



Office of General Services Procurement Services

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Contract Award Notification

Title:	Group 10200 – MMCAP INFUSE INFLUENZA VACCINE SANOFI PASTEUR INC. (Statewide) Classification Code(s): 51	
Award Number:	<u>PGB-23117</u>	(Replaces Award PGB-22555)
Contract Period:	March 26, 2018 through December 31, 2021	
Bid Opening Date:	March 14, 2018	
Date of Issue:	March 27, 2018	(Updated December 24, 2020)
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 : Vivian Basile Title : Contract Management Specialist Phone : 518-474-0912 Email : vivian.basile@ogs.ny.gov	Customer Services Phone : 518-474-6717 E-mail : customer.services@ogs.ny.gov

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

Description

This award offers authorized users a selection of influenza vaccines manufactured by Sanofi Pasteur Inc. It is a Piggyback Contract off the Master Contract MMS17019 between MMCAP Infuse (formerly the Minnesota Multistate Contracting Alliance for Pharmacy or "MMCAP") and Sanofi Pasteur Inc. Authorized users should contact the Contract Management Specialist named herein with any questions.

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

OGS CONTRACT NUMBER	CONTRACTOR INFORMATION	
PC67985	Sanofi Pasteur Inc. Discovery Drive Swiftwater, PA 18370 Federal Identification: 980033013 NYS Vendor Identification: 1000009835	Contact Information: Mackenzie Fetterman E-mail: Mackenzie.Fetterman@sanofi.com Phone: 570-957-3381 Toll Free: 800-822-2463 Website: www.vaccineshoppe.com
<ul style="list-style-type: none"> • Electronic Access Ordering is available via www.vaccineshoppe.com • An additional 1% savings is available for all orders placed through the on-line channel. • An additional 2% discount is available for those members participating in prompt pay per the terms of the contract (2% 30 days, Net 31 days). • Contractor accepts NYS Purchasing Card. 		

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.

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.

APPLICABLE LAW

This Piggyback Contract shall be governed by and construed in accordance with the laws of the State of New York. Any claims or actions brought by the Contractor against the State for monetary damages shall be brought in the New York State Court of Claims. See Section 14, *Governing Law*, in Appendix A.

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 April 2016, 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.

MERGER OF APPENDICES/CONFLICTS OF CLAUSES

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

- I. Appendix A, *Standard Clauses for NYS Contracts*;
- II. Master Contract MMS17019, Minnesota Multistate Contracting Alliance for Pharmacy;
- III. Piggyback Contract and the following attachments thereto;
 - Piggyback Contract Price list as approved by OGS;
 - Attachment 1 - NYS Required Certifications;
 - Attachment 2 - Encouraging Use of NYS Businesses;
 - Attachment 3 – Contractor Information Sheet;
- IV. Appendix B, *OGS General Specifications*; and
- V. Member Participation Agreement (MPA).

TERM

The term of this Piggyback Contract shall be from the last date of execution by the Parties through the current Master Contract expiration date of December 31, 2021, or the date the Master Contract is cancelled pursuant to clause 20 of the Master Contract. Unless terminated sooner by OGS, the term of this Piggyback Contract shall automatically extend with each extension or renewal of the Master Contract term.

PREFERRED SOURCES

New York State Finance Law §162 mandates that a New York State agency, public authority, commission, political subdivision or public benefit corporation obtain certain commodities and services from preferred sources, such as the Correctional Industries Program of the New York State Department of Corrections and Community Supervision (Corcraft), the New York State Preferred Source Program for People Who Are Blind (NYSPSP) and the New York State Industries for the Disabled, Inc. (NYSID), when such products or services meet the form, function and utility of the entity. Some products or services under this Piggyback Contract may be available from one or more preferred sources. The Contractor understands and agrees that the requirements of New York State Finance Law §162 must be complied with, if applicable.

PROCESSING CONTRACT PAYMENTS

The Parties agree that all payments shall be in compliance with Article 11-A of the New York State Finance Law.

MINIMUM ORDER

If the Master Contract contains minimum order quantities or values, the Contractor may elect to honor orders for less than the minimum order. For all orders less than the minimum order, at the Contractor's option, shipping costs from the shipping point may be added to an invoice with a copy of the freight bill.

PRICE AND DISCOUNTS

Price shall include all customs duties and charges and be F.O.B. destination any point in New York State as designated by the Authorized User. 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 **2021-2022 influenza season**. A link to the updated Price List is posted on the OGS website:

https://www.ogs.ny.gov/purchase/spg/pdfdocs/1020023117PL_Sanofi.pdf

1. Reservations can be placed until March 31, 2021 and are non-cancelable. After March 31, 2021, reservation requests will be accepted subject to product availability.
2. **Pricing:** The price list provides the 2021-2022 vaccine formulations, pricing, and discounts. Payment terms will remain at 2% 30, Net 31 days.
3. **Shipping Commitments:** Sanofi Pasteur Inc. expects to make a partial shipment of each MMCAP Participating Facilities' total Fluzone vaccine request as follows:

Shipping Commitment Timelines	Fluzone High-Dose Quadrivalent and Flublok Quadrivalent vaccines	September 30 th -75% of doses shipped October 31 st – 100% of doses shipped
	Fluzone Quadrivalent vaccines	September 30 th – 50% of doses shipped October 31 st – 100% of doses shipped

Sanofi Pasteur Inc. reserves the right to schedule shipments and/or make partial shipments with prior notification. This shipping commitment only applies to each Member's confirmed request for the 2021-2022 influenza season and must be confirmed by March 31, 2021. Any doses confirmed or any modification to the Fluzone vaccine request by Members after March 31, 2021 will be excluded from the shipping commitments above.

4. **Returnability:** Members may return a limited number of unused and expired doses for credit toward future purchases of influenza vaccine as follows:
 - Ten (10) percent of each presentation of each customer's influenza vaccine shipped during the 2021-2022 influenza season may be returned for full credit.
 - Credit can be applied to any future purchases of Sanofi Pasteur Inc. vaccines.
 - Expired influenza vaccine returns are accepted beginning after May 1, 2022 and must be returned by July 31, 2022.
 - Returns shall be based off the invoice purchase price that is net of any prompt pay or other discount.

"OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT

Purchases of the commodities included in this Piggyback Contract are subject to the "OGS or Less" provisions of State Finance Law §163(3)(a)(v). This means that State agencies can purchase commodities from sources other than the Contractor provided that such commodities are substantially similar in form, function or utility to the commodities herein and are:

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

State agencies are reminded that the Contractor must be provided 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.

CONTRACT ADMINISTRATION

A. Contract Administrator: The Contractor must provide a dedicated contract administrator to support the updating and management of this Piggyback Contract on a timely basis. The contract administrator's contact information will be listed on the Procurement Services contract page for this Piggyback Contract.

B. "Toll Free" Number: The Contractor must provide a toll-free telephone number for order tracking/delivery schedule information, contract administration issues, as well as other questions by Authorized Users related to the day-to-day operation and use of this Contract other than product support. The toll-free number must be available Monday through Friday on State business days between the hours of 8 a.m. to 5 p.m., Eastern Time. The Contractor may additionally offer an online e-mail or Internet site for order tracking/delivery schedule information for those customers who have electronic access. The number and online contact information will be listed on the Procurement Services contract page for this Piggyback Contract

PURCHASE ORDERS

Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted during this Piggyback Contract period addressed to the Contractor at the address for receipt of orders designated in the Master Contract or the Contract Award Notification. Any discrepancies between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the terms of this Piggyback Contract shall be resolved in favor of the terms most favorable to the Authorized User. If an Authorized User of this Piggyback Contract adds written terms and conditions to the Purchase Order that conflict with the terms and conditions of this Piggyback Contract, the Contractor may reject the Purchase Order within five (5) business days of its receipt or fulfill the Purchase Order. Prior to rejection of any additional terms and conditions to the Purchase Order, the Contractor has an obligation to attempt to negotiate the additional written terms and conditions in good faith with the Authorized User. For more details on these provisions, See Appendix B, Section 30, of this Contract, *Purchase Orders*.

REPORT OF CONTRACT PURCHASES

Pursuant to Section 2.10 of the Master Contract, the Contractor is required to provide MMCAP with various reports. The Contractor understands and agrees that the State has its own reporting requirements. In order to satisfy those requirements, the State agrees to request reports from MMCAP in the first instance. In the event, however, that the State is unable to obtain any necessary reports from MMCAP, the Contractor agrees to assist the State in obtaining the same from MMCAP and/or to provide the same to the State if it is reasonably able to do so.

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 epuint@osc.state.ny.us or by phone at 518-474-4032.

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.

ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NO. 4

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including the specifications for offerings covered by this Contract, may be found at <https://www.ogs.ny.gov/green/y/green-product-specs.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to New York State Finance Law §§ 139-j and 139-k, this Piggyback Contract includes and imposes certain restrictions on communications between OGS and a vendor during the procurement process. A vendor is restricted from making contacts from the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter 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 (the foregoing is hereinafter referred to as the "Restricted Period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in New York State Finance Law § 139-j(3)(a). Designated staff, as of the date hereof, are identified on the first page of this Piggyback Contract. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the vendor pursuant to New York State Finance Law § 139-j(7). Certain findings of non-responsibility can result in rejection of contract award and in the event of two findings within a four-year period; the vendor will be debarred from obtaining governmental procurement contracts. Further information about these requirements can be found on the OGS website: <http://www.ogs.ny.gov/acpl/>.

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.

CONTRACT MODIFICATIONS

Any modifications to this Piggyback Contract, other than an extension or renewal referenced in the "Term" provision above, must be made by an instrument in writing executed by the Parties. The Contractor shall submit copies of any modifications to the Master Contract, including new products, terms, or price changes, to Procurement Services for review prior to enactment by the State. Procurement Services may accept a modification to the Master Contract in full. If a modification is not fully acceptable to Procurement Services, either the Contractor or OGS may terminate this Piggyback Contract in accordance with its terms or amend this Piggyback Contract to accept the modification to the Master Contract in part.

However, in accordance with Appendix B, Section 26, *Modification of Contract Terms*, an Authorized User shall have the authority to accept an offer from the Contractor for more advantageous terms and pricing than those under this Piggyback Contract. An Authorized User shall not have the authority to accept any other requests for modifications to this Piggyback Contract, which must be handled as outlined herein.

CANCELLATION FOR CONVENIENCE

This Contract may be terminated at any time by the Commissioner for convenience upon 60 calendar days or other longer period as specified by written notice, without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and fulfill any outstanding Purchase Orders.

EMERGENCY CONTRACTS

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

**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 this form & return by email to customer.services@ogs.ny.gov or mail to:

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