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 (MMCAP) INFLUENZA VACCINE (2012-2013) NOVARTIS VACCINES (Statewide)** **Classification Code: 51**
Award Number	:	**PGB-21359**
Contract Period	:	**May 19, 2008 thru April 1, 2012**
Bid Opening Date	:	**March 14, 2008**
Date of Issue	:	**May 20, 2008 (Revised January 6, 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	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

Influenza Vaccine (Fluvirin, Multi-dose Vials and Pre-filled Syringes) for the 2012-2013 Influenza Season.

PR #21359

CONTRACT #	CONTRACTOR & ADDRESS	TELEPHONE #	FED.IDENT.#	NYS VENDOR ID #
PC63928	NOVARTIS VACCINES AND DIAGNOSTICS, INC. 350 Massachusetts Ave. 2nd Floor Cambridge, MA 02139	800/244-7668 617/871-8033 Christopher Fikry, M.D. Fax No.: 617/871-8910 E-mail: christopher.fikry@novartis.com Website: www.novartisvaccines.com	942754624	1000009793

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,

(continued)

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).

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.

CONTRACTED VACCINE

Novartis Fluvirin		**Per 10 dose vial**		
Pre-book order date		Before 2/1/2012	2/1/2012 - 3/1/2012	3/1/2012 - 4/1/2012
Pre-book order price		$77.52	$82.37	$87.21
Number of returnable doses		20%	15%	10%
Novartis Fluvirin		**Per packet of 10 pre-filled syringes**		
Pre-book order date		Before 2/1/2012	2/1/2012 - 3/1/2012	3/1/2012 - 4/1/2012
Pre-book order price		$85.04	$90.36	$95.67
Number of returnable doses		20%	15%	10%

The prices listed above **do not** include the Federal Excise Tax (FET) of $0.75 per dose
Payment terms are 2% 60, net 61 from day of delivery
All deliveries to be completed by October 15, 2012

Electronic Access Ordering (EDI) is available. Contact contractor for further details.
Contractor will honor orders for less than the minimum order specified in the Master Contract and shipping costs will be added in accordance with the "Minimum Order" clause.

Person to contact for expediting New York State contract orders:
Christopher Fikry, M.D.
Phone: 617/871-8033
Fax: 617/871-8910
E-mail: christopher.fikry@novartis.com

If Members choose to order with Novartis go to www.NovartisVaccinesDirect.com and use MMCAP Group Number : 29MMCAP2009.

Ordering: Ordering can begin immediately upon execution of this amendment. Orders may not be changed or cancelled after they are placed.

Delivery: Will be completed by October 15, 2012

Own Use: All items acquired by MMCAP Participating Facilities under this contract are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise.

(continued)

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.

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.

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).

APPENDIX A

Appendix A, Standard Clauses For New York State Contracts, dated June 2006, 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 July 2006, 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.

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.

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APPENDIX B NOTES

The following Appendix B paragraphs are hereby deleted for the purpose of this solicitation.

- 4, "Conflict of Terms"
- 13, "Extraneous Terms"
- 23, "Best Pricing Offer" - With the understanding that all pricing herein shall reflect pricing set forth in the MMCAP contract #MMS28003
- 28, "Samples"
- 41, "Scope Changes"
- 58, "Performance/Bid Bond"

CONFLICT OF TERMS AND CONDITIONS

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

a. Appendix A
b. Master Contract (see "Background and Intent")
c. This Piggyback Agreement
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.

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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/dshm/redrecy/c145home.html.

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY/WOMEN-OWNED BUSINESSES

In accordance with Article 15-A of the New York State Executive Law (Participation by Minority Group Members and Women with Respect to State Contracts) and in conformance with the Regulations promulgated by the Minority and Women's Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Offerer/Contractor agrees to be bound by the following to promote equality of economic opportunities for minority group members and women, and the facilitation of minority and women-owned business enterprise participation on all covered OGS contracts.

a. Equal Employment Opportunity Requirements
By submission of a bid or proposal in response to this solicitation, the Offerer agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The contractor is required to ensure that the provisions of Appendix A clause 12 – Equal Employment Opportunities for minorities and women, are included in every subcontract in such a manner that the requirements of these provisions will be binding upon each subcontractor as to work in connection with the State contract.

b. Participation Opportunities for New York State Certified Minorities and Women-Owned Businesses
Authorized Users are encouraged to make every good faith effort to promote and assist the participation of New York State Certified Minority and Women-owned Business Enterprises (M/WBE) as subcontractors and suppliers on this contract for the provision of services and materials. To locate New York State Certified M/WBEs, the directory of Certified Businesses can be viewed at:
http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp

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. The OGS Procurement Services Group, 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 Novartis Vaccines (hereinafter "Vendor" or "Contractor") for the purchase of specified products under the terms and conditions established pursuant to MMCAP Contract No. MMS28003 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.

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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 Group's 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.

"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

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

the discretionary bid limit. State agencies should refer to Procurement Council Bulletin "OGS or Less Purchases" for complete procedural and reporting requirements.

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.

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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:_____

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

OGS PROCUREMENT SERVICES GROUP
Customer Services, 37th Floor
Corning 2nd Tower - Empire State Plaza
Albany, New York 12242

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