



**STATE OF TENNESSEE**  
**DEPARTMENT OF HEALTH**

JOHN J. DREYZEHNER, MD, MPH  
COMMISSIONER

BILL HASLAM  
GOVERNOR

October 31, 2018

Fiscal Review Committee  
8th Floor, Rachel Jackson Bldg.  
Nashville, TN 37243

Re: Hologic Inc. Contract

Committee:

The Department of Health requests approval to establish a three (3) year, with two (2) options to renew, sole-source contract with Hologic, Inc. The estimated liability is \$778,204.05 for three years and \$1,297,006.75, if all options to renew are executed. The funding will be provided by 50% state and 50% federal monies.

This contract will provide for the purchase of reagents for qualitative and quantitative testing of Human Immunodeficiency Virus (HIV), Hepatitis C (HCV), and Herpes Simplex viruses (HSV). Under requirements of the CDC, Laboratory Services is required to perform these tests. The current instruments used by the lab are state owned and purchasing the manufacturer's reagent kits will ensure compatibility and reduce potential false results.

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:   | Richard Steece                | *Contact Phone:                    | 615-262-6301  |            |            |
| *Presenter's name(s):  | Richard Steece, Brandon Silby |                                    |   |            |            |
| Edison Contract Number: <i>(if applicable)</i>   |                               | RFS Number: <i>(if applicable)</i> |   |            |            |
| *Original or Proposed Contract Begin Date:   | 02/01/19                      | *Current or Proposed End Date:     | 1/31/22<br>1/31/2024 (if all options to renew are executed) |            |            |
| 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:   | 10/31/18                      |                                    |   |            |            |
| *Submitted Within Sixty (60) days:   | Yes                           |                                    |   |            |            |
| <i>If not, explain:</i>  |                               |                                    |   |            |            |
| *Contract Vendor Name:   | Hologic                       |                                    |   |            |            |
| *Current or Proposed Maximum Liability:  | 1,297,006.75                  |                                    |   |            |            |
| *Estimated Total Spend for Commodities:  | 1,297,006.75                  |                                    |   |            |            |
| <b>*Current or Proposed Contract Allocation by Fiscal Year:<br/>(as Shown on Most Current Fully Executed Contract Summary Sheet)</b>           |                               |                                    |   |            |            |
| FY:19  | FY:20                         | FY:21                              | FY:22   | FY23       | FY24       |
| 108,083.90   | 259,401.35                    | 259,401.35                         | 259,401.35  | 259,401.35 | 151,317.45 |
| <b>*Current Total Expenditures by Fiscal Year of Contract:<br/>(attach backup documentation from Edison)</b>                                   |                               |                                    |   |            |            |
| FY:  | FY:                           | FY:                                | FY:   | FY         | FY         |
| \$   | \$                            | \$                                 | \$  | \$         | \$         |
| <b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent: |                               |                                    | N/A   |            |            |
| <b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:          |                               |                                    | N/A   |            |            |
| <b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage: |                               |                                    | N/A   |            |            |

Supplemental Documentation Required for  
Fiscal Review Committee

|  |     |   |     |
|--|-----|---|-----|
| <b>*Contract Funding Source/Amount:</b>  |     |   |     |
| State:   | 50% | Federal:  | 50% |
| <i>Interdepartmental:</i>  |     | <i>Other:</i>   |     |
| If “ <i>other</i> ” please define:   |     |   |     |
| If “ <i>interdepartmental</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?<br>How was this cost determined?  |     | \$1,297,006.75 is the estimated cost for the 3 year plus 2 options to renew. The cost was determined by usage and vendor quotation  |     |
| *List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State. |     | There are no other vendors who can provide reagents compatible with existing state owned equipment. Sole source purchase would eliminate the need to purchase new instruments with costs upward of \$100,000 or more. |     |

# Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

Route a completed request, as one file in PDF format, via e-mail attachment sent to: agsprs.agsprs@tn.gov.

|                           |      |                             |      |
|---------------------------|------|-----------------------------|------|
| <b>APPROVED</b>           |      | <b>APPROVED</b>             |      |
| CHIEF PROCUREMENT OFFICER | DATE | COMPTROLLER OF THE TREASURY | DATE |

|  |   |
|--|---|
| Request Tracking #                                     | HL00000749, HL00017507,<br>HL00017419   |
| 1. Contracting Agency                                  | Health  |
| 2. Type of Contract or Procurement Method              | <input type="checkbox"/> No Cost<br><input type="checkbox"/> Revenue<br><input checked="" type="checkbox"/> Sole Source<br><input type="checkbox"/> Proprietary<br><input type="checkbox"/> Competitive Negotiation<br><input type="checkbox"/> Other _____ |
| 3. Requestor Contact Information                       | Bryan Mason<br><a href="mailto:Bryan.P.Mason@tn.gov">Bryan.P.Mason@tn.gov</a><br>615 262-6350   |
| 4. Brief Goods or Services Caption                     | Aptima HIV, HCV and HSV Quant Assay Kits  |
| 5. Description of the Goods or Services to be Acquired | Multi-year contract for the purchase of Quant Assay kits and associated consumables for both qualitative and quantitative testing of Human Immunodeficiency Virus (HIV), Hepatitis C(HCV) and Herpes Simplex viruses (HSV).                                 |
| 6. Proposed Contractor                                 | Hologic Inc   |

|   |   |
|---|---|
| <b>Request Tracking #</b>   | HL00000749, HL00017507,<br>HL00017419   |
| <b>7. Name &amp; Address of the Contractor's principal owner(s)</b><br>– NOT required for a TN state education institution  | Paula Stokes-Richards<br>Hologic Inc<br>250 Campus Dr<br>Marlborough, MA 01752<br>Paula.stokes@hologic.com  |
| <b>8. Proposed Contract Period</b> – with ALL options to extend exercised<br><i>The proposed contract start date shall follow the approval date of this request.</i>                  | 36 months with 2 options to renew   |
| <b>9. Strategic Technology Solutions (“STS”) Pre-Approval Endorsement Request</b><br>– information technology (N/A to THDA)   | <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached  |
| <b>10. eHealth Pre-Approval Endorsement Request</b><br>– health-related professional, pharmaceutical, laboratory, or imaging  | <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached  |
| <b>11. Human Resources Pre-Approval Endorsement Request</b><br>– state employee training  | <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached  |
| <b>12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.</b> | <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,  |
| <b>13. Maximum Contract Cost</b> – with ALL options to extend exercised   | \$1,297,006.75  |
| <b>14. Was there an initial government estimate? If so, what amount?</b>  | <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,  |
| <b>15. Cost Determination Used-</b> How did agency arrive at the estimate of expected costs?  | Vendor quote and a study of test volumes.   |
| <b>16. Explanation of Fair and Reasonable Price-</b> Explain how agency determined that price is fair and reasonable  | The pricing we have been supplied with from Hologic is special pricing specifically offered to public health entities. This is the lowest tier of prices Hologic offers for these goods.  |
| <b>17. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? Attach documentation to this request as applicable.                     | Primarily email   |
| <b>18. Explanation of Need for or requirement placed on the State to acquire the goods or services</b>  | Under requirements of the Centers for Disease Control and Prevention (CDC), the TN Department of Health, Division of Laboratory Services, must perform analytical services for certain infectious diseases. The kits being requested are what make testing HIV, HSV and HCV possible, in both a qualitative and quantitative fashion. |

|  |   |
|--|---|
| <b>Request Tracking #</b>  | HL00000749, HL00017507,<br>HL00017419   |
| <b>19. Proposed contract impact on current State operations</b>  | The kits on this contract will allow lab staff to carry out qualitative tests for HIV, HCV and HSV in a much more efficient manner than the current method. Additionally, these kits will allow lab staff to carry out quantitative tests, which is a new responsibility for the Division of Laboratory Services.   |
| <b>20. Justification</b> – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected. | As part of its obligations to protecting the health of Tennesseans and meeting CDC's requirements the Department of Health laboratory tests patient samples for certain communicative diseases. Prior to these kits, the Division of Laboratory Services had to use a manual methodology for HIV, HSV and HCV testing that has become too slow and inefficient. The lab acquired Hologic Panther systems, which fully automate the qualitative and quantitative testing of HCV, HSV and HIV viruses, making our productivity in this area much more efficient. Quantitative tests are used to determine the levels of virus present in a patient's blood, which allows epidemiologists and physicians to judge whether the patient's treatment is having the desired effect. To test qualitatively and quantitatively for HIV, HSV and HCV on the Panther systems, the Lab requires a contract for Quant Assay kits and associated consumables. Hologic is the only company that manufactures kits that can run on the Panther systems, resulting in compatibility issues with current equipment. |
| <b>For No Cost and Revenue Contracts Only</b>  |   |
| <b>21. What costs will the State incur as a result of this contract? If any, please explain.</b>   |   |
| <b>22. What is the total estimated revenue that the State would receive as a result of this contract?</b>  |   |
| <b>23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.</b>                   | <input type="checkbox"/> NO <input type="checkbox"/> YES  |
| <b>24. Summary of State responsibilities under proposed contract</b>   |   |
| <b>For Sole Source and Proprietary Procurements Only</b>   |   |
| <b>25. Evidence of Contractor's experience &amp; length of experience providing the goods or services to be procured.</b>                              | Founded in 1985, Hologic is a leader in healthcare diagnostic technologies.   |

|   |   |
|---|---|
| <b>Request Tracking #</b>   | HL00000749, HL00017507,<br>HL00017419   |
| <b>26. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.</b>  | <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES,<br><b>Method: Sole Source</b><br><b>Name/Address: Hologic Inc</b><br><b>250 Campus Dr</b><br><b>Marlborough, MA 01752</b>  |
| <b>27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives</b>   | <b>We are pursuing sole source procurement for these goods because we are already using an instrument with the capacity for fulfilling the tests in question. If we were to change methodology for these tests it would involve procuring a totally different suite of equipment. This would quickly prove an inefficient use of both time and money.</b> |
| <b>Signature Required for all Special Contract Requests</b>   |   |
| <p><b>Signature of Agency head or authorized designee, title of signatory, and date</b> (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"> <h1 style="margin: 0;">Brandon Silby</h1> </div> <div style="font-size: small;"> <p>Digitally signed by Brandon Silby<br/> DN: cn=Brandon Silby, o=Department of Health, ou=Division of Administrative Services, email=Brandon.C.Silby@tn.gov, c=US</p> </div> </div> <p>Signature: _____ Date: 2018.10.17 10:47:10 -05'00' _____ Date: _____</p> |   |



**Invitation to Bid (ITB)**  
 For **34301 Health Aptima-Panther**  
 Event #

**1. Section 1 -- Background Information**

1.1. To establish a multi-year contract for HIV, HCV & HSV testing supplies and reagent kits; Hologic Aptima HIV and HCV Quant DX Assays and HSV 1 & 2 Assay.

1.2. 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.

Estimated Funding New Contract Period

\$1,297,006

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.

- 1.3. **Accommodation for People with Disabilities.** Any individuals with disabilities who wish to participate in public meetings such as a scheduled pre-response conference or other scheduled function should contact the Solicitation Coordinator to discuss any auxiliary aids or services needed. Such contact should be made no less than three (3) business days prior to the public meeting to allow time for the Solicitation Coordinator to provide needed aids or services.
- 1.4. **Questions.** Respondents may submit written questions about this ITB to the Solicitation Coordinator.

- 1.5. **Responses Due.** The response must be received by the State on or before the date and hour designated for the response opening. Responses that are submitted untimely shall be rejected.

## 2. Section 2 -- Award Criteria

- 2.1. **Single Award -- Lowest Cost.** A single contract will be awarded for all line items to the respondent whose response meets the requirements and criteria set forth in this ITB at the lowest cost.

## 3. Section 3 -- Standard Terms of the Solicitation

- 3.1. **Respondent Registration.** Pursuant to Tenn. Code Ann. § 4-56-105 all respondents must be registered prior to the issuance of a contract or a purchase order. Respondents can register online at the State of Tennessee Supplier Portal:

[https://sso.edison.tn.gov/psp/paprd/SUPPLIER/SUPP/h/?tab=PAPP\\_GUEST](https://sso.edison.tn.gov/psp/paprd/SUPPLIER/SUPP/h/?tab=PAPP_GUEST)

- 3.2. **Respondent's Ability to Perform.** The State shall have the right to require evidence of the respondent's ability to perform the services or deliver the goods required pursuant to the terms and conditions of this ITB.
- 3.3. **Quality of Workmanship and Materials.** Unit price responses are requested on goods or services that equal or exceed the specifications, unless the specifications limit the dimensions, brands, or model of goods or services. The absence of detailed specifications or the omission of detailed descriptions shall mean that only the best commercial practices and only first quality goods and workmanship shall be supplied.
- 3.4. **Performance.** The respondent who is awarded a contract will be responsible for delivering the goods or providing the services set out in this ITB. All goods or services are subject to inspection and evaluation by the State.
- 3.5. **Clarifications.** The State reserves the right to conduct clarifications or negotiations with one or more respondents. All communications, clarifications, and negotiations shall be conducted in a manner that is fair and transparent.
- 3.6. **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 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.

- 3.7. **Response Cancellation and Rejection.** The State may cancel this ITB in its entirety and reissue it in whole or in part.

The State may reject any or all responses in its sole discretion. Additionally, the State may reject a response that: (a) qualifies the offer to provide goods or services as required by this ITB; (b) proposes alternative goods or services unless expressly requested by this ITB; (c) involves collusion, consultation, communication, or agreement among respondents; (d) includes information the respondent knew or should have known was materially incorrect; or (e) does not comply with the terms, conditions, specifications, or performance requirements of this ITB.

After the State opens the responses, no price changes shall be permitted except pursuant to target pricing or best and final offer negotiations as specified in this ITB.

- 3.8. **Communications and Contacts.** Prospective respondents must direct communications concerning this ITB to the following person designated as the Solicitation Coordinator:

Kelly Johns | Sourcing Account Management Team Lead  
 Department of General Services, CPO  
 312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower  
 Nashville TN 37243-1102  
 615-741-8852  
 Kelly.X.Johns@tn.gov

Unauthorized contact about this ITB with employees or officials of the State of Tennessee except as detailed in this ITB may result in disqualification from consideration under this procurement process. Notwithstanding the foregoing, respondents may alternatively contact:

Staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, service-disabled veteran owned, businesses owned by persons with disabilities and small businesses as well as general, public information relating to this ITB (visit <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/godbe-general-contacts.html> for contact information); and

The following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and associated federal regulations:

Helen Crowley  
 Department of General Services, CPO  
 312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower

Nashville, TN 37243-1102  
615-741-1035  
[Helen.Crowley@tn.gov](mailto:Helen.Crowley@tn.gov)

- 3.9. **Responses Submitted by Mail.** If submitting a response by mail: (1) all prices must be typed or written in ink on the "Line Details" portion of this ITB; (2) any corrections, erasures, or other alterations to prices must be initialed by the respondent; and (3) the response shall be manually signed by the respondent in ink. Each individual response 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 response opening date. Responses should be mailed in a properly labeled sealed envelope to the following address:

Bidder Services  
Department of General Services, CPO  
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower  
Nashville, TN 37243-1102.

Failure to comply with these requirements may result in rejection of the response.

- 3.10. **Models Included in Response.** All goods identified in the response must be new, of current manufacturer production, and must have been formally announced by the manufacturer or provider of services as being commercially available as of the date of response opening. Goods may include internal refurbished or reconditioned components normally used in the manufacturing process and deemed and warranted and sold as new equipment by the manufacturer.
- 3.11. **Respondent Certification.** By signing or electronically submitting the response, the respondent agrees to the terms and conditions of this ITB and certifies that all goods or services included in the response meet or exceed the Scope or Specifications of this ITB. The respondent agrees that, if it is awarded a contract, it will deliver goods or services that meet or exceed the specifications in this ITB.
- 3.12. **Exceptions or New Terms or Conditions.** Exceptions to terms and conditions or new terms and conditions proposed by the respondent that vary from this ITB may, in the discretion of the State, render the response nonresponsive. A response deemed nonresponsive will not be considered for an award of a contract.
- 3.13. **Conflict of Interest.** The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this ITB:
- a. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
  - b. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
  - c. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6)

months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

- 3.14. **Specifications Govern.** Brands or model numbers identified in the specifications of this ITB are deemed to meet all written specifications. In the event of a conflict between specified brands and models and the written specifications, the conflict shall be resolved in favor of the written specifications.
- 3.15. **Firm Offer.** The response constitutes a firm offer that is irrevocable for ninety (90) days. An award of a contract shall, subject to necessary State approvals, be binding on the respondent without any further action by the respondent.
- 3.16. **F.O.B. Destination.** Respondent's prices shall include delivery of all items F.O.B. destination or as otherwise specified by the State.
- 3.17. **Tax Exemption.** The State of Tennessee is exempt from local, state, and federal excise taxes. These taxes shall not be included in respondent's prices. The successful respondent shall pay all taxes lawfully imposed on it with respect to any goods or services delivered in accordance with this ITB.
- 3.18. **Prompt Pay Discount.** Any prompt pay discounts offered by respondents shall be extended to all authorized users of the contract.
- 3.19. **Fixed Discount or Surcharge.** The percent discount or surcharge per line item must be fixed for the contract's term.
- 3.20. **On-site Inspection.** All respondents should visit the site to take exact measurements and examine the premises to become familiar with any problems or unusual circumstances. No allowances will be made by the State for errors in quotations due to any respondent not visiting the site prior to submitting their response. Respondents shall be responsible for their own measurements.
- 3.21. **Used Equipment.** When this ITB authorizes offers of used items, no used item is acceptable if serial numbers or any other manufacturer's identifying label or markings have been removed, obliterated, or changed in any way.
- 3.22. **Tennessee Contractor License.** Respondents shall comply with Tenn. Code Ann. § 62-6-119 in providing the specified information within this ITB. Any response that does not comply with Tenn. Code Ann. § 62-6-119 shall be rejected.
- 3.23. **Purchase of Materials for Highways or Roadways.** Respondents must comply with Tenn. Code Ann. § 54-5-135.

- 3.24. **Energy Star Products.** Any goods ordered by the State must be Energy Star certified and meet applicable Energy Star specifications for energy efficiency.
- 3.25. **Safety of Chemical Products.** All respondents awarded a contract must maintain, for all of its chemical products available under this Contract, a Safety Data Sheet ("SDS") on the chemical manufacturer's website. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is accessible to the public, free of charge.
- 3.26. **Professional Licensure.** All persons, agencies, firms, or other entities that provide legal or financial opinions, which a respondent provides for consideration and evaluation by the State as a part of a response to this ITB, shall be properly licensed to render such opinions. Upon submitting the response, the respondent (and respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. The State may require any respondent to submit evidence of proper licensure.
- 3.27. **Department of Revenue Registration.** Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this ITB. For purposes of this registration requirement, the Department of Revenue may be contacted at: [TN.Revenue@tn.gov](mailto:TN.Revenue@tn.gov).
- <https://tntap.tn.gov/eservices/>
- 3.28. **Prohibition of Illegal Immigrants.** Any respondent awarded a contract shall comply with Tenn. Code Ann. § 12-3-309 and submit semi-annual attestations to the State.
- 3.29. **Inspection of Procurement File.** All respondents have the right to inspect the procurement file, prior to award, upon completion of the evaluation by the Central Procurement Office. Interested respondents should contact the Solicitation Coordinator following the response opening date or once the file is open for the seven (7) day inspection period. A "Notice of Intent to Award" letter will be sent to all respondents detailing which respondent(s) has been recommended for award and the evaluated award amount(s). Upon request, a reasonable opportunity to inspect the procurement file will be provided to the respondent.
- 3.30. **Protest by Respondent.** Pursuant to Tenn. Code Ann. § 12-3-514, any actual respondent 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: <https://www.tn.gov/generalservices/procurement.html>. If a written protest and a protest bond are not received by the end of the seven-day period to protest then the Solicitation Coordinator will proceed with the contract award.

## GOVERNOR'S OFFICE OF DIVERSITY BUSINESS ENTERPRISE

### Efforts to Achieve Diversity Business Participation

The Governor's Office of Diversity Business Enterprise ("Go-DBE") is the State's central point of contact to attract and assist minority-owned, woman-owned, service-disabled veteran-owned, disabled-owned, and small business enterprises interested in competing in the State of Tennessee's procurement and contracting activities. These diversity business enterprises are defined as follows:

#### Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE)

Businesses that are a continuing, independent, for-profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more individuals in the minority or woman category who were impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, ethnic background, or gender.

#### Service-Disabled Veteran Business Enterprise (SDVBE)

"Service-disabled veteran-owned business" means a service-disabled veteran-owned business located in the State of Tennessee that satisfies the criteria in Tenn. Code. Ann. § 12-3-1102(8). "Service-disabled veteran" means any person who served honorably in active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service-connected, i.e., the disability was incurred or aggravated in the line of duty in the active military, naval or air service.

#### Small Business Enterprise (SBE)

"Small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

#### Disabled Business Enterprise (DSBE)

"Disabled Business Enterprise" means a business owned by a person with a disability that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one (51%) owned and controlled by one (1) or more persons with a disability, or, in the case of any publicly-owned business, at least fifty one percent (51%) of the stock of which is owned and controlled by one(1) or more persons with a disability and whose management and daily business operations are under the control of one (1) or more persons with a disability.

For additional program eligibility information, visit:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/program-eligibility.html>

#### Instructions

As part of this Invitation to Bid, the respondent should complete the Diversity Utilization Plan below. To assist in your effort to seek and solicit the participation of diversity businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at:

<https://tn.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=tn&XID=1215>

directory or by calling Go-DBE toll free at 866-894-5026.

**RESPONDENT'S DIVERSITY UTILIZATION PLAN**

|   |               |               |
|---|---------------|---------------|
| Respondent's Company Name:  |               |               |
| Solicitation Event Name:  |               | Event Number: |
| Respondent's Contact Name:  | Phone:<br>( ) | Email:        |
| Does the Respondent qualify as the diversity business enterprise? ___ Yes ___ No                  |               |               |
| If yes, which designation does the Respondent qualify? ___ MBE ___ WBE ___ DSBE ___ SDVBE ___ SBE |               |               |
| Certifying Agency:  |               |               |

**Estimated level of participation by DBEs if awarded a contract pursuant to this ITB:**

| Diversity Business Information (List all subcontractors, joint-ventures, and suppliers) | % of Contract | Estimated Amount | MBE/ WBE/ SDVBE/ SBE / DSBE Designation | Currently Certified (Yes or No) |
|---|---------------|------------------|---|---------------------------------|
| Business Name:  |               |                  |   |                                 |
| Contact Name:   |               |                  |   |                                 |
| Contact Phone:  |               |                  |   |                                 |
| Business Name:  |               |                  |   |                                 |
| Contact Name:   |               |                  |   |                                 |
| Contact Phone:  |               |                  |   |                                 |

If awarded a contract pursuant to this ITB, we confirm our commitment to make reasonable business efforts to meet or exceed the commitment to diversity as represented in our Diversity Utilization Plan. We shall assist the State in monitoring our performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans and persons with disabilities. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>

We further agree to request in writing and receive prior approval from the Central Procurement Office for any changes to the use of the above listed diversity businesses.

Authorized Signature: \_\_\_\_\_

Date:

Printed Name and Title of Signatory \_\_\_\_\_



#### 4. SCOPE:

- 4.1. **Scope.** The Contractor shall provide all goods or services and deliverables as required, described, and detailed in the Scope or Specifications set forth in the Invitation to Bid and meet all service and delivery timelines as specified by the Invitation to Bid.

#### 4.2. Warranty Clauses:

- 4.2.1. **Warranty.** Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge. Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- 4.3. **Inspection and Acceptance.** The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

#### 5. TERM OF CONTRACT:

- 5.1. **Term of Contract.** This Contract shall be effective on February 01, 2019 ("Effective Date") and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
- 5.2. **Renewal Options.** This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option.
- 5.3. **Term Extension.** The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option.

## 6. PAYMENT TERMS AND CONDITIONS:

- 6.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed ENTER MAX LIABILITY ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- 6.2. **Compensation Firm.** The prices identified in this Contract, whether derived from an awarded published catalog, price list, price schedule, or other mutually agreed upon source shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The prices identified includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- 6.3. **Travel Compensation.** The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- 6.4. **Invoice Requirements.** The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in this Contract. Contractor shall submit invoices and necessary supporting documentation to the State Agency that requested goods or services no later than thirty (30) days after goods or services have been provided.
  - a) Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
    1. Invoice number (assigned by the Contractor);
    2. Invoice date;
    3. Contract number (assigned by the State);
    4. Purchase order number (assigned by the State);

5. Customer account name: The State of Tennessee;
6. Customer account number (assigned by the Contractor to the above-referenced Customer);
7. Contractor name;
8. Contractor Tennessee Edison supplier ID number;
9. Contractor contact for invoice questions (name, phone, or email);
10. Contractor remittance address;
11. Description of delivered goods or services provided and invoiced, including identifying information as applicable;
12. Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
13. Applicable payment methodology of each good or service invoiced;
14. Amount due for each compensable unit of good or service; and
15. Total amount due for the invoice period.

b) Contractor's invoices shall:

1. Only include charges for goods delivered or services provided as described in this Contract and in accordance with payment terms and conditions set forth in this Contract;
2. Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
3. Not include a line item for Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal Property taxes, or income taxes; and
4. Include shipping or delivery charges only as authorized in this Contract.

The timeframe for payment (or any discounts) begins only when the State is in receipt of an undisputed invoice that meets the minimum requirements of this Section.

- 6.5. **Payment of Invoice.** A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- 6.6. **Invoice Reductions.** The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with this Contract, to not constitute proper compensation for goods delivered or services provided.
- 6.7. **Deductions.** The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- 6.8. **Prerequisite Documentation.** The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
  - a) The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State,

payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and

- b) The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

## 7. MANDATORY TERMS AND CONDITIONS:

- 7.1. **Substitute Items Offered by the Contractor.** In the event that an awarded item is no longer being manufactured or is replaced by a functionally equivalent item with superior technological features to the item being replaced, Contractor may offer a substitute item ("Substitute"). The Substitute shall: (a) meet or exceed the functional, technical, and performance characteristics of the item being replaced; (b) not exceed the cost of the item being replaced by more than ten percent (10%); and (c) be available for order on the date Contractor requests to make the substitution. Contractor shall not make any substitutions for awarded items without the State's prior, written approval. Contractor shall submit any proposed substitutions to the Central Procurement Office and include sufficient information to show that criteria (a) -- (c) above are met. The Central Procurement Office may request sample Substitutes for inspection or testing.
- 7.2. **Purchase Order Release.** Agency submission of a purchase order to Contractor authorizes Contractor to deliver goods or provide services.
- 7.3. **Delivery.** Contractor shall provide all goods or services as required and described in this Contract and shall meet all service and delivery timelines specified in this Contract. All quotations shall be F.O.B. destination.
- 7.4. **Required Approvals.** The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- 7.5. **Communications and Contacts.** All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email. All communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address or email address as stated below or any other address provided in writing by a party.

The Contractor:

Contractor  
Contractor's Contact Name & Title

Address  
 Email Address  
 Telephone Number

State of Tennessee:

Department of Health  
 Karen Olive, Director  
 Goods Procurement Program | Procurement Management Office  
 Division of Administration Services  
 Andrew Johnson Tower, 5th Floor  
 710 James Robertson Parkway  
 Nashville, TN 37243  
 p. 615-253-5686  
 Karen.Olive@tn.gov

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- 7.6. **Modification and Amendment.** This Contract may be modified only by a written amendment signed by all parties and approved by all applicable State officials.
- 7.7. **Subject to Funds Availability.** The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- 7.8. **Termination for Convenience.** The State may terminate this Contract for convenience without cause for any reason. The State's election to terminate this Contract for convenience shall be effective upon the date specified and shall not be deemed a breach of contract by the State. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.
- 7.9. **Termination for Cause.** If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity

for breach of this Contract.

7.10. **Assignment and Subcontracting.** The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

7.11. **Conflicts of Interest.** The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

7.12. **Nondiscrimination.** The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

7.13. **Prohibition of Illegal Immigrants.** The requirements of Tenn. Code Ann. § 12-3-309 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.

a) The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information-.html>, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

b) Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an

illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

- c) The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d) The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e) For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

7.14. **Records.** The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

7.15. **Monitoring.** The Contractor's activities conducted and records maintained, pursuant to this Contract, shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

7.16. **Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.

7.17. **Strict Performance.** Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

7.18. **Independent Contractor.** The parties shall not act as employees, partners, joint ventures, or associates of one another. The parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party are not employees or agents of the other party.

- 7.19. **Patient Protection and Affordable Care Act.** The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- 7.20. **Limitation of State's Liability.** The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.
- 7.21. **Limitation of Contractor's Liability.** In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Estimated Liability amount and as may be amended. Except as set forth below, in no event will the Contractor be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- 7.22. **Hold Harmless.** 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 to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- 7.23. **HIPAA Compliance.** The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a) Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b) Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
  - c) The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

- 7.24. **Tennessee Consolidated Retirement System.** Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, et seq., the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, et seq., accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- 7.25. **Tennessee Department of Revenue Registration.** The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 -- 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- 7.26. **Debarment and Suspension.** The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b) have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c) are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d) have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- 7.27. **Force Majeure.** "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the party except to the extent that the non-performing party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- 7.28. **State and Federal Compliance.** The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- 7.29. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 -- 407.
- 7.30. **Entire Agreement.** This Contract is complete and contains the entire understanding between the parties relating to its subject matter, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties, whether written or oral.
- 7.31. **Severability.** If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- 7.32. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- 7.33. **Incorporation of Additional Documents.** Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a) any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b) this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
  - c) any clarifications of or addenda to the Contractor's response seeking this Contract;
  - d) the Invitation to Bid, as may be amended, requesting responses in competition for this Contract;
  - e) any technical specifications provided to respondents during the procurement process to award this Contract; and,
  - f) the Contractor's response seeking this Contract.
- 7.34. **Iran Divestment Act.** The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to

Tenn. Code Ann. § 12-12-106.

### 7.35. Insurance Requirements:

- 7.35.1. **Insurance.** Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the

Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

**7.35.2. Workers' Compensation and Employer Liability Insurance.**

- a) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
  - b) Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or
  - c) In an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
  - d) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 -- 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
    1. The Contractor employees fewer than five (5) employees;
    2. The Contractor is a sole proprietor;
    3. The Contractor is in the construction business or trades with no employees;
    4. The Contractor is in the coal mining industry with no employees;
    5. The Contractor is a state or local government; or
    6. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

**7.35.3. Commercial General Liability Insurance.**

- a) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability

of another assumed in a business contract).

- b) The Contractor shall maintain bodily injury/property damage with a combined single-limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

7.35.4. **Automobile Liability Insurance.** The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles). The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

7.36. **Major Procurement Contract Sales and Use Tax.** Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

## 8. SPECIAL TERMS AND CONDITIONS:

8.1. **Conflicting Terms and Conditions.** Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

8.2. **Confidentiality of Records.** Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

8.3. **Prohibited Advertising or Marketing.** The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

## Specifications for Hologic Aptima HIV and HCV Quant DX Assays and HSV 1 & 2 Assay

1. Vendor shall supply all reagents required to test human specimens to include specimen diluent, calibrators and quality control. Must be an *in vitro* nucleic acid amplification assay for:
  - a. The detection and quantitation of hepatitis C virus (HCV) RNA in human serum and/or plasma specimens using the Panther instrument.
  - b. The detection and quantitation of Human Immunodeficiency Virus (HIV) RNA in human serum and/or plasma specimens using the Panther instrument.
  - c. The detection and differentiation of Herpes Simplex Virus (HSV) 1 and HSV 2 in anogenital lesions specimens using the Panther instrument.
2. Assays must have dual use by supplying both detection and quantitation of HIV and HCV respectively. The detection functions of both assays will aid in diagnosis for either disease. The quantitation functions will aid in monitoring and managing of infected patients.
3. Contract will also include the following consumables for an additional charge:
  - a. Specimen Aliquot Tubes (SAT)
  - b. Transport Tube Cap
4. The following ancillary items should be supplied on an as needed basis at no additional charge and include the following;
  - a. Aptima Specimen diluent
  - b. Aptima Specimen Diluent Kit
  - c. Calibrators Kit qHIV (positive calibrator)
  - d. Calibrators Kit qHIV (high/low positive calibrator and negative calibrator)
  - e. Aptima HCV Quant Dx Control Kit (5 runs)
  - f. Aptima HCV Quant Dx Calibrator Kit (5 runs)
  - g. Aptima Herpes Simplex Virus 1 & 2 Controls Kit



# Quote

August 24, 2018

TN Department of Health  
 Attn: Paula Gibbs  
 Assistant Dir. Microbiology  
 820 Hart Lane  
 Nashville, Tennessee 37216 USA  
 Account #: 158555

Dear Paula Gibbs,

Thank you for your interest in Hologic's line of products. We are pleased to quote the following pricing and annual commitment.

**APTIMA Products**

Term: 60 Months

| Product   | Annual Test Volume | Test Price |
|-----------|--------------------|------------|
| HSV       | 1,500              | \$ 20.00   |
| HIV Quant | 120                | \$ 45.00   |
| HCV       | 3,000              | \$ 35.00   |

The committed volume above may be comprised of any of the following kit types or sizes:

| Product Number | Product Description  | Kit Size | Price/Kit   |
|----------------|--|----------|-------------|
| PRD-03568      | Aptima Herpes Simplex Viruses 1 & 2 Assay Kit (AHSV 1 & 2) | 100      | \$ 2,000.00 |
| PRD-03506      | Aptima HCV Quant Dx Assay Kit                              | 100      | \$ 3,500.00 |

Additional tests that will be available to you include:

| Product Number | Product Description                         | Kit Size | Price/Reportable |
|----------------|---|----------|------------------|
| PRD-03000-CPR  | APTIMA HIV Quant Assay, Cost Per Reportable | 100      | \$45.00          |

Non-Committed items available to you at the prices listed below include the following:

| Product Number | Product Description   | Price        |
|----------------|---|--------------|
| PRD-03569      | Aptima Herpes Simplex Viruses 1 & 2 Controls Kit                            | No Charge    |
| PRD-03566      | Calibrators Kit qHIV (positive calibrator)                                  | No Charge    |
|                | Calibrators Kit qHIV (high/low positive calibrator and negative calibrator) | No Charge    |
| PRD-03567      |   | No Charge    |
| PRD-03706      | Aptima HCV Quant Dx Control Kit (5 runs)                                    | No Charge    |
| PRD-03707      | Aptima HCV Quant Dx Calibrator Kit (5 runs)                                 | No Charge    |
| 503762         | Specimen Aliquot Tubes (SAT)  | 100 \$ 30.00 |
| 504415         | Transport Tube Cap  | 100 \$ 10.00 |
| PRD-03503      | Aptima Specimen diluent   | No Charge    |
| PRD-03654      | Aptima Specimen Diluent Kit   | No Charge    |

**This document is provided for quoting purposes only. To take advantage of this pricing, Customer and Hologic must enter into a signed agreement. Payment terms: 30 days. Shipping charges to be paid by Customer. This offer is valid for 90 days from the date hereof.**

If you should need further assistance, do not hesitate to call me personally at (615) 686-8803

Sincerely,

Paula Stokes  
 Hologic Account Executive

June 19, 2018

To Whom It May Concern:

This letter is to verify that Hologic, Inc. ("Hologic") is the sole source of the instrument system, assay kits, and associated kits and reagents listed below.

**Instrument System**

Cat. #303095 Panther® System

**Assay Kits for Use on the Instrument System**

Cat. #303094 Aptima Combo 2® Assay for the detection of *Chlamydia trachomatis* and *Neisseria gonorrhoeae*, Kit – Panther System (250 test kit)

Cat. #302923 Aptima Combo 2 Assay for the detection of *Chlamydia trachomatis* and *Neisseria gonorrhoeae*, Kit – Panther System (100 test kit)

Cat. #303585 Aptima HPV Assay for the detection of human papillomavirus (HPV), Kit – Panther System (250 test kit)

Cat. #303570 Aptima HPV Assay for the detection of human papillomavirus (HPV), Kit – Panther System (100 test kit)

Cat. # 303537 Aptima *Trichomonas vaginalis* Assay for the detection of *T. vaginalis*, Kit – Panther System (250 test kit)

Cat. #303536 Aptima *Trichomonas vaginalis* Assay for the detection of *T. vaginalis*, Kit – Panther System (100 test kit)

Cat. # PRD-04037-D Aptima Zika Virus Assay, Kit – Panther System (1000 test kit)\*

Cat. # PRD-03565 Aptima HIV-1 Quant Assay, Kit – Panther System (100 test kit)

Cat. # PRD-03705 Aptima HCV Quant Assay, Kit – Panther System (100 test kit)

Cat. # PRD-03568 Aptima HSV 1 & 2 Assay, Kit – Panther System (100 test kit)

Cat. # PRD-03868 Aptima HBV Quant Assay, Kit – Panther System (100 test kit)

The Aptima assays have been validated for use with the Panther system. The firmware in the Panther system is necessary for running the Aptima assays and is unique to Hologic. Hologic is the sole source of this firmware.

**Kits and Reagents Associated with the Assay Kits**

The following kits and reagents were developed and qualified to be used with the Aptima assays and may include proprietary technology. Hologic is the sole source of these kits and reagents.

Cat. #301040 Aptima Urine Specimen Collection Kit for Male and Female Urine Specimens

Cat. #301041 Aptima Unisex Swab Specimen Collection Kit for Endocervical and Urethral Swab Specimens

Cat. #PRD-03546 Aptima Multitest Swab Specimen Collection Kit

Cat. #301154C Aptima Specimen Transfer Kit

Cat. #301048 Aptima Auto Detection Reagent Kit

Cat. #301110 Aptima Controls Kit

Cat. #303001 Aptima Assay Fluids Kit

Cat. #303000 Aptima Auto Detect Kit

Cat. #303096 Panther System Run Kit

Cat. #303085 Advanced Cleaning Solution

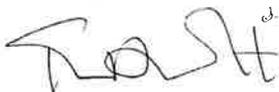
Cat. #303099 Panther System Start-Up kit

Cat. #PRD-03455 Panther Run Kit for Real Time Assays (for real time assays only)

Hologic does not sell through dealers or distributors in the U.S. All sales are made directly to end users. Representative patents covering the above products in the U.S. include the following: 6,245,519, 6,910,720, 7,381,811, 9,523,133 9,598,723, and 9,624,557. For additional patent information concerning the above products, please visit <https://www.hologic.com/patent-information>.

If you have any questions or require additional information, please call Hologic Customer Service at 1.800.442.9892.

Sincerely,



Thomas West  
Division President, Diagnostics

*\*The U.S. Food and Drug Administration (FDA) has issued an Emergency Use Authorization (EUA) to authorize the use of the Aptima Zika Virus Assay on the Panther System for the in vitro qualitative detection of RNA from Zika virus in human serum and plasma specimens. This EUA will terminate when the Secretary of Health and Human Services' declaration terminates, unless the FDA revokes the EUA sooner. The Customer acknowledges and agrees that the Aptima Zika Virus Assay is only available for sale and use while the EUA is in effect. Hologic reserves the right to discontinue the Aptima Zika Virus Assay product at any time.*

**Gen-Probe Sales & Service, Inc. is a subsidiary of Hologic, Inc.**