



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET

May 15, 2012

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

FROM: WILLIAM W. PICKRUM
DEPUTY DIRECTOR, GOVERNMENT SUPPORT SERVICES
302-857-4501

SUBJECT: **AWARD NOTICE**
CONTRACT NO. GSS12675-OXIMETRY
Oximetry Equipment and Supplies

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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, the Legislative Branch and the Board of Pension Trustees and their consultants are specifically exempted from the requirements of this subsection.

Under Title 29 §6935, The State of Delaware is authorized to enter into negotiations with various manufacturers or distributors and award contracts which will enable agencies and local governments to purchase materiel at prices approved by the General Services Administration of the United States government or its successor.

2. CONTRACT PERIOD:

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The contractor's contract shall be valid until August 31, 2013.

3. VENDOR:

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Masimo Corporation
40 Parker
Irvine, CA 92616-1604
Phone: 949-297-7000
Fax: 949-297-7499
Point of Contract: Maureen Turner, RN
410-279-2971

4. SHIPPING TERMS:

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F.O.B. destination; freight pre-paid.

5. DELIVERY AND PICKUP:

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Normal ground delivery – within 45 days ARO

6. PRICING:

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Prices will remain firm for the term of the contract period.

7. WARRANTY PROVISION:

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MASIMO Warranty: Radical and Rad-9 (“Equipment”). MASIMO warrants that for a period of three (3) years from receipt by End User, Equipment will be, under normal use and care, free from defects in workmanship or material and to be in material conformity with MASIMO's specifications. MASIMO bears all replacement costs if

MASIMO reasonably determines that the unit must be replaced under this warranty. Units returned to MASIMO for warranty repairs shall be shipped to MASIMO freight collect according to MASIMO's instruction. Within thirty (30) days of the receipt of Equipment, MASIMO shall replace or repair such units and shall ship them to End User freight prepaid. The foregoing warranties extend to the covered items returned by MASIMO's customers.

Reusable Sensors and Cables. MASIMO warrants that for a period of six (6) months following receipt by End

User, the re-usable probes LNOP•DCI, LNOP Ear, MultiSite YI, NR-125, and the PC04, PC08, and PC12 product cables supplied by MASIMO to End User will be, under normal use and care, free from any defect in Workmanship or material and to be in material conformity with MASIMO's specifications. MASIMO bears all replacement costs if MASIMO reasonably determines that the unit must be replaced under this warranty. Units returned to MASIMO for warranty repairs shall be shipped to MASIMO freight collect according to MASIMO's instruction. Within thirty (30) days of the receipt of Equipment, MASIMO shall replace or repair such units and shall ship them to End User freight prepaid. The foregoing warranties extend to the covered items returned by MASIMO's customers.

Single Patient Adhesive and Disposable Adhesive Sensors. MASIMO warrants that for a period of three (3) months following receipt by End User, and only on first use, the adhesive probes (e.g., LNOP•Neo, LNOP•NeoPt, LNOP•Pdt and LNOP•Adt) supplied by MASIMO to End User hereunder will be, under normal use and care, and only upon first use, free from defect in workmanship or material and to be in material conformity with MASIMO's specifications therefore. MASIMO bears all replacement costs if MASIMO reasonably determines that the unit must be replaced under this warranty. Units returned to MASIMO for warranty repairs shall be shipped to MASIMO freight collect according to MASIMO's instruction. Within thirty (30) days of the receipt of Equipment, MASIMO shall replace or repair such units and shall ship them to End User freight prepaid. The foregoing warranties extend to the covered items returned by MASIMO's customers.

Warranty Limitations. This warranty does not extend to any unit that has been subject to misuse, neglect or accident; that has been damaged by causes external to the unit; that has been used in violation of MASIMO's instructions; that has been affixed to any nonstandard Accessory attachment; or that has been modified, disassembled, or reassembled by anyone other than MASIMO.

Limitation of Liability. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, MASIMO GRANTS NO WARRANTIES, EITHER EXPRESS OR IMPLIED, ON THE MASIMO PRODUCTS, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THE STATED EXPRESS WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF MASIMO FOR DAMAGES, INCLUDING, BUT NOT LIMITED TO, CONSEQUENTIAL DAMAGES OCCURRING OUT OF OR IN CONJUNCTION WITH THE USE OR PERFORMANCE OF THE PRODUCTS. IN NO EVENT SHALL MASIMO BE RESPONSIBLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL DAMAGES, LOSS OF PROFIT, OR EXPENSE SUFFERED BY THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT.

8. RETURN GOODS POLICY:

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MASIMO's policy for returning goods and receiving credit is as follows: At Customer's sole remedy and MASIMO's sole responsibility with respect to any breach of the warranty, MASIMO shall accept

Product for return, and repair or replace such Product, provided that: (i) such Product is returned to MASIMO due to non-conformity with the warranty; (ii) such Product is returned to MASIMO within the warranty period; and (iii) CUSTOMER must first request and obtain from MASIMO a Return Material Authorization Number.

In the event of a general recall or a limited recall, whether directed by the Food and Drug Administration or voluntarily on the part of MASIMO, CUSTOMER will be refunded for Masimo Products subject to such recall that are returned to MASIMO by CUSTOMER in the amount paid by CUSTOMER for such Masimo Products. All shipping costs will be paid by MASIMO. All returns from customers will be handled on a direct basis between MASIMO and such customer unless otherwise agreed upon by MASIMO and CUSTOMER.

If a shipping error occurs due to Contractor's error, the Contractor will pay freight both ways for return/exchange of goods. If an ordering facility error occurs, the ordering facility will pay return freight. No restocking fee will apply either way. Please call Masimo Customer Service department for a Return Material Authorization Number (RMA#) at 1-800-326-4890.

Obtain a Return Material Authorization by Phone. Contact Masimo Corporation by phone at 1-800-326-4890 (Option#2) between 8:30 a.m. - 5:00 p.m. Pacific Standard Time. Monday through Friday, to obtain a Return Material Authorization Number. The customer will be sent a form to fill out and to place with the box of returned goods. This form will have the assigned RMA number on it as well as instruction to follow.

ADDITIONAL TERMS AND CONDITIONS

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9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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

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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>.