



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET

October 1, 2012

TO: ALL STATE AGENCIES, SCHOOL DISTRICTS, MUNICIPALITIES, VOLUNTEER
FIRE COMPANIES AND POLITICAL SUBDIVISIONS

FROM: MICHAEL BACU
STATE CONTRACT PROCUREMENT OFFICER
302-857-4522

SUBJECT: **AWARD NOTICE, Addendum #2, Effective April11, 2013**
CONTRACT NO. GSS12170-LAB_GAS
LAB & COMPRESSED GAS

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KEY CONTRACT INFORMATION

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KEY CONTRACT INFORMATION

1. MANDATORY USE CONTRACT

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REF: Title 29, Chapter 6911(d) Delaware Code. Every state department and agency within the Executive Branch and Judicial Branch of the state government shall procure all material, equipment and nonprofessional services through the statewide contracts administered by Government Support Services, Office of Management and Budget. Delaware State University, Delaware Technical and Community College, the operations funded by Public School Districts, Delaware Transit Corporation, Department of Elections, the Legislative Branch and the Board of Pension Trustees and their consultants are specifically exempted from the requirements of this subsection.

2. CONTRACT PERIOD

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Each vendor's contract shall be valid for a one (1) year period from October 1, 2012 through September 30, 2013. Each contract may be renewed for four (4) one (1) year periods through negotiation between the contractor and Government Support Services. Negotiation must be initiated no later than ninety (90) days prior to the termination of the current agreement.

This contract has been extended through September 30, 2014 under the same terms and conditions.

3. VENDORS

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<p>AIRGAS USA, LLC</p> <p>GSS12170-LAB_GASV03 FSF ID# 0000162363</p> <p>630 Naylor Mill Road Salisbury, MD 21801</p> <p>Timothy Wertz Phone 800.247.2282 Fax 410.742.1674 Timothy Wertz timothy.wertz@airgas.com</p>	<p>MATHESON TRI-GAS</p> <p>GSS12170-LAB_GASV02 FSF ID# 0000114476</p> <p>116 Columbia Road Salisbury, MD 21801</p> <p>Tyler Ladd Phone 410-742-9301 Fax 410-742-3560 Attn: Tyler Ladd tladde@mathesongas.com</p>
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4. SHIPPING TERMS

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F.O.B. destination.

Packaging for shipment shall be such as to protect the product adequately to insure safe shipment. All products are to be packaged in sizes as specified in the proposal and shall be packaged in such a manner as to insure delivery in first class condition and properly marked for identification.

Shipping, cases shall be marked to show the name of the supplier, name and address of receiving agency and state purchase order number. All shipments must be comprised of original cartons associated with the commercial industry represented by the actual product contained within each carton.

Itemized packing list is to accompany all shipments.

Deliveries containing re-used, re-labeled, re-worked or alternate cartons are subject to rejection at the contractor's expense.

5. **DELIVERY AND PICKUP**

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All shipping and associated costs for both the receipt and the return of cylinders will be paid by the vendor.

Deliveries by common carriers will not be accepted. All deliveries and pickups must be signed by a representative of the ordering agency.

Listed below are the maximum expected delivery times after receipt of order:

5 working days - liquid nitrogen.

7 working days - all other gases.

15 working days - specialty gas mixtures.

6. **PRICING**

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Prices will remain firm for the term of the contract as provided by the separate Pricing Spreadsheet.

No service fees or additional costs will be invoiced to Contract Users by the Supplier during the term of this agreement.

Any rush delivery that occurs as a result of Supplier's error (e.g., stock-outs, etc.) will be free of charge. No handling surcharges will be added or discounts lost for any rush or expedited orders.

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7. **BILLING**

The successful vendor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide at a minimum the contract number, ship to and bill to address, contract name and phone number.

8. **PAYMENT**

The agencies or school districts involved will authorize and process for payment each invoice within thirty (30) days after the date of receipt. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.

9. PRODUCT SUBSTITUTION

All items delivered during the life of the contract shall be of the same type and manufacture as specified unless specific approval is given by Government Support Services to do otherwise. Substitutions may require the submission of written specifications and product evaluation prior to any approvals being granted.

10. ORDERING PROCEDURE

Successful contractors are required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Each agency is responsible for placing their orders and may be accomplished by written purchase order, telephone, fax or computer on-line systems. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.

11. HOLD HARMLESS

The contractor agrees that it shall indemnify and hold the State of Delaware and all its agencies harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused, by acts or omissions of the contractor, its employees, and invitees on or about the premises and which arise out of the contractor's performance, or failure to perform as specified in the Agreement.

12. NON-PERFORMANCE

In the event the contractor does not fulfill its obligations under the terms and conditions of this contract, the ordering agency may purchase equivalent product on the open market. Any difference in cost between the contract prices herein and the price of open market product shall be the responsibility of the contractor. Under no circumstances shall monies be due the contractor in the event open market products can be obtained below contract cost. Any monies charged to the contractor may be deducted from an open invoice.

13. FORCE MAJEURE

Neither the contractor nor the ordering agency shall be held liable for non-performance under the terms and conditions of this contract due, but not limited to, government restriction, strike, flood, fire, or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract.

14. AGENCY'S RESPONSIBILITIES

The Agency shall:

- a. Examine and review in detail all letters, reports, drawings and other documents presented by the Contractor to the Agency and render to the Contractor in writing, findings and decisions pertaining thereto within a reasonable time so as not to delay the services of Contractor.
- b. Give prompt written notice to the Contractor whenever the Agency observes or otherwise becomes aware of any development that affects the scope or timing of the Contractor's services.

- c. When an ordering agency first experiences a relatively minor problem or difficulty with a vendor, the agency will contact the vendor directly and attempt to informally resolve the problem. This includes failure to perform by the date specified and any unacceptable difference(s) between the purchase order and the merchandise received. Ordering agencies should stress to vendors that they should expedite correction of the differences because failure to reply may result in an unfavorable rating in the execution of the awarded contract.
- d. The state has several remedies available to resolve non-performance issues with the contractor. The Agency should refer to the Contract Terms and Conditions to view these remedies. When a default occurs, the Agency should first review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the state cannot expect the contractor to perform outside the agreement. If the issue is a part of the contract, the Agency or GSS - Contracting must then contact the contractor, discuss the reasons surrounding the default and establish a date when the contractor will resolve the non-performance issue.
- e. If there is a performance deficiency, a Corrective Action Report (CAR) may be used. Complete this form to report concerns with vendors or commodities. Be sure to furnish as much detail as possible. <http://gss.omb.delaware.gov/divisionwide/forms.shtml>.

15. EPA PROTOCOL

The gases bid must meet EPA Protocol (where specified) and be traceable to Standard Reference Material (SRM's) from the National Institute of Standards and Technology (NIST).

16. MSDS

Material Safety Data Sheets (MSDS) must be supplied to the ordering agency at time of delivery.

17. CYLINDERS & FITTINGS

Cylinders provided by the successful vendor must have a compatible fitting to meet all valve outlets listed in the Technical Specifications or any newer requirements as required. Making the fitting with an adapter **is not** acceptable. The cost for meeting the compatibility requirement shall be borne by the vendor.

The State of Delaware will provide and maintain all on-site regulators with exception of the liquid nitrogen specification.

Treated aluminum cylinders have been specified for certain gases. Treated aluminum cylinders offer a significant weight reduction and allow for easier, safer handling by a single person. Cylinders will not be accepted if they do not meet this specification.