



STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES



Nicholas A. Toumpas
Commissioner

29 HAZEN DRIVE, CONCORD, NH 03301-6527
603-271-4546 1-800-852-3345 Ext. 4546
Fax: 603-271-4779 TDD Access: 1-800-735-2964

José Thier Montero
Director

RETRO

October 9, 2012

His Excellency, Governor John H. Lynch
and the Honorable Executive Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Health and Human Services, Division of Public Health Services, Bureau of Population Health and Community Services, Healthy Eating and Physical Activity Section, Special Supplemental Nutrition Program for Women, Infants, and Children to exercise a contract renew and amend option with Hero Group, Inc. d/b/a Beech Nut Nutrition, Vendor # 225104, 100 Hero Drive, Amsterdam, New York, 12010, by increasing the Price Limitation by \$204,000.00 from \$612,000.00 to \$816,000.00 to provide rebates on selected infant foods purchased with food instruments issued by the Special Supplemental Nutrition Program for Women, Infants, and Children, and extend the Completion Date to September 30, 2013, effective **retroactive** to October 1, 2012. This agreement was originally approved by Governor and Council on December 9, 2009, item # 116.

FROM SEPT 30, 2012

05-95-90-902010-2207 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS, HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF POPULATION HEALTH AND COMMUNITY SERVICES, WIC FOOD REBATES.

100% OTHER REVENUE

Fiscal Year	Class/Object	Class Title	Current Contract Budget	Increased (Decreased) Amount	Revised Contract Budget
SFY 2010	005-402823	Private Local Funds	153,000.00	0	153,000.00
SFY 2011	005-402823	Private Local Funds	204,000.00	0	204,000.00
SFY 2012	005-402823	Private Local Funds	204,000.00	0	204,000.00
SFY 2013	005-402823	Private Local Funds	51,000.00	153,000.00	204,000.00
SFY 2014	005-402823	Private Local Funds	0.00	51,000.00	51,000.00
Total			\$612,000.00	\$204,000.00	\$816,000.00

EXPLANATION

This agreement renew and amend option is being requested **retroactive** due to a delay in receiving current signature pages from the other states we partner with for this agreement.

The Women, Infants, and Children Program provides supplemental nutritious food, nutrition education, and related assessment and referral services to pregnant women, new mothers, infants, and preschool children who are at risk due to nutritionally related medical conditions or poor diets. The Women, Infants, and Children Rebate Program complies with interim federal rule and controls the cost of infant foods in order to increase the number of women, infants, and children served by the States' Women, Infants, and Children Program. Unless medically contraindicated the selected manufacturer's products are issued to Women, Infants, and Children Program participants and the manufacturer pays a rebate to the Women, Infants, and Children Program on all infant foods purchased with Women, Infants, and Children Program food instruments.

Funds in this agreement will be used to support the Special Supplemental Program for Women, Infants, and Children which provides supplemental nutritious food, nutrition education, and related assessment and referral services to pregnant women, new mothers, infants and preschool children who are at risk due to nutritionally-related medical conditions or poor diets.

Should Governor and Executive Council not authorize this Request, the estimated annual rebate revenue of \$204,000 will not be available to offset expenditures for the Program's infant foods purchased by participants. This rebate enables New Hampshire to enroll and provide benefits to additional women, infants, and children each year.

The New Hampshire Department of Health and Human Services, in conjunction with the States of Maine, Connecticut, Rhode Island, and the Commonwealth of Massachusetts, issued a competitive bid for the infant foods rebate contract beginning October 1, 2009. Invitations to Bid were mailed to all Food and Drug Administration-qualified infant foods manufacturers (2) on January 2, 2009. A legal notice was published on the State of New Hampshire, Department of Health and Human Services website soliciting Request for Proposals on January 5, 2009. Bid questions were received and returned on January 19, 2009 and final Bids were due on February 12, 2009.

Under federal regulation, the only infant food rebate evaluation criterion is the lowest net wholesale cost per unit of WIC approved containers. Bids were received from the following companies in the following amounts:

1. Nestlé Infant Nutrition, 12 Vreeland Avenue, Post Office Box 697, Florham Park, New Jersey 07932, Infant Cereal \$0.204, Infant Foods - Fruits/Vegetables \$0.348, and Infant Foods – Meats \$0.348.
2. Beech Nut Nutrition, 13 British American Blvd., Latham, New York 12110, Infant Cereal \$0.179, Infant Foods - Fruits/Vegetables \$0.135, and Infant Foods – Meats \$0.340.

As referenced in the original letter approved by Governor and Council on December 9, 2009, Item #116, and in the Request for Proposal, Renewals Section, this competitively procured Agreement has the option to extend for two (2) additional years in an amount not to exceed an increase in the net wholesale cost as contained in the original bid, contingent upon satisfactory delivery of services, available funding, agreement of the parties and approval of the Governor and Council. The DPHS is exercising one year of this renewal option.

His Excellency, Governor John H. Lynch
and the Honorable Executive Council
October 9, 2012
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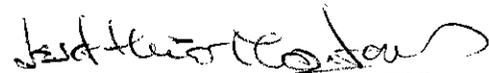
There are no specific performance measures as this is a revenue agreement and no services are being performed.

Area served is Statewide.

Source of Funds: 100% Other Revenue received from Beech Nut Nutrition.

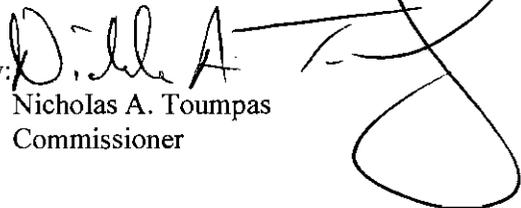
In the event that the Other Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,



José Thier Montero, MD
Director

Approved by:



Nicholas A. Toumpas
Commissioner

JTM/MM/ldr

INFANT FOODS REBATE AMENDMENT & MODIFICATION

To the Agreement made the first day of October 1, 2009 and amended this first day of February 2012 by and between the States of Connecticut, New Hampshire, Maine, Rhode Island and the Commonwealth of Massachusetts {hereinafter STATES} and Hero Group Inc./Beech-Nut Nutrition Corporation {hereinafter MANUFACTURER}

WHEREAS, the STATES implemented a WIC Infant Food and Cereal Rebate System intended to decrease the cost of infant fruit, vegetables, meat, and cereal improve program operations and services through increased participation in the Special Supplemental Nutrition Program for Women, Infants and Children [hereinafter WIC];

WHEREAS, the MANUFACTURER agreed to provide to the STATES a rebate on infant fruit, vegetables, meat and cereal manufactured by the MANUFACTURER and issued to WIC participants;

NOW, THEREFORE, for and in consideration of mutual promises and covenants herein set forth, the parties agree to amend the original contract as follows

1. Amendment and Modification of Agreement

This AGREEMENT shall be extended for one year, the end date of the Agreement changed from September 30, 2012 to September 30, 2013, and shall remain in effect until September 30, 2013 under the same terms, conditions, and rebate structure.

2. Effective Date of Amendment

This amendment shall be effective on the 1st day of October 2012

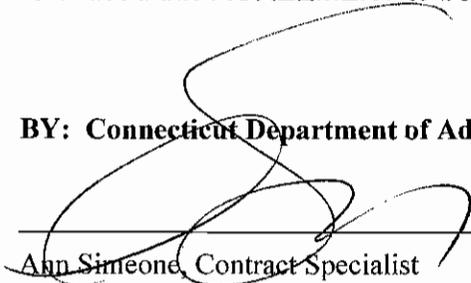
3. Continuance of Agreement

Except as specifically amended and modified by the terms and conditions of this Amendment, the AGREEMENT and the obligations of the parties thereunder shall remain in full force and effect in accordance with the terms and conditions set forth therein.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be duly executed intending to be bound thereby:

CONNECTICUT

BY: Connecticut Department of Administrative Services



Ann Simeone, Contract Specialist

MAINE

BY: Maine Department of Health and Human Services

William W. Boeschstein Jr., Chief Operating Officer

MASSACHUSETTS

BY: Massachusetts Department of Public Health

Carol Foltz, Chief Fiscal Officer

NEW HAMPSHIRE

BY: New Hampshire Department of Health & Human Services

Joan Ascheim, Chief, Bureau of Public Health Systems, Policy, and Performance

RHODE ISLAND

BY: Rhode Island Department of Health

Michael Fine, Director of Health

MANUFACTURER

BY: Hero Group, Inc. DBA Beech-Nut Nutrition

James Schneider, President and CEO

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2012 by James Schneider.

Notary Public/Justice of the Peace
My Commission Expires:

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BY: Rhode Island Department of Health

Michael Fine, Director of Health

MANUFACTURER

BY: Hero Group, Inc. DBA Beech-Nut Nutrition

James Schneider, President and CEO

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2012 by James Schneider.

Notary Public/Justice of the Peace
My Commission Expires:

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BY: Maine Department of Health and Human Services

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Carol Foltz, Chief Fiscal Officer

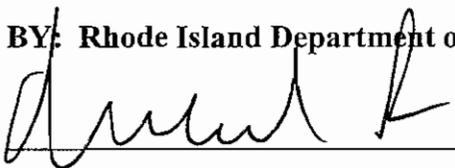
NEW HAMPSHIRE

BY: New Hampshire Department of Health & Human Services

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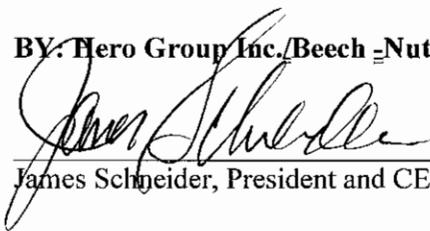
RHODE ISLAND

BY: Rhode Island Department of Health

Michael Fine, Director of Health

MANUFACTURER

BY: Hero Group Inc./Beech-Nut Nutrition Corporation



James Schneider, President and CEO

STATE OF

FLORIDA

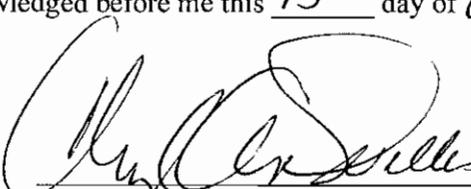
COUNTY OF

MARION

The foregoing instrument was acknowledged before me this 13th day of August, 2012
by James Schneider.



CHERYL ANN WILLIS
NOTARY PUBLIC
STATE OF FLORIDA
Comm# DD0931868
Expires 10/22/2013



Notary Public/Justice of the Peace

My Commission Expires: 10/22/2013

NH Department of Health and Human Services

Exhibit C
SPECIAL PROVISIONS

This is a Rebate Agreement in that the vendor is paying rebate dollars to the Department of Health and Human Services, Division of Public Health Services through its Women, Infant and Children (WIC) Program.

1) **Price Limitation**

Paragraph 1.8 of the General Provisions is hereby deleted.

2) **Employment of Contract/Services To be Performed**

Paragraph 2 of the General Provisions is deleted and replaced with the following language:

2.EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PREFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to provide rebates with respect to goods identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference.

3) **Contract Price: Limitation on Price: Payment**

Paragraph 1.8 of the General Provisions is hereby deleted.

4) **Contract Price/Price Limitation/Payment**

Paragraph 5 of the General Provisions is hereby deleted.

5) **Termination**

Paragraph 10 of the General Provisions is hereby deleted and replaced with the following language:

10.TERMINATION: This agreement may not be terminated except as provided by the terms of the Master Agreement in the attached EXHIBIT A and the SPECIAL PROVISIONS in the attached EXHIBIT C.

6) **Insurance**

Paragraph 14.1.2 of the General Provisions is hereby deleted.

Contractor Initials: 
Date: 6/20/12

State of New Hampshire Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Hero Group Inc. a(n) Delaware corporation, is authorized to transact business in New Hampshire and qualified on August 4, 2009. I further certify that all fees and annual reports required by the Secretary of State's office have been received.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 25th day of July, A.D. 2012

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

HERO GROUP INC.

UNANIMOUS WRITTEN CONSENT OF
THE BOARD OF DIRECTORS
IN LIEU OF SPECIAL MEETING

In lieu of a special meeting of the Board of Directors of Hero Group Inc., a Delaware corporation (the "**Corporation**"), the undersigned, being a member of the Board of Directors of Corporation (the "**Board**"), do hereby, pursuant to Section 141(f) of the Delaware General Corporation Law, declare that the actions hereinafter set forth shall be, and hereby are, taken by the Board this 20th day of June, 2012:

RESOLVED, that this corporation enters into a contract with the State of New Hampshire, acting through its Department of Health and Human Services, Division of Public Health Services.

FUTHER RESOLVED, that James R. Schneider is hereby authorized on behalf of this corporation to enter into said contract with the State and to execute any and all documents, agreements, and other instruments; and any amendments, revisions, or modifications thereto, as he/she may deem necessary, desirable, or appropriate. James R. Schneider is a duly elected Board Member of the corporation.

FUTHER RESOLVED, that the foregoing resolutions have not been amended or revoked and remain in full force and effect as of this 20th day of June, 2012.

IN WITNESS WHEREOF, I have hereunto set my hand as a Board Member of the corporation this 20th day of June, 2012.



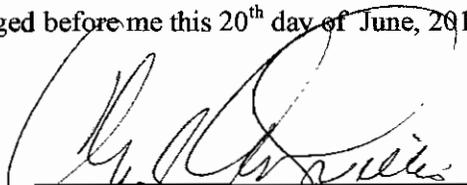
Tim Kennedy
Board Member

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me this 20th day of June, 2012 by Tim Kennedy.



CHERYL ANN WILLIS
NOTARY PUBLIC
STATE OF FLORIDA
Comm# DD0931868
Expires 10/22/2013


Notary Public/Justice of the Peace
My Commission Expires 10/22/2013



STATE OF NEW HAMPSHIRE
 DEPARTMENT OF HEALTH AND HUMAN SERVICES
 DIVISION OF PUBLIC HEALTH SERVICES

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Nicholas A. Toumpas
 Commissioner

José Thier Montero
 Director

October 27, 2009

His Excellency, Governor John H. Lynch
 and the Honorable Executive Council
 State House
 Concord, New Hampshire 03301

Approved F/C _____
 Date _____
 Approved G&C Item # 116
 Date 12/09/09
 Not Approved _____

REQUESTED ACTION

Authorize the Department of Health and Human Services (DHHS), Division of Public Health Services (DPHS), Bureau of Prevention Services, Nutrition and Health Promotion Section, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), to enter into an agreement with Hero Group, Inc. d/b/a Beech Nut Nutrition, 13 British American Blvd., Latham, NY 12110, to provide rebates on selected infant foods purchased with food instruments issued by the WIC Program, to be effective retroactive to October 1, 2009 through September 30, 2012. The price limitation is the amount the WIC Program receives in rebates from Beech Nut Nutrition for infant food purchased with food instruments issued by the WIC Program.

05-95-90-901510-2207 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SERVICES, HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF PREVENTION SERVICES, NUTRITION AND HEALTH PROMOTION SECTION, WIC PROGRAM.

Fiscal Year	Class/Object	Class Title	Job Number	Total Amount
SFY 2010	005-402823	Private Local Funds	90006011	153,000
SFY 2011	005-402823	Private Local Funds	90006011	204,000
SFY 2012	005-402823	Private Local Funds	90006011	204,000
SFY 2013	005-402823	Private Local Funds	90006011	51,000
		Total		612,000

EXPLANATION

The WIC program provides supplemental nutritious food, nutrition education, and related assessment and referral services to pregnant women, new mothers, infants, and preschool children who are at risk due to nutritionally related medical conditions or poor diets. The WIC Rebate Program complies with interim federal rule and controls the cost of infant foods in order to increase the number of women, infants, and children served by the States' WIC Program. Unless medically contraindicated the selected manufacturer's products are issued to WIC participants and the manufacturer pays a rebate to the WIC Program on all infant foods purchased with WIC food instruments.

The New Hampshire Department of Health and Human Services, in conjunction with the States of Maine, Connecticut, Rhode Island, and the Commonwealth of Massachusetts, issued a competitive bid for the infant foods rebate contract beginning October 1, 2009. Invitations to Bid were mailed to all FDA-qualified

infant foods manufacturers (2) on January 2, 2009. A legal notice was published on the State of NH, DHHS website soliciting Request for Proposals (RFP) on January 5, 2009. Bid questions were received and returned on January 19, 2009 and final Bids were due on February 12, 2009.

Under federal regulation, the only infant food rebate evaluation criterion is the lowest net wholesale cost per unit of WIC approved containers. Bids were received from the following companies in the following amounts:

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2. Beech Nut Nutrition, 13 British American Blvd., Latham, NY 12110, Infant Cereal \$0.179, Infant Foods - Fruits/Vegetables \$0.135, and Infant Foods – Meats \$0.340.

The bid was awarded to Beech Nut Nutrition, which had the lowest net wholesale cost.

Retroactive approval is requested because of administrative delays in obtaining signatures of all parties as one of the board members was out of the country until October 20, 2009.

The estimated rebate revenue is projected at \$204,000 for each 12-month period of the contract. These funds are already budgeted in the SFY 10-11 biennium budget. Funds under this agreement will be used to offset expenditures for WIC infant foods purchased by participants.

As referenced in the Request for Proposal, Renewals Section, this Agreement has the option to extend for two additional year(s), in an amount not to exceed an increase in the net wholesale cost as contained in the original bid, with the agreement of the parties and approval by the Governor and Council.

There are no specific performance measures as this is a revenue agreement and no services are being performed.

The geographic area to be served is statewide.

Source of Funds: 100% Other Funds.

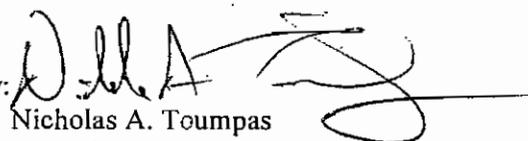
In the event that the Other Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,



José Thier Montero, MD
Director

Approved by:



Nicholas A. Toumpas
Commissioner

