STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET

June 8, 2011

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

FROM: SYLVIA ADAMS
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302-255-9257

SUBJECT: **AWARD NOTICE**
CONTRACT NO. MMCAP
MINNESOTA MULTISTATE CONTRACTING ALLIANCE FOR PHARMACY

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KEY CONTRACT INFORMATION

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KEY CONTRACT INFORMATION

1. CONTRACT USE:

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The Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP), created in 1985, is a free, voluntary group purchasing organization operated and managed by the State of Minnesota's Department of Administration for government healthcare facilities.

MMCAP's primary function is to provide a full range of pharmaceuticals to its participating facilities. However it also has contracts, for vials and containers, medical supplies, drug testing, returned goods processing, influenza vaccine, and dental supplies.

Complete and execute the MMCAP Membership and Agreement Forms and submit it to Sylvia Adams, DE Health & Social Services, (302) 255-9297, sylvia.adams@state.de.us, to participate.

2. CONTRACT PERIOD:

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MMCAP has contracts available for the following services:

Containers and Vials
Drug Testing
Influenza Vaccine
Pharmaceuticals
Invoice Auditing Services
Emergency Preparedness Program
Distributors
Medical Supplies
Dental Supplies
Returned Goods Processing
Vaccines

These contracts have various expiration dates.

3. VENDORS:

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Current Vendors by Good or Service Provided:

http://www.mmd.admin.state.mn.us/mmcap/current_vendors.htm#containers

4. ROBINSON-PATMAN ACT:

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The Robinson-Patman Act (15 U.S.C. 13 (a)-(f)) specifically makes it unlawful for one engaged in commerce to discriminate in price between different purchasers of like commodities where "the effect ... may be substantially to lessen competition." Over the 60 plus years since this law was originally enacted, this language has been interpreted by courts as preventing governmental entities (except the federal government) from using their "purchasing power" to lessen competition -- especially in the area of pharmaceuticals. *In the case of MMCAP contracts, the burden is on the member facility to ensure it is not in violation of Robinson-Patman*.

Any MMCAP manufacturer can refuse to provide products to any MMCAP facility in circumstances where the manufacturer believes there is a violation of Robinson-Patman, *Portland*, or *Jefferson.*

MMCAP's position is that if a manufacturer refuses to provide products to an MMCAP facility, it is the member facility and the member state that must establish that they are not in violation. Facilities are also expected to provide assurances of compliance with Robinson-Patman upon request.

5. DELIVERY AND PICKUP:

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All items acquired under MMCAP Contracts must be purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise.

6. PRICING:

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

ADDITIONAL TERMS AND CONDITIONS

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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. ORDERING PROCEDURE:

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.

10. 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.

11. 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.

12. 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.

13. AGENCY'S RESPONSIBLIITIES:

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.

14. ELECTRONIC CATALOG:

Member Facilities using the MMCAP Pharmaceutical Program have free access to an Internet-based Catalog, which provides an up-to-date listing of every pharmaceutical product on contract. Included in the product listing are the generic and trade name, source, price, AHFS classification, as well as other useful information.

MMCAP also maintains a comprehensive list of pharmaceutical products on backorder along with the status of the product (e.g., long or short term backorder, product short dating, discontinued product lists).

15. MEMBER FACILITY:

Eligible facilities within Delaware may participate in MMCAP.

To become a member, a facility must:

- Complete and execute the MMCAP Membership and Agreement forms and submit it to the state's MMCAP Purchasing Contact, Sylvia Adams, DE Health & Social Services, (302) 255-9297, sylvia.adams@state.de.us.
- Comply with all laws, rules and regulations governing government purchasing of pharmaceuticals and related products, including operating within the boundaries established by Robinson-Patman (15 U.S.C. 13 (a)), *Abbott Labs v. Portland Retail Druggists* (425 U.S. 1(1976)) and *Jefferson County Pharmaceutical Association, Inc. v. Abbott Labs* (460 U.S. 150 (1983)); and
- Use the MMCAP-contracted distributor selected by Delaware.