



## Office of General Services Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | <https://ogs.ny.gov/procurement> | [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov) | 518-474-6717

# Contract Award Notification

<b>Title</b>	<b>:</b>	<b>Group 10200 – MMCAP Infuse INFLUENZA VACCINE - FFF ENTERPRISES, INC. (Statewide)</b> <b>Classification Code(s): 51</b>
<b>Award Number</b>	<b>:</b>	<b><u><a href="#">PGB-22797</a></u></b>
<b>Contract Period</b>	<b>:</b>	<b>August 13, 2014 to April 30, 2020</b>
<b>Bid Opening Date</b>	<b>:</b>	<b>February 18, 2014</b>
<b>Date of Issue</b>	<b>:</b>	<b>August 13, 2014 (Revised December 20, 2019)</b>
<b>Specification Reference</b>	<b>:</b>	<b>As Incorporated In The Piggyback Agreement</b>
<b>Contractor Information</b>	<b>:</b>	<b>Appears on Page 2 of this Award</b>

### Address Inquiries To:

<b>State Agencies &amp; Vendors</b>	<b>Political Subdivisions &amp; Others</b>
Name : Vivian Basile Title : Contract Management Specialist Phone : 518-474-0912 E-mail : <a href="mailto:vivian.basile@ogs.ny.gov">vivian.basile@ogs.ny.gov</a>	Procurement Services Customer Services Phone : 518-474-6717 E-mail : <a href="mailto:customer.services@ogs.ny.gov">customer.services@ogs.ny.gov</a>

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

### Description

This is a notification of award for a Piggyback Contract off of Master Agreement MMS14003 between MMCAP Infuse (formerly Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP)) and FFF Enterprises, Inc. for the purchase of Influenza Vaccines from multiple manufacturers.

This award contains MWBE goals of 0% MBE and 0% WBE.

<u>CONTRACT #</u>	<u>CONTRACTOR &amp; ADDRESS</u>	<u>TELEPHONE #</u>	<u>FED.IDENT.# / NYS VENDOR#</u>
PC66476	FFF Enterprises, Inc. 44000 Winchester Rd. Temecula, CA 92590	800-843-7477 ext (1128) 951-514-5410 Luke D. Noll Fax No.: 800-418-4333 E-mail: lnoll@fffenterprises.com Website: www.fffenterprises.com; www.myfluvaccine.com	330309114 1000055818

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.

#### 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. Procurement Services, on behalf of the Commissioner, found it necessary and desirable to enter into a contract based on the Piggyback Agreement (hereinafter "New York State Contract") with **FFF Enterprises, Inc.** (hereinafter "Vendor" or "Contractor") for the purchase of specified products under the terms and conditions established pursuant to **MMCAP Contract No. MMS14003 for Influenza Vaccine** (hereinafter "Master Contract") by State agencies and other authorized purchasers.

#### 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.

#### 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,
- 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.

#### 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 Invoicing" in Appendix B, OGS General Specifications.

Please note vendor has indicated that they will not accept the P card.

#### VENDOR ADMINISTRATIVE FEES

The vendor pays an administrative fee on contract purchases to MMCAP (3% on all purchases except GSK products at 0.5%). Unused vendor fees are returned by MMCAP directly to its facilities based on contract purchases.

#### 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.

#### CONTRACTED VACCINE

Products and pricing are posted on the OGS website at:  
<http://www.ogs.ny.gov/purchase/spg/awards/1020022797CAN.HTM>

Electronic online ordering is available.

Contractor will honor orders for less than the minimum order.

Contractor offers prompt payment discount: 0.25% for invoices paid no later than 20 days after receipt of order, Net 60 days

Please note that contractor will not accept P-Card.

Person to contact for expediting New York State contract orders:

Luke D. Noll  
Phone: 800-843-7477  
Fax: 800-418-4333  
E-mail: lnoll@fffenterprises.com

**Ordering:** Ordering can begin immediately.

**Delivery:** Facilities will receive a guaranteed delivery date and order confirmation at the time of order placement.

**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.

#### 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.

#### REPORT OF CONTRACT PURCHASES

Contractor agrees it shall furnish a report of purchases made from this Piggyback Contract by the fifteenth of the month following the end of each six-month period. The State reserves the right to seek alternate data and reporting elements and will work with Contractor if necessary to change. The report shall contain the following information:

Invoice number	Invoice date	Facility name	Address	City	State	Manufacturer name	NDC (National Drug Code)	Label name	Unit type (container)	Price (\$) per unit	Quantity shipped	Extended price \$ (unit price X quantity shipped)	Total invoice price \$ (state agency)	Total invoice price \$ (non state agency)
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The report is to be submitted to OGS in accordance with the notice provisions of the Piggyback Contract and shall reference the Group Number, New York State Contract Number, sales period, and Contractor's name. Purchases by Non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and be indicated as required. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided in Microsoft Excel 2003, or newer (or as otherwise directed by OGS), to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the New York State Contract Number, Sales Period, and Contractor's (or other authorized agent) Name, and all other fields required. OGS reserves the right to amend the report template during the Piggyback Contract term.

#### 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](http://www.osc.state.ny.us) or contact them by e-mail at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) or by phone at 518-474-4032.

#### 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

**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.

**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 (see "Background and Intent")
- c. The Piggyback Agreement
- d. Appendix B
- e. Bidders Bid (Response to Piggyback Agreement)

**PROCUREMENT SERVICES DISPUTE RESOLUTION POLICY**

Please refer to Appendix B 64, Disputes

**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 "Prompt 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.

#### 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](http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp)

#### 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](http://www.ogs.ny.gov)). Questions regarding an organization's eligibility to purchase from New York State contracts may also be directed to 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.

#### **"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.

#### **DIESEL EMISSION REDUCTION ACT OF 2006 (NEW REQUIREMENT OF LAW)**

Pursuant to §19-0323 of the N.Y. Environmental Conservation Law ("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. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Vendor 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.

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 complete & return by email to [Customer.Services@ogs.ny.gov](mailto:Customer.Services@ogs.ny.gov), or mail to:**

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