

**STATEMENT OF WORK  
INDUSTRIAL, MEDICAL, SPECIALTY (IMS) GASES, ACCESSORIES  
INVITATION TO QUALIFY (ITQ) CONTRACT**

**OVERVIEW:** The purpose of the Industrial, Medical, Specialty (IMS) Gases & Accessories ITQ is to qualify responsible and responsive Supplier(s) to supply these items to Commonwealth of Pennsylvania's agencies. In addition, Local Public Procurement Units, as defined by the Commonwealth Procurement Code, may use this contract in accordance with the COSTARS Provision contained in the terms and conditions.

Product(s) supplied under this contract which are regulated by the Food and Drug Administration (FDA) must comply with FDA Compliance Program Guidance Manual Program 7356.002E or most recent revision for Compressed Medical Gases.

The registration requirements are those that the Department of General Services is aware of at the time of this solicitation. The supplier must maintain registrations required by federal government entities, the Commonwealth of Pennsylvania and its agencies and the industry for the manufacture, sale and distribution of products covered under this contract. This list is not exhaustive. Additionally, the supplier must comply with federal safety and health regulations, environmental protection regulations and regulations specific to the local authority having jurisdiction within the Commonwealth of Pennsylvania. The Commonwealth shall be under no obligation to obtain current and future registrations from Suppliers. It is the responsibility of qualified Suppliers to continue to maintain an updated copy, in the JAGGAER system, for the length of their contract.

Products provided on this ITQ that are listed or may become listed on the Commonwealth's MRO contract(s) may not be purchased on this ITQ.

This contract does not include service or any additional accessories or parts not specifically related to the supply of gas and/or gas container.

**ISSUING OFFICE:** This ITQ is managed and administered by the Commonwealth of Pennsylvania, Department of General Services (DGS), Bureau of Procurement. All inquiries should be referred to:

Maurice Kujat, Commodity Specialist  
Department of General Services  
Bureau of Procurement,  
Forum Place, 6<sup>th</sup> Floor  
555 Walnut Street  
Harrisburg, PA 17101-1914  
Telephone: (717) 346-2671  
Email: [mkujat@pa.gov](mailto:mkujat@pa.gov)

**TERM OF CONTRACT:** Any contract issued to qualified Suppliers, as a result of this ITQ, shall commence on the Contract Effective Date and shall end on February 28, 2025. There are no renewals available.

**QUALIFICATIONS:** Suppliers interested in becoming an ITQ Supplier must meet the following requirements. Failure to meet the below requirements will result in the application being rejected. Each Supplier that meets the minimum qualifications will be awarded a contract. Award of a contract to a Supplier is not a guarantee of business.

- A. Supplier must document showing two (2) years of experience in the appropriate commodity code selected under the Material Categories

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- B. Supplier must upload documentation they are the manufacturer of the products being offered or an authorized representative (i.e. dealer/reseller) of the manufacturer's products. If not the manufacturer of the products being offered, the Supplier must upload a document, on the manufacturer's letterhead, stating dealer/reseller is permitted to sell the manufactured product;
- C. Supplier providing products covered by transportation regulations must upload a valid US Department of Transportation registration;
- D. 42190000-ITQ-285- Medical - Medical Gas Products, Medical Gas Cylinders or related devices (only).**
  - 1. Suppliers providing products covered by the FDA must upload a valid FDA registration; and
  - 2. Supplier providing products covered by the Commonwealth of Pennsylvania Department of Health (DOH) must upload a valid registration as a Manufacturer of prescription drugs with DOH.

*From the DOH: "Oxygen and/or medical gases for medical purposes are generally considered prescription drugs under state and federal law. If a facility is manufacturing or transfilling oxygen or other medical gases in the Commonwealth, they must register with the Department of Health as a Manufacturer of prescription drugs and register with the Federal Food and Drug Administration (FDA)."; and*

- E. Supplier must select the counties in which they can serve.

**DELIVERIES AND SCHEDULING:** Deliveries shall be F.O.B. Destination to specific location designated by the using agency. Any delivery schedule is set by each facility. All gases shall be packaged, labeled, and transported in accordance with the best recognized commercial practice and all federal, state, and local laws and regulations.

Unless otherwise agreed upon between the using agency and the approved supplier, delivery shall be within two (2) days after receipt of an Agency purchase order or agency notification for delivery.

For medical grade gasses, there may be occasions where emergency deliveries will be required. To that extent, the supplier shall provide emergency delivery seven (7) days per week, twenty-four (24) hours per day at no additional cost to the Commonwealth.

Specific delivery protocol in regards to acknowledgement of receipt of delivered product, inspection of delivered product, etc. may be established by the ordering agency, where desired.

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**CYLINDER REQUIREMENTS:** It shall be the responsibility of the supplier to secure all cylinders at the time of delivery. All cylinders must be anchored securely in place and shall not be left unattended.

The approved supplier shall be responsible for all material, maintenance, and upkeep on rental cylinders at no additional cost to the Commonwealth.

Faulty cylinder, valves, or other furnished items, shall be replaced immediately with a full cylinder of equal size at no additional charge.

All transportation cost associated with the delivery or return of cylinders is the responsibility of the approved supplier.

All rental cylinders shall be affixed with a label identifying the suppliers' name/logo to insure the correct cylinders are returned to the appropriate approved supplier.

Empty cylinders shall be picked up by the appropriate supplier within two (2) weeks of written notification by the using agency. Acceptable written notification may be in the form of a letter, facsimile, or email. Approved suppliers are not permitted to assess cylinder rental charges after two weeks from the date such notification is provided. Where such notification is provided other than at the end of a rental period, the final rental period shall be billed on a pro-rated basis by day.

**BULK/MICRO-BULK TANKS:** The monthly rental fee for bulk/micro-bulk tanks must include the cost of the tank, installation of tank and equipment as well as the removal of the tank at Contract expiration. Tank rental must also include all maintenance and repairs for each tank installed and owned by awarded supplier. Monthly bulk/micro-bulk tank rental fees will be fixed for the life of the Contract as defined in the RFQ.

Any additional requirements for installation of bulk/micro-bulk tanks may be added to the contract through mutual agreement of the awarded supplier, the Using Agency, and the DGS contracting officer.

**SECURITY CLEARANCE (DEPARTMENT OF CORRECTIONS):** At the Department of Corrections' facilities, all approved suppliers, who utilize regular delivery transportation, will have to submit clearance checks for all drivers and their subcontractor's drivers (regardless if delivery is inside or outside the fence) Common carriers will not be required to render clearance checks, however are subject to search and escort procedures. All carriers reporting to outside warehouses must secure their vehicle (windows closed and doors locked), sign in at warehouse and wait for further directions from correctional staff.

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**MATERIAL CATEGORIES:** Supplier will need to choose the appropriate commodity code(s) to qualify for this contract. Supplier will select the appropriate code(s) under the Business Details section of the qualification process. The Commonwealth may add additional commodity codes as the need arises. The table below lists the appropriate commodity code and description of each material category.

| COMMODITY CODE   | DESCRIPTION OF MATERIAL CATEGORY  |
|------------------|---|
| 12140000-ITQ-283 | <b>Industrial - Elements and Gases, Industrial Use Gases, Oxygen Compound Gases</b> – Includes but not limited to: Acetylene, Argon, Carbon Dioxide, Helium, HPG Fuel Gas, Hydrogen, Nitrogen, Oxygen, Propane, Propylene, Welding Shielding Gases.   |
| 12140000-ITQ-284 | <b>Specialty - Non metals and pure and elemental gases</b> – Includes but not limited to: Pure gases and precision blends, Minor component mixtures in a balance of nitrogen or other balance gas, Analytical Gases, Liquid nitrogen, Liquid carbon dioxide (CO <sub>2</sub> ), Helium, Pure hydrocarbons, Hydrocarbon blends, Gases conforming to NIST-traceable calibration standards, Healthcare refrigerants, Electronic-grade, Laser mixes, High-tolerance specialty gas mixtures. |
| 42190000-ITQ-285 | <b>Medical - Medical Gas Products, Medical Gas Cylinders or related devices</b> – Includes but not limited to: Oxygen USP, Liquid oxygen USP, Nitrogen NF, Liquid nitrogen NF, Nitrous oxide USP, Laser mixes, Specialty gases, Compressed air USP, Helium USP, Drug/device gas mixtures, CO <sub>2</sub> , Dry ice, Hyperbaric oxygen supply, Associated gas supply modes (Cylinders, Bulk & MicroBulk, Dewars and VGL's)  |

**GENERAL INFORMATION/REQUIREMENTS:**

- A. Type of Contract.** Upon determination that the Contractor meets the ITQ requirements, the Commonwealth will issue a contract to the Contractor. Upon receipt of a Purchase Order (PO) issued under this Contract, the Contractor agrees to furnish the requested services to the Commonwealth agency issuing the PO.
- B. Order of Precedence.** If any conflicts or discrepancies should arise in the terms and conditions of this Contract, or the interpretation thereof, the order of precedence shall be:
- i. This Contract;
  - ii. The data resident on the ITQ web site and incorporated herein by reference at the date of execution of the Contract or issuance of an RFQ off of this Contract, whichever is later, including but not limited to the promises and certifications the Contractor made in qualifying for the Contract;

If any conflicts or discrepancies should arise in the interpretation of a PO, the order of precedence shall be:

- i. The consulting service category definitions, descriptions, qualification requirements, and contract terms and conditions set forth in the RFQ;

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- ii. This Contract;
- iii. The PO and any attachment thereto, including: (1) the Contractor’s Proposal, as accepted by the Commonwealth; (2) the RFQ.

**C. Bid Protest Procedure (April 2016)** The Bid Protest Procedure is on the DGS website. [Click here](#)

**D. COSTARS Purchasers.** Section 1902 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1902 (“Section 1902”), authorizes local public procurement units and state-affiliated entities (together, “COSTARS Members”) to participate in Commonwealth procurement contracts that the Department of General Services (“DGS”) may choose to make available to COSTARS Members. DGS has identified this ITQ as one which will be made available for COSTARS Members’ participation.

- a. Only those entities registered with DGS are authorized to participate as COSTARS Members in this Contract. A COSTARS Member may be either a local public procurement unit or a state-affiliated entity.

1. A “local public procurement unit” is:

- Any political subdivision (local government unit), such as a municipality, school district, or commission;
- Any public authority (including authorities formed under the Municipality Authorities Act of 1955 or other authorizing legislation, such as the Public Transportation Law or the Aviation Code);
- Any tax-exempt, nonprofit educational institution or organization;
- Any tax-exempt, nonprofit public health institution or organization;
- Any nonprofit fire, rescue, or ambulance company; and
- Any other entity that spends public funds for the procurement of supplies, services, and construction (such as a council of governments, an area government, or an organization that receives public grant funds).

The Department reserves the right to review and determine eligible applicants as Local Public Procurement Units on a case-by-case basis.

2. A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes:

- The Pennsylvania Turnpike Commission;
- The Pennsylvania Housing Finance Agency;
- The Pennsylvania Municipal Retirement System;
- The Pennsylvania Infrastructure Investment Authority;

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- The State Public School Building Authority;
- The Pennsylvania Higher Education Facilities Authority, and
- The State System of Higher Education.

The COSTARS Program is not available for use by Executive Agencies and Independent Agencies as defined by the Commonwealth Procurement Code, or any agency or entity using funds appropriated to the Department of General Services through Capital Budget Project Itemization legislation for the procurement of furniture, fixtures, and equipment.

3. A complete list of local public procurement units and state-affiliated entities that have registered with DGS and that are authorized to procure items from the Contract can be found at <http://www.costars.state.pa.us/SearchCOMember.aspx>.
- b. COSTARS Members have the option to purchase from this Contract, from any DGS contract established exclusively for COSTARS Members in accordance with the requirements of Section 1902, from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements. The Contractor understands and acknowledges that there is no guarantee that a COSTARS Member will place an order under this Contract, and that the decision to procure from this Contract is within the sole discretion of each COSTARS Member.
  - c. DGS is acting as a facilitator for COSTARS Members who may wish to purchase under this Contract. COSTARS Members that participate in this Contract and issue purchase orders (“POs”) to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this Contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a COSTARS Member unless substantial interests of the Commonwealth are involved.
  - d. COSTARS Members electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.
  - e. Those Contractors electing to permit COSTARS Members to procure from this Contract shall pay the Required Administrative Fee applicable to the Contractor’s classification:

| Contractor Classification                      | Required Administrative Fee |
|--|-----------------------------|
| DGS-verified Small Diverse Business Contractor | \$166                       |
| DGS Self-Certified Small Business Contractor   | \$500                       |
| All Other Contractor                           | \$1,500                     |

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1. Each Contractor electing to permit COSTARS Members to participate in the Contract must submit the COSTARS Program Election to Participate form with its bid submittal and pay the applicable Administrative Fee upon Contract award in order to sell the awarded items/services to COSTARS Members. If the Contractor is a Department of General Services Self-Certified Small Business or Department of General Services-verified Small Diverse Business, a copy of its active Small Business Contracting Program certificate must be included with the bid submittal.
  2. At the beginning of each Contract year and upon any Contract renewal, the Contractor shall submit a check for the required amount, payable to “Commonwealth of PA”. The Contractor must pay the Administrative Fee at each contract renewal date to continue to sell the awarded items/services to COSTARS Members.
- f. DGS has registered the COSTARS name and logo (together, the “COSTARS Brand”) as a trademark with the Pennsylvania Department of State. Therefore, the Contractor may use the COSTARS Brand only as permitted under in this Subsection.
1. The Contractor shall pay the Administrative Fee covering its participation in the program, including without limitation any use of the COSTARS Brand, for each year of the Contract period. The fee is payable upon Contract award and prior to the renewal date for each succeeding Contract period.
  2. DGS grants the Contractor a nonexclusive license to use the COSTARS Brand, subject to the following conditions:
    - The Contractor agrees not to transfer to any third party, including without limitation any of its subcontractors or Contractors, any privileges it may have to use the COSTARS Brand under this Contract.
    - The Contractor agrees not to use the COSTARS Brand to represent or imply any Commonwealth endorsement or approval of its products or services.
    - The Contractor is permitted to use the COSTARS Brand in broadcast, or Internet media solely in connection with this Contract and any other Contract with the Commonwealth under which it has agreed to make sales to COSTARS Purchasers. The Contractor may use the COSTARS Brand on business cards, brochures, and other print publications so long as the purpose is to identify the Contractor as a COSTARS vendor, and only so long as the required Contract fee is kept current.
    - Should this Contract terminate for any reason, the Contractor agrees promptly to remove the COSTARS Brand from any and all print and electronic media

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and to refrain from using the COSTARS Brand for any purpose whatsoever from the date of Contract termination forward.

- The Contractor agrees to defend, indemnify, and hold harmless the Commonwealth of Pennsylvania and DGS from and against all claims, demands, liabilities, obligations, costs, and expenses of any nature whatsoever arising out of or based upon the Contractor's use of the COSTARS Brand; and
  - The Contractor agrees it has no property rights in the use of the COSTARS Brand by virtue of this nonexclusive license. The Contractor expressly waives any claims, including without limitation due process claims that may otherwise be available under the law in the event of any dispute involving these terms of use.
- g. The Contractor shall furnish to the DGS COSTARS Program Office a quarterly electronic Contract sales report detailing the previous quarter's Contract purchasing activity, using the form and in the format prescribed by DGS. The Contractor shall submit its completed quarterly report no later than the fifteenth calendar day of the succeeding Contract quarter.
1. The Contractor shall submit the reports through the web-based COSTARS Contractors' Gateway of the PA Contractor Portal at <https://paContractorportal.state.pa.us/irj/portal/anonymous> , Enterprise Applications. If a Contractor does not have access to the Internet, the Contractor shall send the reports, using the form and in the format prescribed by DGS, on compact disc via US Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 6th Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101-1914.
  2. For each PO received, the Contractor shall include on the report the name and address of each COSTARS-Registered Purchaser that has used the Contract along with the sales date, and dollar volume of sales to the specific Purchaser for the reporting period.
  3. DGS may suspend the Contractor's participation in the COSTARS Program for failure to provide the Quarterly Sales Report within the specified time.
- h. Additional information regarding the COSTARS Program is available on the DGS COSTARS Website at [www.costars.state.pa.us](http://www.costars.state.pa.us).
1. If the Contractor is aware of any qualified entity not currently registered and wishing to participate in the COSTARS Program, please refer the potential purchaser to the DGS COSTARS Website at [www.costars.state.pa.us](http://www.costars.state.pa.us), where it may register by completing the online registration form and receiving DGS confirmation of its registration. To view a list of currently-registered COSTARS member entities, please visit the COSTARS website.



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2. Direct all questions concerning the COSTARS Program to:

Department of General Services  
COSTARS Program  
555 Walnut Street, 6th Floor  
Harrisburg, PA 17101  
Telephone: 1-866-768-7827  
E-mail [GS-PACostars@pa.gov](mailto:GS-PACostars@pa.gov)

**E. Approved Equal.** Whenever an item is defined in this ITQ by trade name and catalogue number of a manufacturer or vendor, the term 'or approved equal,' if not inserted therewith shall be implied. Any reference to a particular manufacturer's product either by trade name or by limited description is solely for the purpose of more clearly indicating the minimum standard of quality desired, except where a 'no substitute' is requested. When a 'no substitute' is requested, the Issuing Office will consider Bids for the referenced product only. The term 'or approved equal' is defined as meaning any other make which, in the sole opinion of the Issuing Office, is of such character, quality, and performance equivalence as to meet the standard of quality of products specified for which it is to be used equally as well as that specified. A supplier quoting on a product other than the referenced product shall:

- a) furnish complete identification in its Bid of the product it is offering by trade name, brand and/or model number;
- b) furnish descriptive literature and data with respect to the substitute product it proposes to furnish; and
- c) indicate any known specification deviations from the referenced product.

**F. Alternates.** A Supplier who wants to offer an alternate must notify the Issuing Office in writing, at least five (5) days prior to the scheduled Bid opening, that the Supplier intends to offer an alternate in its Bid. An "alternate" is a product that deviates from the requirements of the specifications in its composition, qualities, performance, size dimension, etc. The written notification from the Supplier must include a complete description of the alternate and must identify the product's deviations from the specifications. Upon receipt of the notification, the Issuing Office will determine whether the alternate is acceptable. If the Issuing Office, in its discretion, determines that the alternate is acceptable, the Issuing Office will issue a change notice to the invitation for bids that revises the specifications. If no change notice is issued revising the specification, a Bid offering the alternate will not be considered for award. If an item or items in the ITQ are designated "no substitute," this provision does not apply and no alternate may be proposed by a supplier nor will any alternate be considered by the Issuing Office.

**G. New Equipment.** Unless otherwise specified in this ITQ, all products offered by Contractors must be new or remanufactured. A 'new' product is one that will be used first by the Commonwealth after it is manufactured or produced. A 'remanufactured' product is one which: 1) has been rebuilt, using new or used parts, to a condition which meets the original manufacturer's most recent specifications for the item; 2) does not, in the opinion of the Issuing Office, differ in appearance from a new item; and 3) has the same warranty as a new item. Unless otherwise specified in this invitation for bids, used or reconditioned products are not acceptable. This clause shall not be construed to prohibit Contractors from offering products with recycled content, provided the product is new or remanufactured.

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- H. Post-Submission Descriptive Literature.** The Commonwealth may, during its evaluation of the bids, require any Contractor to submit cuts, illustrations, drawings, prints, test data sheets, specification sheets and brochures which detail construction features, design, components, materials used, applicable dimensions and any other pertinent information which the Issuing Office may require in order to evaluate the product(s) offered. The required information must be submitted within two (2) business days after notification from the Issuing Office. Failure to submit the required information prior to the expiration of the second business day after notification shall result in the rejection of the bid as non-responsive.
- I. Tie Bids/Quotes.** All tie bids/quotes will be broken by the Issuing Office.
- J. Prompt Payment Discounts.** Prompt payment discounts will not be considered in making an award. If prompt payment discounts are offered by any Contractor, however, the Issuing Office will take advantage of such offer.
- K. Rebates.** Any rebate applicable at the time of purchase should be taken into consideration by the supplier in calculating its quoted price. Suppliers must specifically state in their quote, when applicable, that rebates have been considered in arriving at the quoted price. Following award, the Commonwealth will assign to the awarded supplier, any rebates which the supplier stated that he took into consideration. If the supplier fails to include such a statement, the Commonwealth will receive the full benefit of the manufacturer's rebate.

**REQUEST FOR QUOTES (RFQ) PROCEDURES:** Commonwealth Agencies will issue an RFQ to qualified Contractors, through the Commonwealth's Custom Portal, powered by the JAGGAER system. Contractors will respond to the RFQ in the system. The requesting Agencies may require the qualified Contractors to furnish, upon request, additional documentation in the RFQ. The qualified Contractors selected for the RFQ process will receive a Purchase Order (PO) and will supply the service to meet the specific requirements as indicated in the RFQ.

Agencies will exercise a scoring method based upon the criteria set forth in the RFQ. The Scoring Methods are defined as follows:

- Best Value
  - Refers to the process of selecting the quote which provides the greatest value to the agency based on evaluating and comparing all pertinent criteria, including cost, so that the Contractor whose overall proposal best suits the agency's needs is selected for each individual project; and
- Low Cost
  - Refers to the lowest cost quoted from all proposals received that are deemed both responsive and responsible for the project.