

**CONTRACT #6**

**RFS # NA**

**FA # NA**

**Edison # NA**

**Department of Health  
Laboratory Services**

**VENDOR:  
GenMark Diagnostics, Inc.**



STATE OF TENNESSEE  
DEPARTMENT OF HEALTH

JOHN J. DREYZEHNER, MD, MPH  
COMMISSIONER

BILL HASLAM  
GOVERNOR

December 5, 2013

Mr. Lucian Geise, Director  
Fiscal Review Committee  
Rachel Jackson Building, 8<sup>th</sup> Floor  
320 Sixth Avenue North  
Nashville, TN 37243

Mr. Mike Perry, Chief Procurement Officer  
Department of General Services  
Tennessee Tower, 3<sup>rd</sup> Floor  
Nashville, TN 37243

Dear Director Geise and CPO Perry:

The Department of Health, Division of Laboratory Services is requesting sole source approval to establish a multi-year contact (3 years) for Gen-Mark Diagnostics RVP (respiratory viral panel) reagents. This contract will provide usage of the eSensorXT-8 System (3 Analyzer Module) for respiratory virus testing and a service plan on the instruments. The RVP assay is an integral part of the TN Sentinel Provider Network Influenza-like illness surveillance program and the CDC's national influenza surveillance program. This information is also utilized to monitor for emerging antiviral resistance and to characterize circulating influenza viruses in preparation for vaccine formulation.

Research shows the Gen-Mark assay is the only assay which has the ability to detect 20 viral markers per sample. This assay detects influenza, parainfluenza, respiratory syncytial virus, adenovirus, coronavirus, rhinovirus, and human metapneumovirus as well as relevant influenza subtypes.

We appreciate your approval to proceed with this contract and thank you for your consideration.

Sincerely,

John J. Dreyzehner, MD, MPH, FACOEM  
Commissioner

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Jim Gibson	*Contact Phone:	615-262-6303		
*Original Contract Number:		*Original RFS Number:			
Edison Contract Number: <i>(if applicable)</i>		Edison RFS Number: <i>(if applicable)</i>			
*Original Contract Begin Date:	02/20/14	*Current End Date:	02/19/17		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:	Department of Health				
*Division:	Laboratory Services				
*Date Submitted:	12/20/13				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Gen Mark				
*Current Maximum Liability:	\$466,001.40				
<b>*Current Contract Allocation by Fiscal Year:</b> <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY:14	FY:15	FY:16	FY:17	FY	FY
\$77,666.90	\$155,333.80	\$155,333.80	\$77,666.90	\$	\$
<b>*Current Total Expenditures by Fiscal Year of Contract:</b> <i>(attach backup documentation from STARS or FDAS report)</i>					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:					
*Contract	State:		Federal:	466,001.40	

Supplemental Documentation Required for  
Fiscal Review Committee

Funding Source/Amount:				
Interdepartmental:			<i>Other:</i>	
If “ <i>other</i> ” please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
Method of Original Award: <i>(if applicable)</i>				
*What were the projected costs of the service for the entire term of the contract prior to contract award?				

Supplemental Documentation Required for  
Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

**Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.**

Deliverable description:	FY:	FY:	FY:	FY:	FY:
	14	15	16	17	
	77,666.90	155,333.80	155,333.80	77,666.90	

**Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.**

Deliverable description:	FY:	FY:	FY:	FY:	FY:

**Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.**

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:



STATE OF TENNESSEE  
DEPARTMENT OF GENERAL SERVICES

BILL HASLAM  
GOVERNOR

ROBERT E. OGLESBY, AIA  
COMMISSIONER

MEMORANDUM

TO: Michael F. Perry, Chief Procurement Officer

FROM: Douglas Whitcomb, Sourcing Analyst *DW*

DATE: October 23, 2013

SUBJECT: Recommendation of Sole Source Approval

The Department of Health, Division of Laboratory Services is requesting sole source approval to establish a multi-year contract (3 years) for GenMark Diagnostics RVP (respiratory viral panel) reagents. This agreement provides usage of the eSensorXT-8 System (3 Analyzer Module) for respiratory virus testing and a service plan on the instruments. The RVP assay is an integral part of the TN Sentinel Provider Network Influenza-Like Illness surveillance program and the CDC's national influenza surveillance program. This information is also utilized to monitor for emerging antiviral resistance and to characterize circulating influenza viruses in preparation for vaccine formulation.

Research shows that the GenMark assay is the only assay which has the ability to detect 20 viral markers per sample. This would provide approximately 2200 tests per year. The high volume of sampling is needed to be in alignment with the 2012-2013 influenza season test volume. The GenMark Diagnostics RVP ensures the Tennessee Department of Health is able to meet testing demands.

Sourcing Analyst recommends the approval of this sole source request.

*Michael F. Perry*  
Michael F. Perry, Central Procurement Office

*10/24/13*  
Date

COMMISSIONER'S OFFICE

312 ROSA L. PARKS AVENUE, 22ND FLOOR • NASHVILLE, TENNESSEE 37243  
(615) 741-9263 • WWW.TN.GOV/GENERALSERV/



STATE OF TENNESSEE  
DEPARTMENT OF HEALTH

JOHN J. DREYZEHNER, MD, MPH  
COMMISSIONER

BILL HASLAM  
GOVERNOR

October 1, 2013

Michael Perry, Chief Operating Officer  
Central Procurement Office  
Tennessee Tower, 3<sup>rd</sup> Floor  
312 Rosa L. Parks Avenue  
Nashville, TN 37243-1102

Dear Mr. Perry,

The Department of Health, Division of Laboratory Services is requesting sole source approval to establish a multi-year contract (3 years) for GenMark Diagnostics RVP (respiratory viral panel) reagents. This agreement provides usage of the eSensorXT-8 System (3 Analyzer Module) for respiratory virus testing and a service plan on this instrument. The RVP assay is an integral part of the TN Sentinel Provider Network Influenza-Like Illness surveillance program and the CDC's national influenza surveillance program. This information is also utilized to monitor for emerging antiviral resistance and to characterize circulating influenza viruses in preparation for vaccine formulation. GenMark is the sole source provider for this assay and methodology, which has the ability to detect 20 viral targets; no other assay provides 20 viral markers per sample. This assay detects influenza, parainfluenza, respiratory syncytial virus, adenovirus, coronavirus, rhinovirus, and human metapneumovirus as well as relevant influenza subtypes.

This sole source, three year contract requires the yearly purchase of GenMark RVP reagents at a cost of \$154,488.67 per year. This would provide approximately 2200 tests per year, in alignment with the 2012-2013 influenza season test volume. Funding for this contract would utilize federal PHEP funds, speedchart HL0000290, allotment code/cost center 343.08-58, and project code HL51PHEPFOF0014.

Your favorable consideration of this request is appreciated.

Sincerely,

  
John J. Dreyzehner, MD, MPH, FACOEM  
Commissioner

3<sup>rd</sup> Floor, Cordell Hull Building  
425 5<sup>th</sup> Avenue North \* Nashville, TN 37243  
(615) 741-3111 \* [www.tn.gov/health](http://www.tn.gov/health)



Contact / Ordering Information  
 Attn: Customer Service  
 (800) eSensor (373-6767) Fax (866) 831-2001  
[info@genmarkdx.com](mailto:info@genmarkdx.com)

**REAGENT USAGE AGREEMENT – NONSTANDING ORDER**

CUSTOMER INFORMATION:			
Contact Name: Tennessee Department of Health		Phone: 615.262.6350	Fax:
Contact Name: Susan McCool		Contact Email: susan.mccool@tn.gov	
Address1: 630 Hart Lane			
Address2:			
City: Nashville	State: TN	Zip: 37243	Country: United States
Billing Contact: Susan McCool		Phone: 615.262.6350	Fax:
Billing Address1: 630 Hart Lane			
Billing Address2:			
City: Nashville	State: TN	Zip: 37243	Country: United States
Shipping PO#:	PO#:	Requested Delivery Date:	

- I. **Instruments.** GenMark agrees to provide to Customer, identified in the Customer Information table above, for its use during the Term the Instrument(s) listed in the "Instrument Description and Pricing" table below. GenMark shall retain all right, title and interest to the Instrument(s) at all times. During the Term, GenMark shall provide standard support and service to the Instrument(s). Upon expiration or prior termination of this Agreement Customer shall return the Instrument(s) to GenMark in proper working condition, ordinary wear and normal use excepted.
- II.

**Instrument Description and Pricing**

Description	Item Number	Qty	Discount	List Price	Extended Price
eSensor XT-8 System - 3 Analyzer Module	RM002069	1	0%	\$84,000.00	\$84,000.00
eSensor XT-8 Accessory Kit	IS002100	1	0%	\$368.00	\$368.00
eSensor XT-8 Printer Pack	MT002007	1	0%	\$630.00	\$630.00
				<b>Total List Price</b>	<b>\$84,998.00</b>
				<b>Less Total Discounts</b>	<b>\$0.00</b>
				<b>Total Extended Price</b>	<b>\$84,998.00</b>

**Service Description and Pricing**

Description	Item Number	Qty	Discount	List Price	Extended Price
12 Month Service Plan - 3 Analyzer Module	SV002069P	3	100%	\$8,400.00	\$0.00
				<b>Total List Price</b>	<b>\$25,200.00</b>
				<b>Less Total Discounts</b>	<b>\$25,200.00</b>
				<b>Total Extended Price</b>	<b>\$0.00</b>



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 Attn: Customer Service  
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[info@genmarkdx.com](mailto:info@genmarkdx.com)

III. **Reagents.** As shown in the "Reagent Description & Pricing" table below, the Customer agrees to purchase during each year of the Term the specified minimum number of tests shown in the "Annual Test Volume Commitment" column. The corresponding annual expenditure is shown in the "Annual Dollar Commitment" column. Each Kit contains the specified number of tests shown in the "Cartridges/Kit" column. Kits are also referred to as "Products" in this agreement. Kits not listed below will be sold to the Customer at GenMark's list prices unless otherwise agreed to in writing.

Reagent Description & Pricing

Description	Item Number	Cartridges/Kit	Monthly Test Volume Commitment	List Reagent Price (Kit)	Discount	Extended Reagent Price (Kit)	Extended Reagent Price (Kit) + Instrument	Annual Test Volume Commitment	Annual Dollar Commitment
eSensor RVP (RUO)	MT005008	48	183	\$4,449.60	24.11%	\$3,376.80	\$0.00	2196	\$154,488.67

IV. **Term.** The term of this Agreement shall be for three (3) years, beginning on the Effective Date.

The terms of this Purchase Agreement and the attached General Terms and Conditions incorporated herein (collectively the "Agreement") apply.

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have entered into this Agreement effective as of the latest date set forth on the signature blocks of this Agreement (the "Effective Date").

THIS AGREEMENT IS EFFECTIVE ONLY UPON SIGNING BY BOTH PARTIES. THIS AGREEMENT MAY NOT BE CANCELLED AND/OR TERMINATED EARLY.

Clinical Micro Sensors, Inc. d/b/a  
 GenMark Diagnostics

("Seller")

Customer

("Accepted By")

Sales Representative: \_\_\_\_\_  
 (Approved By)  
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_



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[info@genmarkdx.com](mailto:info@genmarkdx.com)

## GENERAL TERMS AND CONDITIONS

The following General Terms and Conditions apply in addition to the other terms and conditions set forth on the face page of this Agreement, and the Support and Maintenance Addendum, where applicable.

**1. Payment Terms.** All prices are firm unless otherwise agreed to in writing. Payment terms shall be net 30 days from date of invoice. GenMark reserves the right to require C.O.D. payment terms if Customer's account is overdue for a period of more than 60 days or if it has an unsatisfactory credit or payment record. GenMark may also refuse to sell to Customer until overdue accounts are paid in full. Customer is responsible for all applicable taxes, customs, duties and fees imposed upon this transaction by any federal, state or local governmental authority, unless Customer provides GenMark appropriate evidence of exemption. GenMark reserves the right to increase any pricing or fee by five percent (5%) on January 1<sup>st</sup> of each year. Payments past due shall bear interest at the rate of eighteen percent (18%) or the maximum rate permitted by law, whichever is less.

**2. Purchase Orders.** Customer shall submit Purchase Orders for Products, specifying: (a) Products ordered; (b) the quantity desired; (c) the desired shipping or delivery instructions; and (d) invoice information. Purchase Orders will be subject to GenMark's acceptance in its discretion. Each Purchase Order shall be governed by the terms of this Agreement and in the event of a conflict between the provisions of such Purchase Order or acknowledgment and this Agreement, this Agreement shall control. Products includes without limitation, Kits, Instruments, software, documentation and related accessories.

**3. Delivery, Inspection, Title.** Delivery terms shall be F.O.B. point of distribution at which time risk of loss and title to the Products shall pass to Customer, provided that, unless purchased by Customer, Genmark shall retain title to the Instruments. All shipment, handling and insurance costs shall be paid by Customer and if prepaid by GenMark, shall be reimbursed to GenMark. GenMark will make reasonable efforts to ship the Products or provide services in accordance with mutually agreed upon delivery dates, provided that GenMark shall not be liable for any delay in delivery. Customer shall be responsible for inspecting all Products delivered or installed. If Customer has not have given GenMark written notice of rejection within thirty (30) days of delivery or installation, the Products shall be deemed to have been accepted. GenMark, in its sole discretion, shall replace or remedy rejected Products. Customer shall maintain the Instruments in proper working order. Unless purchased, Customer shall return the Instrument(s) to GenMark upon expiration or prior termination of this Agreement in proper working condition, ordinary wear and normal use excepted. Customer shall at all times be responsible for any damage or loss to the Instrument.

**4. Product Returns.** Products that do not conform to the warranties set forth herein may be returned. GenMark, in its sole discretion, may authorize Product returns, subject to the provisions of the published GenMark Return Policy. Returns of non-defective Products are subject to a restocking charge. No returns will be authorized after ninety (90) days following shipment to Customer.

**5. License.** The Customer is hereby granted a limited, non-exclusive, non-sublicensable, non-transferable license to use the GenMark software loaded on the Instruments as delivered to the Customer or that is otherwise provided to the Customer under this Agreement solely for Customer's internal use. The Customer shall not modify, alter, copy, create derivative works, decompile, disassemble, translate or reverse engineer such software, or attempt to do any of the foregoing.

**6. Warranty and Remedy.** GenMark warrants that each Product sold or provided to the Customer under this Agreement will perform in accordance with its Product specifications (per the package insert or user manual, as applicable) for: (i) Instruments, one (1) year from the date of installation; and (ii) Kits, 60 days from the date of shipment, or relevant specified Product shelf life date, expiration or "use by" date. GenMark reserves the right to change the specifications of its Products at any time without notice. Customer's sole remedy under GenMark's warranty shall at GenMark's option, be limited to either: (i) repair or replacement of the Product or component which failed to conform to the warranty; or (ii) refund to the Customer the purchase price paid by the Customer for such Product. GenMark reserves the right, in its sole discretion, to exchange, upgrade, or substitute an Instrument provided to Customer under a rental agreement. The warranties provided in this Agreement shall be void if the Product is improperly used, stored or handled, is accidentally damaged or is subjected to abuse or neglect, or is modified or altered where the modification or alteration was not provided by or expressly authorized by GenMark. In the event that a claim that a Product or Customer's use thereof infringes any patent or violates or any proprietary right of a third party, and Customer's use is enjoined, GenMark shall use its best efforts to: (i) procure for Customer the right to continue using the Product; or (ii) modify or replace the Product so as to render it non-infringing while remaining functionally equivalent to the original Product, at no additional charge to Customer. If none of these alternatives appear to be reasonably feasible, then Customer may terminate this Agreement with respect to the affected Product and any specific volume commitment schedules will

be reduced thereby. The foregoing obligations of GenMark do not apply to any claim or loss to the extent it results from: (i) any modification or alteration to the Product where the modification or alteration was not provided by or expressly authorized by GenMark; (ii) use of the Product in a way not provided for or described in the applicable documentation; (iii) use of the Product in combination with any other product not supplied or authorized by GenMark which causes the Product to become infringing. Customer shall indemnify, defend and hold harmless GenMark from and against any and all claims and losses to the extent such claims and losses are excluded from GenMark's infringement obligations. GenMark's obligations hereunder are conditioned upon promptly notifying GenMark in reasonable detail of any claim or loss. This Section 6 states Customer's exclusive remedy with respect to any claim or loss for breach of warranty or infringement. **GENMARK MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, AND GENMARK DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**7. Limitations.** GENMARK SHALL NOT BE LIABLE FOR ANY LOST REVENUE, LOST PROFITS, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, SUSTAINED BY CUSTOMER RELATED TO THE SALE, PERFORMANCE OR USE OF THE PRODUCTS OR SERVICES PROVIDED OR FOR ANY AMOUNTS IN EXCESS OF THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT.

**8. Default.** Any of the following events or conditions constitute a default by Customer under this Agreement: (a) the failure of Customer to fully comply with and perform any and all terms and conditions including to make payments when due, which failure remains uncured for a period of thirty (30) days after written notice thereof; (b) the making of assignment for the benefit of creditors by Customer; (c) the institution of bankruptcy, reorganization, liquidation, or receivership proceedings by or against Customer or impairment of the credit of Customer.

**9. Remedies.** Upon the occurrence of any default of Customer, GenMark in its sole discretion shall have the right to exercise any one or more of the following remedies: (a) to terminate this Agreement; (b) to declare and have the remaining unpaid balance for Products and volume commitments, and all other charges, taxes and assessments otherwise owing under this Agreement become due; (c) adjust the Term, prices or volume commitment to reflect actual test volumes; (d) with or without notice, demand or legal process, to retake possession of the Products (and Customer authorizes and empowers GenMark to enter upon the premises wherever Products may be found) and (i) retain such Products and all payments made under this Agreement, and (ii) resell the Products and recover from the Customer any amount owing to GenMark hereunder; or (d) to pursue any other remedy available to GenMark at law or in equity. Without limitation, GenMark shall have all of the rights and remedies of a secured party under the California Uniform Commercial Code. Customer also agrees to pay all costs of collection, including without limitation, court costs, reasonable attorneys' fees, and fees for repossession, repair, storage and sale of the Products.

**10. Confidentiality.** Each party agrees that it will keep in confidence all information and documentation disclosed by the other party which relates to any confidential information or trade secrets, including without limitation, proprietary processes of manufacture, know-how, methods of carrying on business including the terms of this Agreement, or information which is designated by a party as confidential ("Confidential Information") and that it will not directly or indirectly use, copy or disclose to any third party any Confidential Information it receives from the other party, except that access shall be permitted to an employee, attorney, auditor or contractor requiring access to same in connection with performance under this Agreement and who are bound by confidentiality obligations at least as stringent as those contained herein. Confidential Information shall not include any information which is: (i) known by the receiving party at the time of disclosure by the other party, free of any obligation to keep it confidential; (ii) publicly available or hereafter becomes publicly available through authorized disclosure; or (iii) rightfully obtained by the receiving party from a third party who has the right to disclose such information; or (iv) independently developed by the receiving party.

**11. Restrictions on Product Use, Compliance with Laws.** In performing under this Agreement, both parties shall comply with all applicable laws, rules and regulations of all governmental and regulatory bodies, including fraud and anti-kickback laws, and Medicare and Medicaid regulations. Product labeled IVD is intended for in vitro diagnostic use in accordance with the label claims stated in the Package Insert accompanying the Product. Products labeled Research Use Only (RUO) are intended for research purposes only and not for use in or with any diagnostic or clinical procedure, and shall not be used in or with any diagnostic procedure. Customer warrants that it shall not use RUO Products for diagnostic or clinical purposes and shall indemnify, defend and hold harmless GenMark from and against any and all claims and losses to the extent such claims and losses arise from a breach of this warranty.



Contact / Ordering Information  
Attn: Customer Service  
(800) eSensor (373-6767) Fax (866) 831-2001  
[info@genmarkdx.com](mailto:info@genmarkdx.com)

- 12. Assignment.** Customer may not assign or transfer this Agreement without GenMark's prior written consent.
- 13. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding choice of law provisions.
- 14. Entire Agreement, Waiver.** This Agreement contains the entire understanding of the parties and supersedes any and all previous agreements, communications and understandings between the parties concerning the subject matter hereof. No amendment of this Agreement shall be effective unless in writing and signed by both parties. No failure or delay by any party hereto in exercising any right or remedy hereunder or under applicable law will operate as a waiver thereof, or a waiver of a particular right or waiver of any right or remedy on any subsequent occasion.
- 15. Force Majeure.** Neither party shall be responsible for any failure to perform its obligations under this Agreement during the period that such failure is caused by acts of God, civil or military unrest, acts of terrorism, riots, war, fire, explosion, flood, earthquake, laws or governmental regulations or other causes that are beyond the reasonable control of such party. During such period, Products affected hereby may be excluded from this Agreement without liability of either party and GenMark shall not be obligated to purchase substitute products for Customer.
- 16. Other.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original agreement, and all of which taken together shall constitute one and the same instrument. A facsimile or electronic copy of this Agreement bearing authorized signatures shall be taken as an original. No expiration or termination of this Agreement shall relieve Customer of any payment or other obligations accrued at the time of such expiration or termination. Further, any and all rights and obligations set forth in this Agreement which by their nature and context are intended to survive such expiration or termination shall so survive.

**GenMark**DX

GenMark Diagnostics, Inc.  
757 South Raymond Avenue  
Pasadena, California 91105

Tel 1 800 373 6767  
Fax 1 866 831 2001  
www.genmarkdx.com

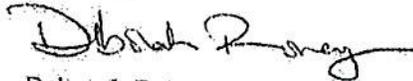
September 26, 2013

Susan McCool  
Virology and Serology Department  
Tennessee Division of Laboratory Services  
630 Hart Lane  
Nashville, TN 37243

Dear Ms. McCool,

This is to confirm that GenMark Diagnostics is the only source from which you can purchase the GenMark RVP assay. We have absolutely no distributors, and sell this only on a direct basis to the end user. Again, we are the only source for this product.

Sincerely,



Deborah Roney  
Senior Molecular Account Executive  
GenMark Diagnostics, Inc.  
704-301-9017



## Terms and Conditions

Event Number: **34301-000007532**

### **Standard Terms and Conditions**

Instructions to Bidders:

1. Read the entire bid, including all terms and conditions and specifications.
2. If submitting the bid by mail: All bid prices must be typed or written in ink on the Line Details portion of the Invitation to Bid (ITB); any corrections, erasures or other forms of alteration to unit prices must be initialed by the bidder.
3. If submitting the bid by mail, the bid must be manually signed in ink; failure to do so will cause rejection of your bid. If submitting the bid on-line, your electronic signature constitutes having signed the bid.
4. Bid prices shall include delivery of all items F.O.B. destination or as otherwise specified.
5. Address all inquiries and correspondence to the Purchasing Agent indicated in the Invitation to Bid.
6. I (we) agree to strictly abide by all the statutes and terms contained in the rules of the Department of General Services, Central Procurement Office which are by reference made a part hereof, in addition to the Standard and Special Terms & Conditions, and Specifications embodied in this Invitation to Bid.
7. **IMPORTANT:** By submitting the bid, the Bidder certifies compliance with the above and further certifies that this bid is made without collusion or fraud.
8. State statutes require that all bidders be registered prior to the issuance of a contract or a purchase order. Vendors/Bidders can register online at the State of Tennessee Supplier Portal:  
<https://supplier.edison.tennessee.gov>.
9. I (We) propose to furnish and deliver any and all of the supplies, services, and/or other commodities named in the Invitation to Bid, and for which I (we) have set prices in my (our) offering.
10. It is understood and agreed that this bid, when certified by authorized signature, shall constitute an offer, which when accepted in writing by the Department of General Services, Central Procurement Office, and subject to the terms and conditions of such acceptance, will constitute a valid binding contract between the State of Tennessee and the Vendor/Contractor (bidder) submitting such offering.
11. By my (our) written signature on this bid I (we) guarantee and certify that all items included in the bid meet or exceed any and all State specifications covering such items. I (We) further agree, if awarded a contract or purchase order as a result of this bid, to deliver such commodities, service or merchandise which meet or exceed the specifications.
12. It is understood and agreed that no contract may be assigned, sublet, or transferred without the written consent of the Central Procurement Office.

13. The inclusion in any bid of a limitation of remedies clause or a limitation of liabilities clause shall be cause for rejection except in bids for telecommunications and information technology goods and services. Pursuant to Tennessee Code Annotated 12-3-314(d), if a limitation of liability is included in the bid for telecommunications and information technology goods and services it can be for not less than two (2) times the value of the contract and it shall not apply to intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death. Provided, however, if the Chief Procurement Officer determines that it is necessary to protect the interests of the state, the Chief Procurement Officer may petition the Procurement Commission to approve contractor liability in excess of two (2) times the value of the contract. If the Commission agrees with the Chief Procurement Officer, it may approve such a higher liability amount.

14. All bidders have the right to inspect the bid file, prior to award, upon completion of the evaluation by the Central Procurement Office. Interested bidders should contact the Purchasing Agent following the bid opening date or once the file is open for the seven (7) day inspection period. A "File Open for Inspection" letter will be sent to all bidders detailing the bidder(s) recommended for award and the evaluated award amount(s). Upon request, a reasonable opportunity to inspect the bid file will be provided to the bidder. If there is no request to inspect the bid file by the end of the seven (7) day inspection period, the Purchasing Agent will proceed with the award.

15. Protest by Vendor: Pursuant to Tenn. Code Ann. § 4-56-103, any actual proposer may protest. Please refer to the Central Procurement Office's website to obtain a copy of the protest procedures and protest bond requirements or contact the sourcing analyst or category specialist at 615-741-1035. The website for the Central Procurement Office is as follows: [www.tennessee.gov/generalserv/CPO](http://www.tennessee.gov/generalserv/CPO)

16. Bid Mailing Instructions: Each individual bid proposal must be returned in a separate envelope package or container and must be properly labeled on the outside referencing the applicable event number and the bid opening date. Bids should be mailed in a properly labeled sealed envelope to the following address:

Department of General Services, Central Procurement Office  
Attn: Bidder Services  
3rd Floor, William R Snodgrass, Tennessee Tower  
312 Rosa L. Parks Avenue  
Nashville, TN 37243-1102

17. Subject to paragraph 13, the Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106

18. Contracts are entered into solely for the convenience of the State of Tennessee. The vendor/contractor understands and agrees that the State of Tennessee, as a signatory party to a contract, is solely responsible for its performance, and that the officers and employees of the Department of General Services, Central Procurement Office, act exclusively as agents of the State for the award, consummation, and administration of contracts and are not personally liable for any performance or nonperformance by the State.

19. A bid must be received in the Central Procurement Office on or before the date and hour designated for the bid opening or the bid will be rejected.

20. The Central Procurement Office may reject any or all bids. Action to reject all bids shall be taken only for unreasonably high prices, errors in the Invitation to Bid (ITB), cessation of need, unavailability of funds, or any other reason approved by the Procurement Commission. The Procurement Commission has authorized rejection of all bids for failure to secure adequate competition. If an ITB is to be re-advertised, all prior bids shall remain closed to inspection until the evaluation of the re-advertisement is complete.

21. All present and former employees or officials of the State are referred to Tennessee Code Annotated 12-4-103.

22. Any individuals with disabilities who wish to participate in public meetings such as a scheduled pre-bid conference or other scheduled function should contact the Central Procurement Office to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephonically, or otherwise, and should be made no less than ten (10) days prior to the scheduled event, to allow time for the Central Procurement Office to provide such aid or service.

23. No person on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal and/or Tennessee State Constitutional and/or statutory law shall be excluded from participation in, or denied benefits of, or be otherwise subjected to discrimination in the performance of the Contract or in the employment practices of the vendor/contractor. The vendor/contractor shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to employees and applicants, notices of non-discrimination.

24. TAXES: Purchases of goods by the State of Tennessee are exempt from Tennessee sales and use tax pursuant to Tenn. Code Ann. 67-6-329(a) (4), and the state is generally exempt from Federal excise tax. Contractors are subject to Tennessee sales and use tax on all materials and supplies used in the performance of a contract, whether such materials and supplies are purchased by the contractor, produced by the contractor, or provided to the contractor by the State, pursuant to Tenn. Code Ann. 67-6-209. The contractor agrees to pay all taxes incurred in the performance of an awarded contract.

State agencies which procure products for the purpose of resale shall register with the Department of Revenue. Upon registration the agency will issue resale certificates to the successful contractor(s) for products procured for resale. The agency is responsible for the collection of the appropriate sales or use tax when the product is sold.

25. Exceptions to terms and conditions and/or those proposed by the bidder which may vary from the invitation to bid may render the bid unresponsive and subject the bid to rejection.

26. Unless otherwise stated, all goods called for by a purchase order must be tendered in a single delivery in compliance with the delivery time specified and payment is due only on such tender. Partial shipments and/or back orders will only be accepted with receiving agency's prior authorization.

27. All products, materials, supplies and equipment offered and furnished must be new, of current manufacturer production, and must have been formally announced by the manufacturer as being commercially available as of the date of the bid opening, unless otherwise stated in this event.

28. Manufacturers of chemical products which are the subject of purchase contracts for the State of Tennessee shall list and maintain a material safety data sheet (MSDS) for such chemical products on the national MSDS search repository or on the manufacturer's website so that such information can be accessed by means of the Internet. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is freely accessible to the public. In lieu of posting a MSDS on MSDSSEARCH, a bidder shall include the manufacturer's universal resource locator (URL) for its MSDS in the event. For purposes of this MSDS requirement, the Department of General Services recognizes the

following URL for national MSDS search repository:MSDS-SEARCH, which can be accessed on the internet at: <http://www.msdssearch.com>.

29. Conflict of Interest: The State may not consider a solicitation response from an individual who is, or within the past six (6) months has been, a state employee. For purposes of this solicitation, an individual shall be considered to be a "state employee" and prohibited from submitting a response to this solicitation for six (6) months after such time as all compensation for salary, termination pay, and annual leave has been paid to such state employee. A contract with or a solicitation response from a company, corporation, or any other contracting entity in which a controlling interest is held by a state employee shall be considered to be a contract with or a solicitation response from a state employee as though the state employee were submitting a response or entering a contract on his or her behalf. Notwithstanding the foregoing, a contract with or a solicitation response from a company, corporation, or any other contracting entity that employs an individual who does not own a controlling interest in such entity and who is, or within the past six months has been, a state employee shall not be considered a contract with or a solicitation response from a state employee and shall not constitute a prohibited conflict of interest.

30. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The contractor agrees that it will be subject to the exclusive jurisdiction of the courts of Tennessee in actions that may arise under this contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Section 9-8-101 through 9-8-407.

31. State and Federal Compliance: The contractor shall comply with all applicable state and federal laws and regulations in the performance of this contract.

32. Professional Licensure and Department of Revenue Registration: All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Proposer provides for consideration and evaluation by the State as a part of a proposal in response to this solicitation, shall be properly licensed to render such opinions. Before the Contract resulting from this solicitation is signed, the apparent successful Proposer (and Proposer employees and subcontractors, as applicable) must hold all necessary, appropriate business and professional licenses to provide service as required. The State may require any Proposer to submit evidence of proper licensure. Before the Contract resulting from this solicitation is signed, the apparent successful Proposer must be registered with the Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Proposer provides proof of such registration. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation.

33. Prohibition of Illegal Immigrants: The requirements of State of Tennessee's Public Acts, 2006, Chapter Number 878 and Executive Order 41 addressing the use of Illegal Immigrants in the performance of any contract to supply goods or services to the State of Tennessee, shall be a material provision of this contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this contract.

As required by Public Acts, 2006, Chapter Number 878, no person may enter into a contract to supply goods or services to the State without first attesting in writing that the person will not knowingly utilize the services of Illegal Immigrants in the performance of this contract, and will not knowingly utilize the services of any subcontractor who will utilize the services of Illegal Immigrants in the performance of this contract. For purposes of this contract, "Illegal Immigrant" shall be defined as any person who is not either a United States citizen, a lawful permanent resident, or a person whose physical presence in the United States is authorized or allowed by the department of homeland security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the contract. The contractor hereby attests, certifies, warrants, and assures that it shall comply with this term and condition for the entire contract period.

The contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract. The contractor may appeal the imposition of the one-year prohibition by utilizing an appeals process established by the Commissioner of Finance and Administration.

As per Executive Order 41, the contractor shall be required to submit semi-annual Attestation Forms and obtain a signed Attestation Form from any subcontractor prior to the use of the subcontractor and semi-annually thereafter during the contract period. The records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State. Records shall include but are not limited to the following:

Documentation on contractors' employees and subcontractor personnel working on this contract showing that they are legal to work in the United States and payroll records.

Signed and dated Attestation Forms for your company that have been submitted to the Central Procurement Office and Attestation Forms obtained from subcontractor(s).

Note: The contractor shall be required to obtain prior approval to subcontract from the Deputy Commissioner of General Services, Central Procurement Office.

By authorized signature on this Invitation to Bid the contractor constitutes signing the Attestation Form for the initial six (6) months of the contract period. The contractor shall be required to submit signed Attestation Forms on a semi-annual basis from the start date of the contract period through to its completion date to the Central Procurement Office. Such attestations shall be maintained by the contractor in a permanent file on the vendor premises and made available to State officials upon request. The State of Tennessee provides an "approved Attestation Form" to support the reaffirmation process. The form can be accessed and printed from the internet at [http://tn.gov/generalserv/purchasing/for\\_bidders.html](http://tn.gov/generalserv/purchasing/for_bidders.html).

# Special Terms and Conditions

## 1. F.O.B. Destination (Agency Term Contract)

F.O.B. Point:

Agency Name: Tennessee Department of Health

Address: 630 Hart Lane Nashville TN 37216-2006

## 2. Term of Contract - Multi-Year

Total Number of Years: 3

Start Date: February 20, 2014

End Date: February 19, 2017

The anticipated effective (start) date and expiration (end) dates of the contract are shown above. If award has not been made by the anticipated effective date, then the contract shall become effective upon the date the bid is accepted and contract awarded by the State, as indicated by the purchasing agent's signature on the contract notice of award (note: the change of effective date may not result in a change of the anticipated expiration date.)

It is understood and agreed that the State reserves the right to extend the term contract period resulting from this solicitation an additional period of time, not to exceed 180 days beyond the normal expiration date of such contract, upon mutual written agreement by both parties, under the same terms and conditions. Provided, however, in no event shall the maximum term of a contract exceed a total of sixty (60) months.

## 3. Volume, Multi-Year

The total purchases of any individual item on the contract are not known. The Central Procurement Office has attempted to give an accurate estimate of probable purchases of each item from the current contract period and projected estimates for the new contract period. The Central Procurement Office does not guarantee that the state will buy any or all estimated amounts of any specified item or any total amount.

Purchases Current Contract Period N/A New Contract

Estimated Funding New Contract Period

1st 12 MONTHS	\$ 155,333.80
2nd 12 MONTHS	\$ 155,333.80
3rd 12 MONTHS	\$ 155,333.80

The vendor/contractor will only be paid for products or services rendered hereunder pursuant to purchase order releases issued to vendor/contractor from the state. The vendor/contractor is not entitled to be paid the maximum liability for any one year under the contract or any extensions of the contract for product or service not requested by the state. Maximum liability represents available funds for payment to vendor/contractor and does not guarantee payment of any such funds to the vendor/contractor per year under this contract unless the state requests product or service and vendor/contractor provides said product or service. The state is under no obligation to request product or service from vendor/contractor in any specific dollar amounts per year under this contract and the state may not request any product or service at all from vendor/contractor during the contract period.

#### **4. Bids Requested on Standard State Specifications for Products and/or Services**

Unit price bids are requested on products or services that equal or exceed (unless specifications limit the dimensions or brand(s)/model(s) of products to be bid). The absence of detailed specifications or the omission of detail description shall be recognized as meaning that only the best commercial practices are to prevail and that only first quality materials and workmanship are to be used. All interpretations of specifications shall be made from this statement. It is understood that the specifications or references to available specifications shall be sufficient to make the terms of such specifications binding on the vendor/contractor. Bidders must submit for bid evaluation applicable cuts, sketches, descriptive literature, and technical specifications covering the product offered, when applicable. Reference to literature submitted previously will not satisfy this requirement.

Bids requested on architect/engineer/designer specifications, if applicable. Bids are requested per architect/ engineer/designer's specification attached. Bids are to be lump sum and/or unit prices as shown on the price sheet. Any errors or omissions in plans or specifications shall be resolved prior to submission of a bid. Submission of a bid shall constitute agreement and compliance with such specifications and plans. All shop drawings and product sheets required by specifications shall be submitted to architect/engineer/designer prior to fabrication and/or installation.

#### **5. Bid Offer Expiration**

Enter the expiration date of your bid offer in the space provided on this Invitation to Bid. A minimum period of thirty (30) days from the bid closing date is requested. The state shall have sixty (60) days to accept the bid if a minimum period is not stated.

#### **6. Delivery Time (On-Time)**

The contractor shall be required to maintain or to have available for their own use personnel, equipment, and products sufficient to perform "on-time" as specified in this Invitation to Bid.

#### **7. Freight F.O.B. State Agency (Dock)**

All quotations shall be F.O.B. destination. The term F.O.B. shall mean delivered and unloaded onto the receiving dock of the agency listed, with all charges for transportation and unloading prepaid by the vendor/contractor.

#### **8. Bidder's Qualification**

Bidders must, upon request of the state, furnish satisfactory evidence of their ability to furnish products or services in accordance with the terms and conditions and specifications. The Assistant Commissioner, Department of General Services, Central Procurement Office, reserves the right to make the final determination as to a bidder's ability to perform.

#### **9. Inspection/Facilities**

The Central Procurement Office may inspect the facilities of any bidder or may require additional information regarding a bidder's ability to perform the proposed contract. Bids may be rejected for lack of apparent ability to perform the proposed contract.

#### **10. Substitution**

Substitution of one or more goods, brands or manufacturers after the contract is awarded is expressly prohibited unless approved in writing by the State. The State may, at its discretion, require the contractor to provide one or more substitute goods of equal quality, subject to the approval by the State, for the same price and on the same delivery terms, if one or more goods for which the contract was awarded becomes unavailable to the contractor.

#### **11. Inspection of Materials, Equipment and Products**

All materials, equipment, and products are subject to inspection and testing. Items that do not meet specifications will be rejected. Failure to reject upon receipt does not relieve the vendor/contractor of liability. When subsequent tests after receipt are conducted and when such tests reveal damage or

failure to meet specifications, the state may seek damages regardless of whether a part or all of the merchandise has been consumed.

## **12. Negotiations**

The State may elect to negotiate by requesting revised Cost Proposals from apparently responsive and responsible respondents. However, the State reserves the right to award a contract on the basis of initial responses received. Therefore, each response should contain the respondent's best terms from a price and technical standpoint. The State reserves the right to conduct multiple negotiation rounds. If the State exercises its right to enter into negotiations, it may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications and/or requirements. The State may seek to clarify those identified issues during negotiations. All responsive respondents will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other price or service level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other method that does not reveal individual respondent pricing. During target price negotiations respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in response improvement. Note that each clarification sought by the State may be unique to an individual respondent.

## **13. Department of Revenue Registration**

The contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

## **14. Bid Rejection**

The Central Procurement Office reserves the right to reject any bid that contains prices for individual items or services that are inconsistent or unrealistic when compared to other prices in the same or other bids, if such action would be in the best interest of the state.

Errors: Each correction made by the bidder on the bid response must be initialed in ink by each correction. No corrections will be made in pencil. No bid or line item shall be altered or amended after the bid opening. In the case of errors in the extension price, the unit price will govern. Failure to comply with the above may be cause for rejection of part or the entire bid.

## **15. Single Award**

A single contract for all line items will be awarded to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid. Prices shall be calculated as follows: The bidders unit bid price shall be multiplied by the line item quantity to obtain the line item total. If more than one line item is included in the bid document, each line item total shall be added together for a total price for all line items bid. The bidder must bid all line items to be considered for an award.

## **16. Award Criteria**

An award shall be made to the lowest responsive and responsible bidder considering the following:

- Ability to Perform
- Conformity to Specifications
- Lowest Composite Score

## **17. State Contract Administrator**

Questions or problems arising from bid procedures or subsequent order and delivery procedures should be directed to:

State of Tennessee  
Department of General Services, Central Procurement Office  
3rd Floor, William R. Snodgrass, Tennessee Tower  
312 Rosa L. Parks Avenue  
Nashville, TN 37243-1102  
Attn: Karen Olive

## **18. Purchase Order Releases (Agency Term Contract)**

Orders for products or services that are included on agency term contracts shall be prepared by agencies on Departmental Purchase Release Orders and forwarded to the vendor/contractor. These purchase orders, when received by the vendor/contractor, serve as authorization for shipment of product(s) or start of service.

### Billing Instructions:

The vendor/contractor shall invoice the state only after product has been received by the user agency or upon completion of the service described in the purchase order/contract, unless otherwise authorized in writing by the user agency and as required below prior to any payment.

The contractor shall submit an invoice, with all necessary supporting documentation, to the state agency billing address. Such invoice shall clearly and accurately detail the following required information:

1. Invoice/reference number; (assigned by the contractor);
2. Invoice date;
3. Contract and/or purchase order number; (assigned by the state);
4. Account name;
5. Procuring state agency and division name;
6. Account/customer number (uniquely assigned by the vendor/contractor);
7. To the above-referenced account name;
8. Contractor name;
9. Contractor Identification Number; (as referenced in the contract);
10. Contractor contact (name, phone, and/or fax for the person to contact with billing questions);
11. Contractor remittance address;
12. Description of delivered product(s) or service; and
13. Total amount due for delivered product(s) or service.

The contractor understands and agrees that the invoice shall;

- Include only charges for service described in contract or Purchase Order and in accordance with payment terms and conditions set forth in the contract or purchase order;
- Not include any future work but will only be submitted for completed service, unless otherwise authorized in writing by the user agency; and
- not include sales tax or shipping charges (unless otherwise stipulated in the contract or purchase order).

Payment: The contractor agrees that timeframe for payment (and any discounts) begins when the state is in receipt of a correct invoice meeting the minimum requirements above. It shall be the responsibility of the "bill to" agency to make payment in accordance with the Prompt Payment Act of 1985. Any questions concerning payment should be addressed to the "bill to" agency and not to the Central Procurement Office.

## **19. Contract Cancellation**

Termination for Convenience: The State may terminate this contract without cause. Said termination shall not be deemed a breach of contract by the State. The State shall give the vendor/contractor at least ninety (90) days written notice before the effective cancellation date.

The vendor/contractor shall be entitled to receive compensation for product(s) shipped or services satisfactorily completed as of the cancellation date, but in no event shall the state be liable to the vendor/contractor for compensation for any product(s) or services which have not been rendered.

Upon such termination, the vendor/contractor shall have no right to any actual general, special, incidental, consequential, or any other claims whatsoever of any description or amount.

Termination for Cause: If the vendor/contractor fails to fulfill its obligations under this contract in a timely or proper manner, or if the vendor/contractor violates any terms of this contract, the State shall have the right to immediately terminate the contract upon written notice of intent to cancel. The State shall have the right to withhold payment in excess of fair compensation for completed services. Notwithstanding the above, the contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this contract by the contractor.

At the end of any fiscal year any contract may be canceled by the state without notice, in the event that funds to support the contract become unavailable.

The vendor/contractor will be required to honor all purchase orders that were prepared and dated prior to the date of the termination, if received by the vendor/contractor within a period of thirty (30) days following the date of cancellation.

## **20. Subcontracting: Responsibilities and Liabilities, Bond Required if Subcontracting**

Based on Tennessee Code Annotated 12-4-201, the vendor/contractor shall not enter into any subcontract for services, prior to or following award, without the written consent of the Central Procurement Office. It is also understood and agreed that no contract may be assigned, sublet, or transferred without the written consent of the Central Procurement Office. The awarded vendor/contractor is responsible for work, service, performance, injuries of employees and payment to the subcontractor.

The subcontractor shall be required to register with Central Procurement Office and provide proof of insurance in accordance with the insurance term and condition, if insurance is required.

All anticipated or actual costs incurred for subcontracting must be included in the bid price per line item. The vendor/contractor can only invoice for actual bid prices per line item; regardless of how much it has agreed to pay the subcontractor.

The successful bidder(s) will be required to furnish a Labor and Material Surety Bond issued by a surety company licensed to do business in the State of Tennessee in the amount of twenty-five (25) % of the total contract amount. The Labor and Material Surety Bond shall be issued by a surety company licensed to do business in the State of Tennessee or an Irrevocable Letter of Credit from a state or national bank or state or federal savings and loan association having its principal office in Tennessee; or any state or national bank or state or federal savings and loan association that has its principal office outside this state and that maintains one (1) or more branches in this state which are authorized to accept federally insured deposits may be accepted by the Central Procurement Office in lieu of a performance bond. The terms and conditions of any letter of credit shall be subject to the approval of the public official named in the contract. The form of such letter of credit shall be provided by the bank or savings and loan association and may be based on either the uniform commercial code, Tennessee Code Annotated, Title 47, Chapter 5, or the ICC Uniform Customs and Practice for Documentary

Credits (UPC 500). All letters of credit shall be accompanied by an authorization of the contractor to deliver retained funds to the bank issuing the letter.

The Labor and Material Surety Bond or Irrevocable Letter of Credit shall be furnished to the Central Procurement Office within ten (10) business days after the request. The Labor and Material Surety Bond or Irrevocable Letter of Credit will insure that the contractor will pay for all labor and materials used by the contractor, or any immediate or remote subcontractor under the contractor, in such contract, in lawful money of the United States.

In the event that the Bidder does not indicate that they would be subcontracting and therefore no bond was received, the state reserves the right to request a Labor and Material Surety Bond from the vendor/contractor in the event that a subcontractor submits a claim against the vendor/contractor's surety bond to the Central Procurement Office due to non-payment. If requested, the vendor/contractor will be required to submit a Labor and Material Surety Bond in the amount specified in the request letter within ten (10) business days.

## **21. Specifications Govern Over Brand Names Listed**

The acceptable brands and model numbers are believed to meet all written specifications; however, if an error exists, the specifications will govern.

**STATE OF TENNESSEE  
DEPARTMENT OF GENERAL SERVICES  
CENTRAL PROCUREMENT OFFICE**

**INVITATION TO BID**

**The following shall be completed by the bidder. The following is a list of acceptable responses:**

1. The bidder can copy the document to their computer, fill out the form and re-attach it to the bid.
2. The bidder can attach or send its company's diversity business policies with the bid.
3. The bidder can attach or send responses to the Good Faith Efforts, Diversity Business Participation, and the Diversity Utilization Plan with the bid.

**EFFORTS TO ACHIEVE DIVERSITY BUSINESS ENTERPRISE PARTICIPATION**

The Governor, in an effort to expand economic opportunities for small businesses and businesses owned by minorities and women in Tennessee, issued Executive Order Number 14 on December 8, 2003, which created the Governor's Office of Diversity Business Enterprise (Go-DBE). In 2004, to further facilitate the State's efforts to promote greater participation by minority owned, woman owned and small businesses in its procurement and contracting opportunities, the General Assembly passed legislation amending Tennessee Code Annotated 12-3-801 through 808 establishing the "Tennessee Minority Owned, Woman Owned and Small Business Procurement and Contracting Act." July 1, 2010 Public Chapter No. 1140 became effective by amending Title 12, Chapter 3, and Part 8 relative to include service-disabled veteran owned businesses. To coordinate this effort, Go-DBE and the Department of General Services' Central Procurement Office have implemented the following procedure:

The vendor or prime contractor should contact appropriate sources within its geographic area to identify qualified minority owned, woman owned, service-disabled veteran owned and small businesses for this purpose. If needed, the Governor's Office of Diversity Business Enterprise can provide a list of minority owned, woman owned, service-disabled veteran owned and small businesses who provide an array of services or a vendor may advertise in a newspaper with one or more wide-circulation publications to enhance the solicitation of proposals from minority owned, woman owned, service-disabled veteran owned and small businesses.

To assist you in your effort to seek and solicit the participation of minority owned, women owned, service-disabled veteran owned or small businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at: <http://www.tn.gov/businessopp/regdivcomp.html> ; or by calling the Governor's Office of Diversity Business Enterprise toll free at 866-894-5026. If you are currently utilizing a minority owned, women owned, service-disabled veteran owned or small business that is not listed in the State's directory, please provide its company name, address and telephone number in the space provided. We will assist them in registering with the Governor's Office of Diversity Business Enterprise.

Please complete the attached form and include all pertinent documentation regarding your company's efforts to achieve diversity business participation. This information must be submitted with the bid document and monthly thereafter until a reasonable level of diversity business participation is achieved.

## GOOD FAITH EFFORTS

### GOOD FAITH EFFORTS UNDERTAKEN BUT NOT LIMITED TO THE FOLLOWING ACTIONS (PROVIDE SPECIFIC DOCUMENTATION FOR EACH EFFORT CHECKED)

- 1) \_\_\_ Contacted diversity businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on the Go-DBE Directory. (Provide a list of minority, women, service-disabled veteran owned and small businesses who were contacted. Indicate whether the diversity business responded or followed up to your solicitation request.)
- 2) \_\_\_ Make the specifications and requirements of this procurement available for review by prospective diversity businesses at least ten (10) days before the bid or proposals are due.
- 3) \_\_\_ If possible, breaking down or combining elements of work into economically feasible units to facilitate diversity business participation.
- 4) \_\_\_ Work with minority, women, service-disabled veteran owned, and small business trades, community organizations, or minority, women, service-disabled veteran owned or small business organizations identified by Go-DBE to obtain diversity businesses participation, whenever possible.
- 5) \_\_\_ If possible, provide assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for diversity business subcontractors.
- 6) \_\_\_ Negotiate in good faith, with interested diversity businesses, and not reject them as unqualified without sound reasons based on lack of qualification, and document in writing the reasons for exclusion.
- 7) \_\_\_ If possible, provide assistance to an otherwise qualified diversity business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assist diversity businesses in obtaining the same unit pricing with the bidder's suppliers, in order to help diversity businesses establish credit.
- 8) \_\_\_ If possible, negotiate joint venture and partnership arrangements with diversity businesses in order to increase opportunities for diversity business participation on this procurement.
- 9) \_\_\_ If possible, provide quick pay agreements, and policies to enable diversity businesses and suppliers to meet cash-flow demands.
- 10) \_\_\_ Other effort. (Please provide details of efforts made to obtain diversity participation on the procurement).

**DIVERSITY BUSINESS PARTICIPATION:**

In order to achieve Diversity Business participation, certified **MINORITY-OWNED, WOMEN-OWNED, SERVICE-DISABLED VETERAN OWNED, AND SMALL-OWNED BUSINESSES** are expected to participate in the following manner.

MBE/WBE/ SDVBE/SBE Firm	Description of Work (MBE/WBE/ SDVBE, SBE)	Projected Contract Amount and Award Date	Contract Schedule Start Date	Contract Payment Schedule	Project Completion Date
Name:  Address:  City:  State/Zip Code:  Phone: E-mail:					
Name:  Address:  City:  State/Zip Code:  Phone: E-mail:					

**DIVERSITY UTILIZATION PLAN**

**CONSULTANT/CONTRACTOR DETAILED MBE/WBE/SDVBE/SBE PLAN**

Business/Company/Vendor Name:		
Event/Contract Number:		Award Date:
Address:	City:	State: Zip Code:
Event/Contract Description: (Brief Description of Project)		
Business/Company/Vendor Contact Name:		Phone: E-Mail:

**PROJECTED MBE/WBE/SDVBE/SBE BID SUMMARY**

	%	Amount		Amount
1. Total Dollar Value of the Contract	100%	\$		
2. MBE Projected Goal Applied to the Contract	____%	\$	6. Total MBE Dollar Amount Met	\$
3. WBE Projected Goal Applied to the Contract	____%	\$	7. Total WBE Dollar Amount Met	\$
4. SDVBE Projected Goal Applied to the Contract	____%	\$	8. Total SDVBE Dollar Amount Met	\$
5. MBE/WBE/SDVBE Combined Projected Goals	____%	\$	9. Combined Total MBE/WBE/SDVBE Dollar Amount Met	\$

**Go-DBE PROGRAM USE ONLY**

		Date Approved	Date Disapproved	Initials
MBE (%)	Minorities (%)			
WBE (%)	Female (%)			
SDVBE (%)	Service-disabled veteran (%)			