



Contract Award Notification

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|---------------------------------|--|
| Title: | Group 10200 – MN MULTISTATE (MMCAP) INFLUENZA VACCINE SANOFI PASTEUR, INC. (Statewide) Classification Code(s): 51 |
| Award Number: | <u>PGB-22555</u> |
| Contract Period: | July 1, 2013 through December 31, 2017 |
| Bid Opening Date: | March 19, 2013 |
| Date of Issue: | July 1, 2013 (Revised December 1, 2016) |
| 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 : Sarah Crossman Title : Contract Management Specialist Phone : 518-473-9440 Email : Sarah.Crossman@ogs.ny.gov | Customer Services Phone : 518-474-6717 Fax : 518-474-2437 E-mail : customer.services@ogs.ny.gov |

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

Description

Piggyback contract off of MMCAP Contract to procure influenza vaccines from Sanofi Pasteur, Inc.

PR #22555

| CONTRACT # | CONTRACTOR & ADDRESS | TELEPHONE # | FEIN | NYS VENDOR ID # |
|-------------------|---|--|-------------|------------------------|
| PC66020 | Sanofi Pasteur, Inc. Discovery Drive Swiftwater, PA 18370 | 800-822-2463 570-957-0300 Pamela Garcia-Gomez Fax: 570-957-3272 E-mail: Pamela.Gomez@sanofipasteur.com Website: www.sanofipasteur.com | 980033013 | 1000009835 |

Electronic Access Ordering is available via www.vaccineshoppe.com
 Accepts NYS Purchasing Card for orders up to \$15,000.00
 Contractor will honor orders for less than the minimum order specified in the Master Contract.

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 PROCUREMENT SERVICES 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 PROCUREMENT SERVICES.

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:

Procurement Services 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,
- 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).

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.

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.

APPENDIX A

Appendix A, Standard Clauses For New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this Agreement as fully as if set forth at length herein.

APPENDIX B

Appendix B, Office of General Services General Specifications, dated June 2014, incorporated by reference herein, is hereby expressly made a part of this Agreement as fully as if set forth at length herein and shall govern any situations not covered by this Agreement or Appendix A.

APPENDIX B NOTES

Appendix B Clause 17 paragraphs f, g and h are hereby deleted.

Appendix B Clause 52 paragraph d is hereby deleted.

Appendix B Clause 61 is hereby deleted and replaced with the following in its entirety:

INDEMNIFICATION

Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder to the extent of the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Commissioner shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to

defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

Appendix B Clause 62 is hereby deleted and replaced with the following in its entirety:

CONTRACT INVOICING

a. Invoicing. Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in a commercially reasonable manner as requested by the Commissioner. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

b. Payment of Contract Purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment. The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.ny.us, by e-mail at HelpDesk@sfs.ny.gov, or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

c. Payment of Contract Purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment. The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any claims or actions brought by Contractor against the State for monetary damages shall be brought in the New York State Court of Claims. See "Governing Law" in Appendix A, Standard Clauses for New York State Contracts.

CONFLICT OF TERMS AND CONDITIONS

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

- a. Appendix A
- b. Master Contract (MMCAP contract MMS13000)
- c. This Piggyback Agreement PC66020
- d. Appendix B
- e. Bidders Bid (Response to Piggyback Agreement)

PROCUREMENT LOBBYING TERMINATION:

OGS reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer/bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, OGS may exercise its termination right by providing written notification to the Offerer/bidder in accordance with the written notification terms of this contract.

SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING:

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between OGS and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:

<http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>

PAYMENTS OF INTEREST:

See "Interest on Late Payments" in Appendix B, OGS General Specifications. The Federal Prompt Payment Law (or any other law governing payment terms incorporated in the Master Contract) does not apply to the New York State Contract regardless of customer.

MERCURY-ADDED CONSUMER PRODUCTS:

Offerers are advised that effective January 1, 2005, Article 27, Title 21 of the Environmental Conservation Law bans the sale or distribution free of charge of fever thermometers containing mercury except by prescription written by a physician and bans the sale or distribution free of charge of elemental mercury other than for medical pre-encapsulated dental amalgam, research, or manufacturing purposes due to the hazardous waste concerns of mercury. The law further states that effective July 12, 2005, manufacturers are required to label mercury-added consumer products that are sold or offered for sale in New York State by a distributor or retailer. The label is intended to inform consumers of the presence of mercury in such products and of the proper disposal or recycling of mercury-added consumer products. Offerers are encouraged to contact the Department of Environmental Conservation, Bureau of Solid Waste, Reduction & Recycling at (518) 402-8705 or the Bureau of Hazardous Waste Regulation at 1-800-462-6553 for questions relating to the law. Offerers may also visit the Department's web site for additional information:
<http://www.dec.state.ny.us/website/dshh/redrecy/c145home.html>.

BACKGROUND AND INTENT:

In accordance with Article XI Section 163 of the New York State Finance Law, the Commissioner of General Services (hereinafter "OGS", "State" or "Purchaser"), may authorize purchases required by New York State agencies or other authorized purchasers by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states. OGS Procurement

Services, on behalf of the Commissioner, finds it necessary and desirable to enter into a contract based on this Piggyback Agreement (hereinafter "New York State Contract") with Sanofi Pasteur, Inc. (hereinafter "Vendor" or "Contractor") for the purchase of specified products under the terms and conditions established pursuant to MMCAP Contract No. MMS13000 for Influenza Vaccine (hereinafter "Master Contract") by State agencies and other authorized purchasers. By completing and signing this document, Vendor is willing and able to enter into a contract and authorizes OGS to process the contract and provide notification to all authorized purchasers.

PRICE AND DISCOUNTS

Price includes all customs duties and charges and is 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.

CONTRACT PRICING:

Products and pricing are subject to change after the **2016-2017 influenza season**. A link to the updated Price List is posted on the OGS website:

<http://www.ogs.ny.gov/purchase/spg/awards/1020022555CAN.HTM>

- Reservations can be placed until March 31, 2016. After cutoff occurs, reservation requests will be accepted subject to product availability.
- An additional 2% discount is available for those members participating in prompt pay per the terms of the contract. (2% 30, Net 31 days)
- Influenza vaccines are subject to Federal Excise Tax. Therefore, Federal Excise Tax will be collected on all doses of 2016-2017 vaccines at a rate of \$0.75 per dose.
- Distribution Policy: Sanofi Pasteur Inc. expects to make a partial shipment of each MMCAP Participating Facilities' total Fluzone request of 50% or more by September 30, 2016 with the balance to be completed by November 15, 2016. Sanofi Pasteur Inc. reserves the right to schedule shipments and/or make partial shipments with prior notification. This only applies to each Member's confirmed request for the 2016-2017 influenza season and must be confirmed by March 31, 2016. Any doses confirmed or any modification to the Fluzone vaccine request by Members after March 31, 2016 will be excluded from the shipping guarantees above.
- Return Policy: Upon expiration, MMCAP Participating Facilities may return 25% of unused doses (per presentation) shipped before October 31, 2016 and/or 50% of unused doses (per presentation) shipped after October 31, 2016 and receive full credit of the net purchase price, less excise tax to be used on future purchases of Fluzone vaccine. Full credit of the Federal Excise Tax will be given per the Sanofi Pasteur Inc. Terms and Conditions of Sale. Returns must be received by August 31, 2017.
- End of Season Performance Credit: MMCAP Participating Facilities who retain 95% total Fluzone vaccine dose volume on reservations confirmed by March 31, 2016 may earn a 2% year end credit on Fluzone Quadrivalent vaccine pediatric-dose and Fluzone High-Dose vaccine. The credit must be used against Fluzone vaccine purchases. Fluzone reservations must be confirmed by March 31, 2016 to be eligible.

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 for approval 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 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.

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, prior to effectuation.

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.

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.

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.

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.

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 Customer Services at 518-474-6717.

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

Pursuant to N.Y. Environmental Conservation Law §19-0323 ("the Law"), it is 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. 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.

The Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities and require certain reports from contract vendors. All heavy duty diesel vehicles must have BART by December 31, 2015 (unless further extended by Law). The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. 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 6 NYCRR Parts 248 and 249.

"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 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.

**State of New York
Office of General Services
PROCUREMENT SERVICES
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
 Customer Services, 37th Floor
 Corning 2nd Tower - Empire State Plaza
 Albany, New York 12242

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