

State of New York Executive Department
Office Of General Services
Procurement Services Group
Corning Tower Building - 38th Floor
Empire State Plaza
Albany, New York 12242
<http://www.ogs.ny.gov>

CONTRACT AWARD NOTIFICATION

Title	:	Group 10200 – MN Multistate Influenza Vaccine (2012-2014) ASD Specialty Healthcare, Inc. (Statewide)
		Classification Code(s): 51
Award Number	:	PGB - 22417
Contract Period	:	June 15, 2012 through May 1, 2014
Bid Opening Date	:	April 8, 2012
Date of Issue	:	June 18, 2012
Specification Reference	:	As Incorporated In The Piggyback Agreement
Contractor Information	:	Appears on Page 2 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Todd Kayser Title : Purchasing Officer I Phone : 518-474-4501 Fax : 518-474-5052 E-mail : todd.kayser@ogs.ny.gov	Procurement Services Group Customer Services Phone : 518-474-6717 Fax : 518-474-2437 E-mail : customer.services@ogs.ny.gov

**The Procurement Services Group values your input.
Complete and return "Contract Performance Report" at end of document.**

Description

MN Multistate Piggyback Agreement for the 2012-2014 Seasonal Influenza Vaccine (ASD Healthcare, Inc.)

**GROUP 10200 - MN MULTISTATE INFLUENZA VACCINE (2012-2014) AWARD PAGE 2
ASD SPECIALTY HEALTHCARE (STATEWIDE)**

<u>CONTRACT #</u>	<u>CONTRACTOR & ADDRESS</u>	<u>TELEPHONE #</u>	<u>FED.IDENT #</u>	<u>NYS VENDOR #</u>
PC65805	ASD Specialty Healthcare, Inc. d/b/a ASD Healthcare 3101 Gaylord Pkwy. Frisco, TX 75034	800-746-6273 469-365-7465 Liz Feldman, Senior Manager of Business Development and Trade Relations Fax: 469-365-7900 Toll Free Fax: 800-547-9413 Email: Elizabeth.feldman@ASDHealthcare.com	33-0800482	100009101

Contractor offers Electronic Access Ordering.

Contractor will accept the New York State Procurement Card for orders not to exceed \$15,000.00.

Cash Discount, If Shown, Should be Given Special Attention.

INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.

(See "Contract Payments" and "Electronic Payments" in this document.)

AGENCIES SHOULD NOTIFY THE PROCUREMENT SERVICES GROUP PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES GROUP.

SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

The Procurement Services Group supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,

**GROUP 10200 - MN MULTISTATE INFLUENZA VACCINE (2012-2014) AWARD PAGE 3
ASD SPECIALTY HEALTHCARE (STATEWIDE)**

GENERAL INFORMATION (Cont'd)

NOTE TO AUTHORIZED USERS (Cont'd.)

- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

APPENDIX B NOTES:

The following Appendix B paragraphs were deleted for the purpose of this solicitation:

- Paragraph 72 (a) - "Product Performance".
- Paragraph 74 - "Indemnification".

It is understood that ASD Specialty Healthcare, Inc. is not the manufacturer of the contracted vaccines and is therefore NOT responsible for the performance of the vaccines.

The warranty policies of the Master Contract (MMS12002) and its' amendments shall take precedence over the "warranties" clauses of Appendix B as per the Piggyback Agreement "Conflict of Terms and Conditions".

CONFLICT OF TERMS AND CONDITIONS

Conflicts between documents shall be resolved in the following order of precedence:

- Appendix A
- Master Contract (see "Background and Intent")
- This Piggyback Agreement
- Appendix B
- Bidders Bid (Response to Piggyback Agreement)

PRICE AND DISCOUNTS

Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State as designated by the ordering agency. Any prompt payment terms (cash discounts) or quantity (volume) discounts which are included in the Master Contract will also be included in the New York State Contract.

Manufacturer Name	Product Name	Container Type	Pack Size	Price Per Container (Prices do not include FET)	Max Quantity to MMCAP
Merck/CSL	Afluria	0.5 ML prefilled syringes	Pack of 10	\$102.50	1,000,000 Doses
Merck/CSL	Afluria	5 ML MD vial	10 Dose	\$95.00	1,000,000 Doses
MedImmune	Flumist	Nasal Sprayer	Pack of 10	\$157.50	1,000,000 Doses
Novartis Vaccines	Fluvirin *	0.5 ML prefilled syringes	Pack of 10	\$83.30	1,500,000 Doses
Novartis Vaccines	Fluvirin *	5 ML MD vial	10 dose	\$75.90	2,000,000 Doses
Sanofi Pasteur	Fluzone	5 ML MD vial; 6 months of age and older	10 Dose	\$103.93	500,000 Doses
Sanofi Pasteur	Fluzone, No Preservative	36 months of age and older; prefilled syringe	Pack of 10	\$116.24	500,000 Doses
Sanofi Pasteur	Fluzone, No Preservative	36 months of age and older; SD vials	Pack of 10	\$116.24	1,000,000 Doses
Sanofi Pasteur	Fluzone Intradermal, No Preservative	18 years through 64 years of age, Prefilled Syringe	Pack of 10	\$149.97	250,000 Doses
Sanofi Pasteur	Fluzone, No Preservative: Pediatric Dose	6 months to 35 months of age; prefilled syringe	Pack of 10	\$124.41	1,000,000 Doses
Sanofi Pasteur	Fluzone, No Preservative High Dose	65 years and older; prefilled syringe	Pack of 10	\$256.41	250,000 Doses
GSK	Flulaval	5ML MD vial	Pack of 10	\$83.20	250,000 Doses

GENERAL INFORMATION (Cont'd)

PRICE AND DISCOUNTS (Cont'd)

*Additional volume discounts on **Novartis Fluvirin** available as follows;

Product must be purchased by a single entity but can be shipped to multiple locations that are affiliated with the ordering entity.

50,000 doses of Fluvirin product 1% discount

100,000 doses of Fluvirin product in vials will be billed at \$72.80 per vial plus FET.

Payment terms Net 30

Vendor will not charge a fee for members using credit or P-cards.

Prebooking MMCAP members may pre-book immediately upon execution of this Agreement through June 1, 2012, or when the number of vials allotted to MMCAP is pre-booked, whichever is earlier. For a MMCAP member that pre-booked prior to the execution of this Agreement, Vendor will honor the MMCAP contracted pricing stated in this Agreement; provided that such member notifies Vendor that it will be purchasing its vials under this Agreement (rather than under another agreement with a group purchasing organization or other third party). Flu Vaccines may be ordered online, by phone or by fax:

- Live: 1-866-281-4FLU(4358)
- Monday - Friday 7 a.m. to 6 p.m., Central Time.
- On-line: www.asdhealthcare.com
- Fax: 1-800-547-9413

Facilities that did not order last year will be required to complete a business application if an existing account is not set up or has been inactive for greater than one year. Orders may be modified or cancelled by ordering facility until August 1, 2012, and thereafter in accordance with the schedule set forth below.

- **Price Protection:** Vendor will provide members with price protection. Members will receive ASD's lowest published price through the date of shipment – regardless of the members order date or price.
- **Returns:** MMCAP member may return the following contracted products to ASD by February 28, 2013. Contact ASD's customer care team at 1-866-281-4FLU(4358)
MedImmune Flumist Product - This product may be exchanged only and cannot be returned for credit.
Merck Afluria Product – Up to 20% of pre-booked doses can be returned for credit.
Novartis Fluvirin Products – Up to 20% of pre-booked doses can be returned for credit.
Sanofi Pasteur Fluzone product – Up to 15% of pre-booked doses can be returned for credit.
ASD will not accept return of products that were repurchased or obtained from any other source than ASD.
- **Returns - Federal Excise Tax (FET):** Unused doses of any of the brands sold by ASD can be returned for credit of the FET. Contact ASD for return authorization at 1-866-281-4FLU(4358).

Based on the potential volatility in the Flu Vaccine market and manufacturers' inability to provide a guarantee to supply provision to Vendor, MMCAP acknowledges that Vendor does not guarantee any supply of the Flu Vaccines to purchasers or the presentation of Flu Vaccines that will be available. Neither Vendor nor any of its affiliates guarantee any specific delivery date or quantity of Flu Vaccines to any purchaser. Vendor ships Flu Vaccines based on availability from manufacturers. Neither Vendor nor any of its affiliates will be liable for any delays or product shortages. In no event shall Vendor be liable to purchasers for incidental, special, or consequential damages (including lost profits) from any cause, including without limitation, damages resulting from any unavailability or delays in shipments of, or defects in, Flu Vaccines. If vaccine supply is limited through no fault of Vendor and is inadequate to meet demand, Vendor will work in conjunction with MMCAP to obtain alternative supply.

REQUEST FOR CHANGE:

Any request by the agency or contractor regarding changes in any part of the contract must be made in writing to the Office of General Services, Procurement Services Group prior to effectuation.

GENERAL INFORMATION (Cont'd)

CONTRACT PAYMENTS:

Payments cannot be processed by State facilities until the contract products have been delivered in satisfactory condition or services have been satisfactorily performed. Payment will be based on any invoice used in the supplier's normal course of business. However, such invoice must contain sufficient data including but not limited to contract number, description of product or service, quantity, unit and price per unit as well as federal identification number.

State facilities are required to forward properly completed vouchers to the Office of the State Comptroller for audit and payment. All facilities are urged to process every completed voucher expeditiously giving particular attention to those involving cash discounts for prompt payment.

If the contract terms indicate political subdivisions and others authorized by law are allowed to participate, those entities are required to make payments directly to the contractor. Prior to processing such payment, the contractor may be required to complete the ordering non-State agency's own voucher form.

See "Contract Billings" in Appendix B, OGS General Specifications.

ELECTRONIC PAYMENTS:

The Office of the State Comptroller (OSC) offers an "electronic payment" option in lieu of issuing checks. To obtain an electronic payment authorization form visit the OSC website at www.osc.state.ny.us or contact them by e-mail at epunit@osc.state.ny.us or by phone at 518-474-4032.

NOTE TO CONTRACTOR:

This Contract Award Notification is not an order. Do not take any action under this contract except on the basis of purchase order(s) from the agency or agencies.

CONTRACT PERIOD AND RENEWALS

The New York State Contract period shall be for the term as indicated on the Piggyback Agreement. Extensions or renewals to the Master Contract or any modification including new products, terms, or price changes to the Master Contract shall be submitted by the Contractor to the Office of General Services, Procurement Services Group for approval as well as the approval of the State Comptroller's Office and shall be effective to the New York State Contract upon the date of issuance of a written notification to New York State contract users

Upon expiration of the Master Contract, Contractor may submit any subsequent replacement contracts entered into for the same or similar products with the same Issuing Entity to the Office of General Services, Procurement Services Group in order to establish a new contract.

In the event Contractor's Master Contract expires and no new contract is let by the original Issuing Entity, OGS reserves the right, upon written agreement with Contractor and Office of the State Comptroller's approval, to renew the New York State Contract under the same terms and conditions for an additional period of one year.

SHORT TERM EXTENSION

In the event the replacement contract has not been issued, any contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one month upon notice to the contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the contractor, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should the replacement contract be issued in the interim.

PRICE CHANGE PROCEDURE (AFTER EXPIRATION OF MASTER CONTRACT)

Should the Master Contract expire and not be extended or renewed prior to the expiration of the New York State Contract (including any renewals processed by New York State), and providing the Master contract referenced uniform discount(s) from nationally distributed price list(s), the contract prices may be subject to

GENERAL INFORMATION (Cont'd)

PRICE CHANGE PROCEDURE (AFTER EXPIRATION OF MASTER CONTRACT) (Cont'd.)

increase or decrease during the remainder of the contract period in accordance with changes which may be made by the manufacturer in their established, nationally distributed price list or published catalog. Catalog or price lists may indicate increases or decreases in pricing, but the percentage discount(s) in effect at the time of Master Contract expiration shall not be decreased.

In the event the Master Contract did not reference uniform discount(s) from nationally distributed price list(s), updated price lists may be submitted for acceptance providing the discount structure used as a basis for pricing which was in effect at the time of Master Contract expiration remains unaltered. This evidence must be supplied by the Contractor along with the updated price lists.

New products will be considered for inclusion provided they are pertinent to the contract and are offered to the State at the same discount, terms and conditions as the Master Contract.

The price revisions, new lists or supplements to an original list shall be submitted to the Office of General Services, Procurement Services Group, to the attention of the Purchasing Officer shown on the front of this document, in triplicate, for approval before ordering agencies will be bound to any such revisions. Approvals of price revisions shall become effective upon the date of issuance of a written notification to New York State contract users.

CANCELLATION FOR CONVENIENCE

The State of New York retains the right to cancel this contract, in whole or in part without reason provided that the Contractor is given at least sixty (60) days notice of its intent to cancel. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Agency agreements, which are subject to the same 60 day discretionary cancellation or cancellation for cause by the respective user Agencies.

CONTRACT MIGRATION

State Agencies or any other authorized user holding individual contracts with contractors under this centralized contract shall be able to migrate to this contract award with the same contractor, effective on the contract begin date (retroactively, if applicable). Migration by an agency or any other authorized user to the centralized contract shall not operate to diminish, alter or extinguish any right that the agency or other authorized user otherwise had under the terms and conditions of their original contract.

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in this contract. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See "Participation in Centralized Contracts" in Appendix B, OGS General Specifications. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include delivery to locations adjacent to New York State.

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS(Cont'd)

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (www.ogs.ny.gov). Questions regarding an organization's eligibility to purchase from New York State contracts may also be directed to OGS Procurement Services Group's Customer Services at 518-474-6717.

GENERAL INFORMATION (Cont'd)

PURCHASE ORDERS

See "Purchase Orders" in Appendix B, OGS General Specifications.

If there is a discrepancy between the purchase order and what is listed on contract, it is the contractor's obligation as a condition of payment to clarify and resolve what is to be actually shipped by contacting ordering agency.

EMERGENCY PURCHASING

In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or that the Commissioner determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of commodities or services, the Commissioner reserves the right to obtain such commodities or services from any source, including but not limited to this contract, as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for commodities or services procured from other sources pursuant to this paragraph.

DIESEL EMISSION REDUCTION ACT OF 2006 (NEW REQUIREMENT OF LAW):

On February 12, 2007 the Diesel Emissions Reduction Act took effect as law (the "Law"). Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law ("NYECL") it is now a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. They need to be operated exclusively on ULSD by February 12, 2007. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

As a contract vendor the Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities. Thirty-three percent (33%) of affected vehicles must have BART by December 31, 2008, sixty-six percent (66%) by December 31, 2009 and one-hundred percent (100%) by December 31, 2010. The Law provides a list of exempted vehicles. Regulations currently being drafted will provide further guidance as to the effects of the Law on contract vendors using heavy duty diesel vehicles on behalf of the State. The Law also permits waivers of ULSD and BART under limited circumstances at the discretion of the Commissioner of Environmental Conservation. The Law will also require reporting from State agencies and from contract vendors in affected contracts.

Therefore, the bidder hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the bidder.

"OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT

Purchases of the products included in the Piggyback Agreement and related Contract Award Notification are subject to the "OGS or Less" provisions of Section 163.3.a.v., Article XI, of the New York State Finance Law. This means that State agencies can purchase products from sources other than the contractor provided that such products are substantially similar in form, function or utility to the products herein and are:

1. lower in price
-and/or-
2. available under terms which are more economically efficient to the State agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State contractor an opportunity to match the non-contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State

GENERAL INFORMATION (Cont'd)

"OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT (Cont'd)

Contract Reporter, prior approval of the Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit. State agencies should refer to Procurement Council Bulletin "OGS or Less Purchases" for complete procedural and reporting requirements.

OVERLAPPING CONTRACT ITEMS:

Products/services available in this contract may also be available from other New York State contracts. Agencies should select the most cost effective procurement alternative that meets their program requirements and maintain a procurement record documenting the basis for the selection.

PSG's DISPUTE RESOLUTION POLICY:

It is the policy of the Office of General Services' Procurement Services Group (PSG) to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to PSG bid solicitations or contract awards. PSG encourages vendors to seek resolution of disputes through consultation with PSG staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of PSG's Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this document or through the OGS website (www.ogs.ny.gov).

**State of New York
Office of General Services
PROCUREMENT SERVICES GROUP
Contract Performance Report**

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

Contract No.: _____ **Contractor:** _____

Describe Product* Provided (Include Item No., if available): _____

***Note:** "Product" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

CONTRACTOR

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments: _____

 _____ (over)

Agency: _____ Prepared by: _____

Address: _____ Title: _____

_____ Date: _____

_____ Phone: _____

_____ E-mail: _____

Please detach or photocopy this form & return by FAX to 518/474-2437 or mail to:

OGS PROCUREMENT SERVICES GROUP
 Customer Services, 38th Floor
 Corning 2nd Tower - Empire State Plaza
 Albany, New York 12242
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