of Public Health 250 Washington Street, 6th Floor Boston, MA 02108-4619 Phone: 617-624-6109 Fax: 617-624-6179 beverly.andrew@state.ma.us	Margaret Murphy, Administrator Nutrition and Health Promotion Section Department of Health and Human Services 29 Hazen Drive, Concord NH 03301 Phone: 603-271-4545 Fax: 603-271-4779 mmurphy@dhhs.state.nh.us
Ann Barone Chief, WIC Program Division of Family Health Rhode Island Department of Health-Cannon Building 3 Capitol Hill, Room 302 Providence, RI 02909-5097 Phone: 401-222-4604 Fax: 401-222-1442 Ann.Barone@health.ri.gov	

D. PAYMENT AND INTEREST PENALTIES

The Manufacturer shall submit payment to the States within thirty (30) days of the date of the receipt of the States' invoices which will either be transmitted to the Manufacturer by FAX or E-Mail, with the time and date of the transmission documented on the invoice, or by express or certified mail, return receipt requested. If the Manufacturer does not mail, as evidenced by a postmark or receipt, or authorize a funds transfer payment within 30 days of the receipt as evidenced by receipt or transmission data, of the invoice, the Manufacturer will

pay the State submitting the invoice, in addition to the amount due, interest at a rate of 0.8 percent per month or portion thereof on the unpaid balance from the expiration of such 30 day period until such time as the check is mailed to the State.

E. DISPUTE RESOLUTION

1. The parties agree that each State shall be responsible for implementation of The Infant Foods Rebate Contract within the State. Disputes between a State and the Manufacturer arising out of this Contract shall be resolved between the State and the Manufacturer in accordance with terms of this paragraph.
2. Each State agrees to resolve promptly any billing errors that the State identifies.
3. The Manufacturer shall notify the State(s) of any dispute concerning a rebate invoice within 90 days of receipt of the invoice. Each State shall respond to the Manufacturer within 90 days of receipt of the billing dispute. All billing disputes must be raised no later than December 31 following the fiscal year to which the dispute applies. Failure to notify a State of a billing dispute by December 31 shall result in waiver of the dispute.
4. Manufacturer shall have no right of offset against future invoices for billing errors without advance approval from the State(s).
5. Manufacturer shall not withhold any rebate payments under any circumstances.

F. COVENANT AGAINST CONTINGENT FEES

The Manufacturer warrants that no commissions, percentages, brokerage, gratuities, kickback, or contingency fees were paid in connection with the Contract, nor exchanged for substantial consideration by the Manufacturer for the purpose of securing this Contract.

G. AUDITS AND RECORDS

1. The Manufacturer shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices.
2. The Manufacturer assures that these records created solely for this Contract shall be subject, during normal business hours, to inspection, review, or audit by States' personnel and other personnel duly authorized by the States, as well as by Federal personnel also duly authorized.
3. The Manufacturer shall maintain and file with the States the progress, fiscal,

inventory, and other reports as the States may require within the period of this Contract.

4. The Manufacturer shall allow public access to all documents, papers, letters, or other material made, or received by the Manufacturer in conjunction with this Contract. It is expressly understood that receipt of substantial evidence of the Manufacturer's refusal to comply with this provision shall constitute a breach of this Contract. In addition to termination of this Contract, the Manufacturer shall be barred from bidding in the solicitation to replace the Contract.

H. RETENTION OF RECORDS

1. The Manufacturer shall retain all financial records, supporting documents, statistical records, and any other documents created solely for this Contract for a period of four (4) years after termination of this Contract including any option year. If an audit or litigation has been initiated and has not been resolved at the end of the four (4) years including any option year, the records shall be retained until resolution of the audit or litigation.
2. The Manufacturer shall allow persons duly authorized by state or federal WIC Program personnel to have full access to, and the right to examine any of the records and documents in G.1 above, during the retention period.

I. MONITORING

1. The Manufacturer shall provide to the States access to or furnish to the States whatever information is necessary to effect monitoring of this Contract.
2. The Manufacturer shall permit the States to monitor the Contract according to applicable regulations of state and federal governments.

J. NONDISCRIMINATION

The Manufacturer shall operate under this Contract so that no person, otherwise qualified, is denied employment or other benefits on the grounds of race, color, sex, creed, national origin, age, marital status, religion, ancestry, or physical or mental handicap which would not reasonably preclude the required performance. Except in subcontracts for standard commercial supplies or raw materials, the Manufacturer shall include a clause similar to this clause in all subcontracts. The Manufacturer and each subcontractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

K. FEDERAL LOBBYING PROHIBITION

1. In accordance with Section 1352 of Title 31 of the United States Code, the States and all subgrantees, subcontractors, etc. of the States are prohibited from using any federal funds for the purpose of lobbying Congress or any federal agency in connection with the awarding of a particular contract, grant, cooperative agreement or loan.
2. Further, any recipient of such federal funds including subgrantees, subcontractors, etc., which receives over \$100,000 in federal monies must also file a Disclosure of Lobbying Activities form (Federal Form SF LLL), which requires the disclosure of any and all such lobbying activities, even those funded with non-federal monies.
3. By entering into this Contract with the States the Manufacturer hereby specifically agrees to abide by all applicable requirements of 31 United States Code, Section 1352.

L. NON-HIRING OF EMPLOYEES

1. The Manufacturer warrants that it has not paid, directly or indirectly, any officer or employee of the States any wages, compensation, or gifts in exchange for acting as officer, agency, employee, subcontractor, or consultant to the Manufacturer in connection with this Contract.
2. The Manufacturer further agrees that no employee of the States, whose duties as such employee include matters relating to or affecting the subject matter of this Contract shall while such employee, become or be an employee of the Manufacturer.

M. DRUG-FREE WORKPLACE

The Manufacturer agrees to abide by the requirements for a drug and alcohol free work place as promulgated by U.S.D.A. and each of the States.

The Manufacturer should be aware of the State Finance and Procurement Article, Section 16-203 of the Annotated Code of Maryland which requires that any person convicted of bribery, attempted bribery, or conspiracy to bribe based upon acts committed after June 30, 1977, in the obtaining of a contract from the State or any of its subdivisions, shall be subject to disqualification pursuant to State Finance and Procurement Article, Section 16-203, Annotated Code of Maryland from entering into a contract with the State, or any county or other subdivision of the State, for the supply of materials, supplies, equipment, or services by the person.

N. DEBARMENT AND SUSPENSION

The Manufacturer certifies by execution of this Contract that it is eligible for

participation in federal-sponsored programs under Executive Order 12549, Debarment and Suspension. A false statement regarding the Manufacturer's status will be treated as a material breach of this Contract and may be grounds for termination at the option of the States. The manufacturer also certifies that it is in compliance with 7 C.F.R. Part 3017 regarding debarment and suspension.

O. OFFICIAL USE

Use of the acronym "WIC" and the WIC logo, including close facsimiles thereof, in total or in part, is reserved for the official use of the WIC Program. Such official use is restricted to purposes consistent with the WIC Program regulations, FNS Instructions, and policies. Materials which display WIC identifies will be used primarily for identification, public notification, and outreach purposes.

P. NOTIFICATIONS

The manufacturer will provide advance notification of 120 days to the States at the same time retailers/wholesalers/customers are notified of any changes in the label, unit size and product reformulation of the infant foods. The manufacturer will provide within 48 hours such notice of any product recall to each state named in this Contract.

II. THE STATES AGREE TO THE FOLLOWING PROVISIONS:

A. REPORTS

Each of the States' WIC Programs shall provide to the Manufacturer an invoice that indicates the total number of ounces of infant foods or total number of ounces of infant cereal authorized on all drafts redeemed by the State's WIC Program participants in a calendar month. The invoices will be transmitted to the Manufacturer by FAX or E-MAIL system, documenting time and dates on the invoice, or by express or certified mail, return receipt requested, by each State's WIC Program and shall specify the total products authorized on redeemed drafts for a one-month period. Invoices for each month will be sent by FAX or e-mailed within 45 days after the last day of the month. The WIC Program recognizes that we cannot guarantee that all authorized product has been purchased nor that we can provide an accurate estimate of percentage not purchased. Bidders are expected to take this into consideration when submitting their bids.

B. AUDITS AND RECORDS

The States' WIC Programs will each provide to the Manufacturer, upon request, a monthly report specifying the number of ounces of infant foods or infant cereals authorized on all drafts redeemed during the month, as well as supporting documentation to verify the accuracy of the monthly invoice. Only those records which are directly related to monthly billing and which are for current federal fiscal year at the time of the request shall be provided; client confidentiality must be maintained.

C. LIST OF VENDORS

If requested, the States will supply the Manufacturer with a list of approved retail vendors in each state prior to the effective date of the Contract. The States will also provide their minimum stocking requirements.

D. DESIGNATION OF SOLE SOURCE

The States will designate the Manufacturer's infant foods as the only infant foods and infant cereals that can be purchased with WIC food instruments by WIC participants in the States. With the exceptions for documented availability, dietary or religious reasons stated in III. A. 1-3, of the IFB.

E. MONITORING OF RETAIL VENDORS

The States shall monitor all authorized WIC retail vendors for compliance with the designation of the Manufacturer's product as being the only such products that can be purchased with WIC food instruments

III. THE MANUFACTURER AND THE STATES MUTUALLY AGREE:

A. TERMINATION

1. Termination for Breach

Unless the Manufacturer's breach of a material provision of this Contract is waived by the States in writing, the States may individually or as a group, by written notice to the Manufacturer specifying Manufacturer's breach, terminate its Contract upon no less than twenty-four (24) hours notice unless the Manufacturer has cured the breach within time frames agreed upon by both parties. This notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The provisions herein do not limit the States' right to remedies at law or to damages.

2. Termination due to Non-availability of Funds

If the Congress of the United States or the U. S. Department of Agriculture fails to make funds available for continued performance for any fiscal period of this Contract, this Contract shall be cancelled automatically as of the beginning of the fiscal period for which funds are not available; provided, however, that this will not affect either the States' rights or the Manufacturer's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Manufacturer and the States from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The States shall notify the Manufacturer as soon as they have knowledge that funds may not be available for the continuation of this Contract.

B. NOTICE AND CONTACT

The representative of the Manufacturer responsible for administration of the services under this Contract is (Name)
(Address & Phone No.). In the event that different representatives are designated by either party after execution of this Contract, notice of the name and address of the new representative shall be provided immediately, in writing, to the other party and this notification attached to the originals of this Contract.

C. RENEGOTIATION OR MODIFICATION

1. Modifications of the provisions of this Contract shall only be valid when they

have been reduced to writing and duly signed and approved by all involved parties. The parties agree to renegotiate this Contract if federal and/or state revisions of any applicable laws or regulations make changes in this Contract necessary.

2. Price increases in the Manufacturer's wholesale price of any forms of the product listed in Section I.B. shall result in an automatic rebate increase on a cent-for-cent basis. The States' WIC Programs shall be notified in writing of any increase in the wholesale prices at least thirty (30) days in advance of the time of any such increase or at the same time as wholesalers, if less than thirty days notice is given. The per ounce rebate shall increase effective the first day of the month in which prices were increased. Any decrease in the wholesale price shall result in a cent for cent rebate decrease.

D. GOVERNING LAW

This Contract shall be deemed to have been executed and entered into separately in the State of Connecticut, the State of Maine, the State of the Commonwealth of Massachusetts, the State of New Hampshire, the State of Rhode Island, and shall be construed, performed, and enforced in all respects in the respective jurisdiction in accordance with the laws each state. Each party shall perform its obligations hereunder in accordance with the terms and conditions of this Contract.

E. NON-ASSIGNMENT

No party shall assign, sublicense, or otherwise transfer its rights, duties, and/or obligations under this Contract without the prior written consent of the other party, which consent shall not unreasonably be withheld. Any sublicense, assignment, or transfer otherwise occurring shall be null and void, provided, however, that each of the States shall at all times be entitled to assign or transfer its rights, duties, and/or obligations under this Contract to another governmental agency within each State upon giving prior written notice to the Manufacturer.

F. RELEASE OF PARTICIPANT INFORMATION

Due to federal confidentiality requirements, the Manufacturer may not have access to actual or microfilmed food instruments or other client records which identify WIC participants.

G. CONFIDENTIALITY OF VENDOR INFORMATION

States are prohibited from disclosing confidential Vendor information to the Manufacturer, per 7 C.F.R. § 246.26(e).

H. ALL TERMS AND CONDITIONS INCLUDED

All conditions of the States' Invitation to Bid for a WIC Infant Foods Rebate System and WIC Infant Cereal Rebate System and the Manufacturer's accepted responses to the bid as well as the Bid/Proposal and Contract Affidavit are hereby incorporated herein and are a part of this Contract. This Contract contains all of the terms and conditions agreed upon by the parties.

I. INDEMNITY CLAUSE

The Manufacturer, being an independent contractor and not an employee of the States, agrees to carry adequate public liability insurance of not less than \$1,000,000 per occurrence and other appropriate forms of insurance. The Manufacturer agrees to hold the States harmless, for all claims, losses, or suits accruing from or resulting from defects in the contracted products. The States shall give the Manufacturer written notice of each such claim or suit and full right and opportunity to conduct the Manufacturer's own defense thereof, together with full information and all reasonable cooperation.