



# Contract Award Notification

<b>Title</b>	: <b>Group 10200 – Pharmaceutical Prime Vendor Contract, Cardinal Health (Statewide)</b> Classification Code(s): 51
<b>Award Number</b>	: <a href="#">PGB-23184</a> (Replaces Award PGB-22881)
<b>Contract Period</b>	: <b>January 9, 2020 through October 31, 2021</b>
<b>Bid Opening Date</b>	: <b>N/A</b>
<b>Date of Issue</b>	: <b>January 9, 2020</b>
<b>Specification Reference</b>	: <b>As Incorporated in the Piggyback Agreement</b>
<b>Contractor Information</b>	: <b>Appears on Page 2 of this Award</b>

### Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
<b>Name</b> : Julie Carlson <b>Title</b> : Contract Management Specialist <b>Phone</b> : 518-474-8077 <b>E-mail</b> : Julie.carlson@ogs.ny.gov	<b>Procurement Services Customer Services</b>  <b>Phone</b> : 518-474-6717 <b>E-mail</b> : customer.services@ogs.ny.gov

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

### Description

This Award provides for the purchase of generic and brand name pharmaceuticals, over the counter pharmaceuticals (OTC), nutritional products, vaccines (other than influenza), diabetic supplies, and other drug products.

The Contract is a Piggyback Agreement off Master Contract (MMS1900113) offered by the State of Minnesota, acting through its national cooperative group purchasing organization, MMCAP Infuse. More information about MMCAP Infuse can be found here: <https://www.infuse-mn.gov/>

Cardinal Health 110, LLC is the Contractor.

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

PR # 23184

**NOTE: See individual contract items to determine actual awardees.**

<u>CONTRACT #</u>	<u>CONTRACTOR &amp; ADDRESS</u>	<u>TELEPHONE #</u>	<u>FED.IDENT.# / NYS VENDOR#</u>
PC68919	Cardinal Health 110, LLC 7000 Cardinal Place Dublin, OH 43017	(866) 641-1199 Fax: (866) 551-0530 Email: GMB-P_SPL_V_GOV@cardinalhealth.com	68-0158739 1000009622

Contractor offers Electronic Access Ordering (EDI).  
 Contractor has catalog prices on the internet.  
 Contractor has the ability to make NYS pricing available along with catalog pricing online.

Contact information for expediting New York State contract orders:

Customer Service  
 Phone: 866-641-1199  
 Fax: 866-551-0530  
 Email: GMB-P\_SPL\_V\_GOV@cardinalhealth.com  
 Customer Service Hours: 7:30 A.M. – 9:00 P.M EST, Monday-Friday excluding the following national holidays: Christmas Day, New Year’s Day, Thanksgiving Day, Memorial Day, the Fourth of July and Labor Day.

In the event of an emergency occurring after business hours or on weekend/holidays please call:

**Customer Service Emergency Call Center - 24 hours (877) 772-0346**

Brad Luchene  
 Cardinal Health, Regional Leader, Northeast  
 Phone: (262) 527-1942  
 Fax: (614) 652-8103  
 Email: bradley.luchene@cardinalhealth.com  
 Business Hours: 8:00 A.M. – 5:00 P.M EST, Monday-Friday

Cash Discount, If Shown, Should be Given Special Attention.  
**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.**  
**(See "Processing Contract Payments" in this document.)**

AGENCIES SHOULD NOTIFY NEW YORK STATE 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).

**TERM:**

The term of this Piggyback Contract shall commence on the date of execution by OGS (hereinafter referred to as the “Commencement Date”) and end on the expiration date of the Master Contract or the date the Master Contract is cancelled or terminated pursuant to clause 25 of the Master Contract, subject to OGS’ right to terminate this Piggyback Contract as provided herein (hereinafter referred to as the “Termination Date”). It is the intent of the Parties that the term of this Piggyback Contract be coterminous with the term of the Master Contract; accordingly, the term of this Piggyback Contract shall be deemed extended whenever the term of the Master Contract is extended, without the need for the Parties to execute an extension or amendment to this Piggyback Contract.

**CONTRACT MODIFICATIONS AND RENEWALS:**

With the exception of term extensions addressed in Section 2, Term above, any modifications to this Piggyback Contract must be made by an instrument in writing executed by the Parties hereto. Contractor shall submit copies of any modifications to or renewals of the Master Contract, including new products, terms, or price changes, to Procurement Services for review prior to enactment. Procurement Services may accept a modification to or renewal of the Master Contract in full. If a modification is not fully acceptable to Procurement Services, either the Contractor or OGS may terminate the Piggyback Contract in accordance with its terms or amend the 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 Contractor for more advantageous terms and pricing than those provided under this Piggyback Contract. An Authorized User shall not have the authority to accept any other requests for modifications to the Piggyback Contract, which must be handled as outlined herein.

**MERGER OF APPENDICES/CONFLICT OF CLAUSES:**

This Piggyback Contract shall incorporate the following appendices as if set forth herein at length. Only documents expressly enumerated below shall be deemed a part of this Piggyback Contract, and references contained in those documents to additional Contractor documents not enumerated below shall be of no force and effect. Conflicts between these documents shall be resolved in the following descending order of precedence.

- I. Appendix A, *Standard Clauses for NYS Contracts* (October 2019);
- II. Piggyback Contract;
- III. Appendix B, *OGS General Specifications* (April 2016);
- IV. Member-Requested Participation Agreement (MPA);
- V. Master Contract, MMCAP Infuse Contract #MMS1900113

**APPENDIX B AMENDMENTS:**

The following Appendix B clauses are hereby modified for the purposes of this Contract.

The following sections of Appendix B are hereby deleted: 3 (International Bidding), 4 (Bid Opening), 5 (Late Bids), 10 (Product References), 14 (Site Inspection), 17 (Tie Bids), 18 (Quantity Changes Prior To Award), and 19 (Timeframe for Offers).

**AUTHORIZED USERS:**

“Authorized User” shall have the meaning set forth in the State Finance Law section 163(1)(k). This Piggyback Contract is for use by Authorized Users, which includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, Definitions.

Upon request, all eligible non-State agencies must furnish the Contractor with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. 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 or at [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov)

**PREFERRED SOURCES:**

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in this Piggyback Contract may be available from one or more Preferred Sources. An Authorized User must determine if a particular Product is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

**PROCESSING CONTRACT PAYMENTS:**

The Contractor acknowledges that a contract payment cannot be processed by an Authorized User until the contract Products have been delivered and accepted in accordance with the terms and conditions of Appendix B Sections 31 *Product Delivery* and 34 *Title and Risk of Loss for Products Other than Technology Products*.

**CONTRACT BILLINGS AND PAYMENTS:**

Appendix B, Section 45, *Contract Invoicing*, applies to this Piggyback Contract.

**PAYMENTS OF INTEREST:**

Appendix B, Section 47, Prompt Payments, applies to this Piggyback Contract. The parties acknowledge that Article 11-A of the State Finance Law requires payments to small businesses to be made within 15 days if the conditions set forth therein are met.

The Federal Prompt Payment Law (or any other law governing payment terms incorporated in the Master Contract) does not apply to the Piggyback Contract regardless of Authorized User.

**PRICE AND DISCOUNT:**

## I. MINIMUM ORDER

There are no minimum order quantities under the Master Contract or this Piggyback Contract

## II. PRICE AND DISCOUNTS

- A. 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 Authorized User.
- B. The price for products and services included in the Master Contract shall either be at the agreed-upon discounts and service rates in the Master Contract, or at a price that is more advantageous to the Authorized User, as mutually agreed to by the Parties.
- C. Any prompt payment terms (cash discounts) or quantity (volume) discounts which are included in the Master Contract will also be included in this Piggyback Contract.
- D. All payments made by State agencies will be made in accordance with Article 11-A of the New York State Finance Law.

## III. "OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT

Purchases of the commodities included in the 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 Products from sources other than the Contractor provided that such Products 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.).

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 Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary bid limit. State Agencies should refer to Procurement Council Guidelines for additional information.

**USE OF SUBCONTRACTORS/DEALERS/DISTRIBUTORS/RESELLERS:**

Contractor shall be fully liable for Subcontractor, Dealer, Distributor and/or Reseller performance under this Piggyback Contract, and their compliance with all Piggyback Contract terms and conditions.

**OVERLAPPING CONTRACT ITEMS:**

Products available under this Piggyback Contract may also be available from other New York State contracts. Authorized Users will be advised to select the most cost effective procurement alternative that

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meets their program requirements, and to maintain a procurement record documenting the basis for this selection.

**PURCHASE ORDERS:**

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, Purchase Orders. Authorized Users may submit orders using the Contractor's ordering system(s), including but not limited to Order Express, which is to be used in the performance of this Piggyback Contract at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

**CATALOGS AND PRICE SHEETS:**

Catalogs and price lists shall be provided in accordance with the terms of the Master Contract. Upon request, Contractor shall also assist Authorized Users in the use of such documents.

**DELIVERY:**

Routine deliveries will be made available five days per week for all facilities regardless of dollar volume, (Monday-Friday) with a delivery window of 7 AM to 3 PM, depending upon the ordering facility's location and distance from the distribution service center providing service to that facility. For any deliveries made after 3 PM local time, Contractor will obtain approval from the ordering facility. Orders received Monday through Thursday will be delivered the following day. Orders received Friday will be delivered the next business day (Monday).

All fees charged for delivery will be listed on Master Contract Attachment B, Discounts and Fees. All routine scheduled order shipments will be F.O.B. destination, freight prepaid. Contractor will provide up to 5 routine deliveries per week, at no charge with no minimum average monthly purchasing volume requirement. Scheduled delivery days will be communicated at setup.

**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 Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <https://www.ogs.ny.gov/greenny/>. 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.

**USE OF RECYCLED OR REMANUFACTURED MATERIALS:**

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Piggyback Contract. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

**SURPLUS/TAKE-BACK/RECYCLING:**

- I. A State Agency is reminded of its obligation to comply with the NY State Finance Law § 167, Transfer and Disposal of Personal Property, and §168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
- II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.
- III. The NYS Department of Environmental Conservation (“DEC”) Electronic Equipment Recycling and Reuse Act (“Act”) (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.
- IV. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (“NIST”) Guidelines for Media Sanitation as found in NIST Special Publication 800-88

**BULK DELIVERY AND ALTERNATE PACKAGING:**

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A Contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the Product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN:****I. New York State Law**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises (“MWBES”) and the employment of minority group members and women in the performance of OGS contracts.

**II. General Provisions**

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a

value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State, or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

### III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
  - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
  - 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

#### B. Form EEO 100 – Staffing Plan

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

#### C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)

- 3. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO\_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
- 4. Separate forms shall be completed by Contractor and all subcontractors.
- 5. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a



separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

- D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

#### IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at:  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.  
Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- B. Good Faith Efforts  
Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:
1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
  2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
  3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
  4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
  5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
  6. Other information deemed relevant to the request.

#### V. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

**ALL FORMS ARE AVAILABLE AT:** <https://ogs.ny.gov/MWBE>

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**PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES:**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Piggyback Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>.

Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or [VeteranDevelopment@ogs.ny.gov](mailto:VeteranDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/Veterans/>

**MERCURY-ADDED CONSUMER PRODUCTS:**

Contractor shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury under this Piggyback Contract.

**DIESEL EMISSION REDUCTION ACT OF 2006:**

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 Contractors “on behalf of” State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. Contractor hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this Piggyback Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

**NEW YORK STATE REQUIRED CERTIFICATIONS:**

An Offerer must complete and submit the NYS Required Certifications form certifying compliance with the Diesel Emission Reduction Act, MacBride Fair Employment principles, the Non-Collusive Bidding Requirements, and Executive Order No. 177 Certification in order to be considered for award under this Piggyback Contract.

**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 via email to [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov) or mail to:**

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



# Contract Award Notification

<b>Title</b>	:	<b>Group 10200 – Pharmaceutical Prime Vendor Contract, Cardinal Health (Statewide)</b> Classification Code(s): 51
<b>Award Number</b>	:	<a href="#">PGB-23184</a> (Replaces Award PGB-22881)
<b>Contract Period</b>	:	January 9, 2020 through October 31, 2021
<b>Bid Opening Date</b>	:	N/A
<b>Date of Issue</b>	:	January 9, 2020 (updated May 1, 2020)
<b>Specification Reference</b>	:	As Incorporated in the Piggyback Agreement
<b>Contractor Information</b>	:	Appears on Page 2 of this Award

### Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Julie Carlson Title : Contract Management Specialist Phone : 518-474-8077 E-mail : <a href="mailto:Julie.carlson@ogs.ny.gov">Julie.carlson@ogs.ny.gov</a>	<b>Procurement Services Customer Services</b>  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 Award provides for the purchase of generic and brand name pharmaceuticals, over the counter pharmaceuticals (OTC), nutritional products, vaccines (other than influenza), diabetic supplies, and other drug products.

The Contract is a Piggyback Agreement off Master Contract (MMS1900113) offered by the State of Minnesota, acting through its national cooperative group purchasing organization, MMCAP Infuse. More information about MMCAP Infuse can be found here: <https://www.infuse-mn.gov/>

Cardinal Health 110, LLC is the Contractor.

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

PR # 23184

**NOTE:** See individual contract items to determine actual awardees.

<u>CONTRACT #</u>	<u>CONTRACTOR &amp; ADDRESS</u>	<u>TELEPHONE #</u>	<u>FED.IDENT.# / NYS VENDOR#</u>
PC68919	Cardinal Health 110, LLC 7000 Cardinal Place Dublin, OH 43017	(866) 641-1199 Fax: (866) 551-0530 Email: GMB-P_SPL_V_GOV@cardinalhealth.com	68-0158739 1000009622

Contractor offers Electronic Access Ordering (EDI).  
Contractor has catalog prices on the internet.  
Contractor has the ability to make NYS pricing available along with catalog pricing online.

Contact information for expediting New York State contract orders:

Customer Service  
Phone: 866-641-1199  
Fax: 866-551-0530  
Email: GMB-P\_SPL\_V\_GOV@cardinalhealth.com  
Customer Service Hours: 7:30 A.M. – 9:00 P.M EST, Monday-Friday excluding the following national holidays: Christmas Day, New Year’s Day, Thanksgiving Day, Memorial Day, the Fourth of July and Labor Day.

In the event of an emergency occurring after business hours or on weekend/holidays please call:

**Customer Service Emergency Call Center - 24 hours (877) 772-0346**

Jeremy Fiorentino  
State Government Regional Leader  
11 Centennial Drive Peabody, MA 01960  
413-883-3854 mobile | 614-652-4521 fax  
Email: jeremy.fiorentino@cardinalhealth.com  
Business Hours: 8:00 A.M. – 5:00 P.M EST, Monday-Friday

Cash Discount, If Shown, Should be Given Special Attention.  
**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.**  
**(See "Processing Contract Payments" in this document.)**

AGENCIES SHOULD NOTIFY NEW YORK STATE 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).

**TERM:**

The term of this Piggyback Contract shall commence on the date of execution by OGS (hereinafter referred to as the “Commencement Date”) and end on the expiration date of the Master Contract or the date the Master Contract is cancelled or terminated pursuant to clause 25 of the Master Contract, subject to OGS’ right to terminate this Piggyback Contract as provided herein (hereinafter referred to as the “Termination Date”). It is the intent of the Parties that the term of this Piggyback Contract be coterminous with the term of the Master Contract; accordingly, the term of this Piggyback Contract shall be deemed extended whenever the term of the Master Contract is extended, without the need for the Parties to execute an extension or amendment to this Piggyback Contract.

**CONTRACT MODIFICATIONS AND RENEWALS:**

With the exception of term extensions addressed in Section 2, Term above, any modifications to this Piggyback Contract must be made by an instrument in writing executed by the Parties hereto. Contractor shall submit copies of any modifications to or renewals of the Master Contract, including new products, terms, or price changes, to Procurement Services for review prior to enactment. Procurement Services may accept a modification to or renewal of the Master Contract in full. If a modification is not fully acceptable to Procurement Services, either the Contractor or OGS may terminate the Piggyback Contract in accordance with its terms or amend the 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 Contractor for more advantageous terms and pricing than those provided under this Piggyback Contract. An Authorized User shall not have the authority to accept any other requests for modifications to the Piggyback Contract, which must be handled as outlined herein.

**MERGER OF APPENDICES/CONFLICT OF CLAUSES:**

This Piggyback Contract shall incorporate the following appendices as if set forth herein at length. Only documents expressly enumerated below shall be deemed a part of this Piggyback Contract, and

references contained in those documents to additional Contractor documents not enumerated below shall be of no force and effect. Conflicts between these documents shall be resolved in the following descending order of precedence.

- I. Appendix A, *Standard Clauses for NYS Contracts* (October 2019);
- II. Piggyback Contract;
- III. Appendix B, *OGS General Specifications* (April 2016);
- IV. Member-Requested Participation Agreement (MPA);
- V. Master Contract, MMCAP Infuse Contract #MMS1900113

**APPENDIX B AMENDMENTS:**

The following Appendix B clauses are hereby modified for the purposes of this Contract.

The following sections of Appendix B are hereby deleted: 3 (International Bidding), 4 (Bid Opening), 5 (Late Bids), 10 (Product References), 14 (Site Inspection), 17 (Tie Bids), 18 (Quantity Changes Prior To Award), and 19 (Timeframe for Offers).

**AUTHORIZED USERS:**

“Authorized User” shall have the meaning set forth in the State Finance Law section 163(1)(k). This Piggyback Contract is for use by Authorized Users, which includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, Definitions.

Upon request, all eligible non-State agencies must furnish the Contractor with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. 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 or at [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov)

**PREFERRED SOURCES:**

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in this Piggyback Contract may be available from one or more Preferred Sources. An Authorized User must determine if a particular Product is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

**PROCESSING CONTRACT PAYMENTS:**

The Contractor acknowledges that a contract payment cannot be processed by an Authorized User until the contract Products have been delivered and accepted in accordance with the terms and conditions of Appendix B Sections 31 *Product Delivery* and 34 *Title and Risk of Loss for Products Other than Technology Products*.

**CONTRACT BILLINGS AND PAYMENTS:**

Appendix B, Section 45, *Contract Invoicing*, applies to this Piggyback Contract.

**PAYMENTS OF INTEREST:**

Appendix B, Section 47, *Prompt Payments*, applies to this Piggyback Contract. The parties acknowledge that Article 11-A of the State Finance Law requires payments to small businesses to be made within 15 days if the conditions set forth therein are met.

The Federal Prompt Payment Law (or any other law governing payment terms incorporated in the Master Contract) does not apply to the Piggyback Contract regardless of Authorized User.

**PRICE AND DISCOUNT:**

## I. MINIMUM ORDER

There are no minimum order quantities under the Master Contract or this Piggyback Contract

## II. PRICE AND DISCOUNTS

- A. 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 Authorized User.
- B. The price for products and services included in the Master Contract shall either be at the agreed-upon discounts and service rates in the Master Contract, or at a price that is more advantageous to the Authorized User, as mutually agreed to by the Parties.
- C. Any prompt payment terms (cash discounts) or quantity (volume) discounts which are included in the Master Contract will also be included in this Piggyback Contract.
- D. All payments made by State agencies will be made in accordance with Article 11-A of the New York State Finance Law.

## III. "OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT

Purchases of the commodities included in the 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 Products from sources other than the Contractor provided that such Products 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.).

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 Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary bid limit. State Agencies should refer to Procurement Council Guidelines for additional information.

**USE OF SUBCONTRACTORS/DEALERS/DISTRIBUTORS/RESELLERS:**

Contractor shall be fully liable for Subcontractor, Dealer, Distributor and/or Reseller performance under this Piggyback Contract, and their compliance with all Piggyback Contract terms and conditions.

**OVERLAPPING CONTRACT ITEMS:**

Products available under this Piggyback Contract may also be available from other New York State contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements, and to maintain a procurement record documenting the basis for this selection.

**PURCHASE ORDERS:**

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, Purchase Orders. Authorized Users may submit orders using the Contractor's ordering system(s), including but not limited to Order Express, which is to be used in the performance of this Piggyback Contract at any time. Orders submitted shall be deemed received by Contractor on the date submitted.



All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

**CATALOGS AND PRICE SHEETS:**

Catalogs and price lists shall be provided in accordance with the terms of the Master Contract. Upon request, Contractor shall also assist Authorized Users in the use of such documents.

**DELIVERY:**

Routine deliveries will be made available five days per week for all facilities regardless of dollar volume, (Monday-Friday) with a delivery window of 7 AM to 3 PM, depending upon the ordering facility's location and distance from the distribution service center providing service to that facility. For any deliveries made after 3 PM local time, Contractor will obtain approval from the ordering facility. Orders received Monday through Thursday will be delivered the following day. Orders received Friday will be delivered the next business day (Monday).

All fees charged for delivery will be listed on Master Contract Attachment B, Discounts and Fees. All routine scheduled order shipments will be F.O.B. destination, freight prepaid. Contractor will provide up to 5 routine deliveries per week, at no charge with no minimum average monthly purchasing volume requirement. Scheduled delivery days will be communicated at setup.

**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 Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <https://www.ogs.ny.gov/greenny/>. 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.

**USE OF RECYCLED OR REMANUFACTURED MATERIALS:**

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Piggyback Contract. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

**SURPLUS/TAKE-BACK/RECYCLING:**

- I. A State Agency is reminded of its obligation to comply with the NY State Finance Law § 167, Transfer and Disposal of Personal Property, and §168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
- II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an

environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.

- III. The NYS Department of Environmental Conservation (“DEC”) Electronic Equipment Recycling and Reuse Act (“Act”) (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.
- IV. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (“NIST”) Guidelines for Media Sanitation as found in NIST Special Publication 800-88

#### **BULK DELIVERY AND ALTERNATE PACKAGING:**

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A Contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the Product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

#### **CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN:**

##### **I. New York State Law**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises (“MWBES”) and the employment of minority group members and women in the performance of OGS contracts.

##### **II. General Provisions**

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State, or local laws.

- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

### III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

- B. Form EEO 100 – Staffing Plan

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

- C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)

3. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO\_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
4. Separate forms shall be completed by Contractor and all subcontractors.
5. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

- D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

**IV. Contract Goals**

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at:  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.  
Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- B. Good Faith Efforts  
Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:
1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
  2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
  3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
  4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
  5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
  6. Other information deemed relevant to the request.

**V. Fraud**

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

**ALL FORMS ARE AVAILABLE AT:** <https://ogs.ny.gov/MWBE>

**PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES:**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Piggyback Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as

subcontractors, service providers, and suppliers to Contractor. Nevertheless, Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>.

Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or [VeteranDevelopment@ogs.ny.gov](mailto:VeteranDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/Veterans/>

**MERCURY-ADDED CONSUMER PRODUCTS:**

Contractor shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury under this Piggyback Contract.

**DIESEL EMISSION REDUCTION ACT OF 2006:**

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 Contractors "on behalf of" State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. Contractor hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this Piggyback Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

**NEW YORK STATE REQUIRED CERTIFICATIONS:**

An Offerer must complete and submit the NYS Required Certifications form certifying compliance with the Diesel Emission Reduction Act, MacBride Fair Employment principles, the Non-Collusive Bidding Requirements, and Executive Order No. 177 Certification in order to be considered for award under this Piggyback Contract.

**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 via email to [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov) or mail to:**

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