Master Agreement - E194 - 299 – 08

RENEWAL

Document Id: 299

Document Name: **Diagnostic Test Chlamydia & Gonorrhea**

Procurement Folder: 591

Procurement Type: IFB

Original Effective Begin Date: 2/23/2006

Original Expiration Date: 1/31/2008

Current Effective Date: 2/1/2008

Current Expiration Date: 1/31/2009

Contact Information

Tina M. Mizelle

Phone: (804) 786-1603

Email: tina.mizelle@dgs.virginia.gov

Fax: (804) 786-5413

Thresholds

Minimum Order Amount: $100.00

Minimum Order Value: Yes

Maximum Order Amount: $0.00

Maximum Order Value: No

Authorized Departments

Department of General Services, Division of Consolidated Laboratory Services and Virginia Department of Health

Spending Limit: $0.00

No Limit: Yes

Vendor

Legal Name: GEN-PROBE

Contact: Customer Svc Dept.

Vendor Contact Email: customerservice@gen-probe.com

Phone: 800-523-5001 ext.5329

Contracts Dept.: contractadmin@gen-probe.com

Fax: 800-288-3141

Technical Support: technicalsupport@gen-probe.com

Local Rep.: Ted Whitford, Technical Sales Representative

Local Rep. Email: tedw@gen-probe.com

Renewal Periods

Line Number: 1

~~Renewal Period Length: 1~~ ~~Renewal Period Unit: Years~~

~~Effective Date: **2/1/2008**~~ ~~Expiration Date: **1/31/2009**~~

~~Notification Days Prior to Expiration: 90~~

Line Number: 2

Renewal Period Length: 1 Renewal Period Unit: Years

Effective Date: **2/1/2009** Expiration Date: **1/31/2010**

Notification Days Prior to Expiration: 90

Terms And Conditions

This Master Agreement shall include all General and Special Terms and Conditions per the original Invitation For Bids Document.

CONTRACT TERM

THE INITIAL TERM OF THIS CONTRACT WILL BE FOR THREE YEARS BEGINING APPROXIMATELY February 10, 2006 through January 31, 2008.

RENEWAL OF CONTRACT

This contract may be renewed by the Commonwealth upon written agreement of both parties for two (2) additional successive one year periods under the terms and conditions of the current contract, and at a reasonable time (approximately 90 day) prior to expiration.

MINIMUM ORDER

Orders will be F. O. B. delivery to ordering agency within the Commonwealth of Virginia. For orders of less then $100.00 the contractor will be permitted to add actual transportation cost (prepaid) to invoice for payment, or the agency may purchase such orders off contract from other sources. Partial shipments of less than minimum order value which are made at the option of the contractor shall be made F.O.B. Destination with no transportation chares added. If at the agency's request shipments are below the minimum order value, the contractor may add actual transportation to invoice for payment.

PURCHASE REPORT

The Contractor shall furnish the Division of Purchases and Supply reports of the total dollar

volume of purchases made under this contract and the total number of each contract item ordered under this contract in accordance with the following schedule: 1. The first report shall include purchases made in the first six months of the contract. 2. For contracts of one year, the Contractor shall furnish a second report listing the purchases made in the first nine months of the contract. In addition, for contracts exceeding one year, the Contractor shall furnish reports at the end of each consecutive twelve month period and 90 calendar days prior to the expiration date of the contract. All reports shall be delivered to the Division of Purchases and Supply no later than 14 calendar days after the request has been made by the Division. Reports shall be sent to the attention of the appropriate contract officer. Failure to submit this information in the required time may result in disqualification from bidding on the next solicitation for this contract. Each report shall be in two segments: (1) One to report the total dollar volume of purchases and the total number of each item ordered by State agencies, institutions and departments; (2) One to report the total dollar volume of purchases and number of each item ordered by all other Commonwealth public bodies (e.g. cities, towns, counties, schools and authorities, etc.), if authorized users of this contract

PRICE CHANGES

Price adjustments may be permitted only for changes in the Contractor's cost of materials. Consumers Price Indices, Producers Price Indices or other appropriate indices will be used as a guide to determine price increases or decreases. No price increases will be authorized for 365 calendar days after the effective date of the contract. Price escalation may be permitted only at the end of this period and each 365 days thereafter and only where verified to the satisfaction of the purchasing office. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth. Contractor shall give not less than 30 days advance notice of any price increase to the purchasing office. Any approved price changes will be effective only at the beginning of the calendar month following the end of the full 30 day notification period. The Contractor shall document the amount and proposed effective date of any general change in the price of materials. Documentation shall be supplied with the Contractor's request for increase which will: (1) verify that the requested price increase is general in scope and not applicable just to the Commonwealth of Virginia; and (2) verify the amount or percentage of increase which is being passed on to the Contractor by the Contractor's suppliers. The purchasing office will notify the using agencies and Contractor in writing of the effective date of any increase which it approves. However, the Contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The Contractor is further advised that decreases which affect the cost of materials are required to be communicated immediately to the purchasing office.

CONTRACT CANCELLATION

The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective

date of cancellation.

DELIVERY SERVICE

Delivery of all requested contract items shall be made within 10 calendar days after receipt of purchase order. Contractor shall carry an adequate stock to insure such delivery service for the duration of the contract.

EQUIPMENT

Please list equipment to be supplied for this contract. The contractor shall supply equipment at no charge to the DCLS. Equipment may be added to or removed from this contract at anytime, so long as performance, reliability and service care are not reduced. Title shall at all times remain with the contractor. Maintenance is the responsibility of the title holder. The user will be responsible for all supplies and consumables. the contractor may add or remove equipment by submitting a letter to the DCLS with a copy to the contract officer with a description of equipment, with its serial number and stating what action is being taken and when. The vendor shall perform, at no cost to the DCLS, one annual preventive maintenance check for each instrument provided.

INSTALLATION

The vendor shall be responsible for all shipping and installation costs for instrumentation or any component needed to perform the assay. The vendor shall deliver all components necessary to perform testing within two weeks from the date of the signed agreement. The vendor shall unpack, install and validate the assay system by successfully analyzing the assay's quality control at two testing sites in Richmond, Va. and Abingdon, Va. The vendor shall be responsible for all costs associated with the removal of instrumentation at termination of this contract.

TRAINING

The vendor shall be responsible for all costs associated with vendor site training for one (1) DCLS employee. This training shall occur within two (2) weeks from the date of successful installation and validation.

INSTRUMENTATION

The vendor shall be responsible for the cost of any instrumentation and non-consumable components needed to accomplish the workload as stated under section 34 entitled "workload". The vendor shall supply a list of costs for consumable replacement parts for all instrumentation and components. If method requires more than two (2) manual pipetting steps, then the vendor will supply a semi-automated or automated pipetting system.

TECHNICAL SUPPORT

The vendor shall provide, at no cost to the DCLS, telephone technical service to the DCLS staff as needed from 8:00 am EST to 5:00 pm est. The vendor shall provide, at no cost to the DCLS, technical support personnel to repair equipment. The vendor will be responsible for the shipment, installation, removal and maintenance of malfunctioning or contaminated equipment.

Equipment should be repaired or replaced within two (2) working days of notification. The vendor shall provide, at no cost to the DCLS, one technical manual for each instrument provided.

SHIPPING

The vendor shall be responsible for all costs to properly deliver assay and collection kits to DCLS on a periodic basis (monthly). The vendor will be responsible for the costs associated with the shipment of sample collection and testing materials. Materials should be received by the laboratory with at least a 6 month shelf life.

AUDIT

The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

CHANGES TO CONTRACT

Changes can be made to the contract in any of the following ways: (1.) The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract. (2.) The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods: (2a.) By mutual agreement between the parties in writing; or (2b.) By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or (2c.) By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia

Commodity Information

Line: 1

Commodity: 26936

Description: Diagnostic Agents

Manufacturer Part Number: 1130-AC2 Tigris Pack

Extended Description: DCLS is requesting responses from qualified vendors to provide a Food and Drug Administration (FDA) cleared/approved Nucleic Acid Amplification Test (NAAT) kit and necessary instrumentation for the diagnostic detection of C. Trachomatis and N. Gohorrhea. See Specifications here within for details.

Unit Price: **$10.00 per Test – with a breakdown of: Assay Cost Per Test $8.75; Collection devices $62.50 per box of 50 or $1.25 per each**

Delivery: 7 days ARO

Free On Board Name: FOB Destination-Freight Prepaid

Ship To

Attention: **Sean Kelly, Group Manager**

Molecular Detection and Characterization

Division of Consolidated Laboratory Services,
600 N. 5th Street, Richmond, VA 23219

Free On Board Name: FOB Destination-Freight Prepaid

Part Number: 1130-AC2 TIGRIS PACK

Hazardous Materials: ITEM NO. 1048-APTIMA AUTO DETECT

Special Handling: GOOD LABORATORY HANDLING PRACTICES

COMMONWEALTH OF VIRGINIA-DCLS, Richmond, VA
Customer No. 3030171000

GEN-PROBE REAGENT ORDER CATALOG NUMBERS FOR APTIMA COMBO 2 on DTS TIGRIS PLATFORM

Based on 7,000 tests/month (<400 tests/day)

Catalog No.	Description	Contract price[1]	Est. Monthly Quantities	
301130B	APTIMA Multi-Pak Kit (1000 Tests/Kit)	$8,750.00	7	
301133	APTIMA Fluids Kit	N/C	10	
301048-01	APTIMA Detection Kit	N/C	10	
301110-01	APTIMA Controls Kit	N/C	1	
301191	Tigris Run Kit	N/C	1 every 2 mo.	
301041	APTIMA Unisex Coll. Kit (50/Box)	$62.50	124	
301040	APTIMA Urine Coll. Kit (50/Box)	$62.50	12	
	Tecan Disposable Tips	See Below		

[1] Based on Contract Agreement Effective Dates: 2/1/2008-1/31/2009

Disposable Tips (Ordered directly from Tecan U.S.)

Tecan U.S.
P.O. Box 13953
Research Triangle Park, NC 27709
800-338-3226

Catalog. No. 10612513 Case: 9600 Tips (10 boxes of 960/box) Est. Quant.: 1/mo.

PRICING FOR VIRGINIA DEPARTMENT OF HEALTH

GEN-PROBE

August 1, 2006

Virginia Department of Health
ATTN: Casey Riley
Division of Disease Prevention
109 Governor Street
Richmond, VA, 23218-2448

To: Mr. Riley

From: Gen-Probe Sales & Services

Listed below are the pricing and terms for Gen-Probe's Aptima family of products (individually or collectively, "Reagents").

Product Number	Product Description	Price/Kit	Monthly Purchase Quantity	Extended Monthly Price
1032	Aptima Combo 2 Assay (100 test)	$ 925.00	5.0	$ 4,625.00
1040	Aptima Combo 2 Urine Collection	$ 62.50	As Needed	$ -
1041	Aptima Combo 2 Swab Collection	$ 62.50	10.0	$ 625.00
1048	Aptima Combo 2 AutoDetect	$ 45.00	2.0	$ 90.00
			TOTAL:	$ 5,340.00

Instrumentation/equipment "system" required will include the following:

Quantity & Instrumentation	Description
1 x 302280	DTS 400 System with Windows XP
2 x 5524	SB100™ Dry Heat Bath/Vortexer

Term of Agreement: August 1, 2006 through July 31, 2011

PAYMENT AND SHIPPING TERMS

Payment Terms	Net 30 days from Date of Invoice
Freight Terms	FOA Origin PP & Added
Delivery	7 Business days After Receipt of Order

1 **Unauthorized Use.** Customer agrees to use the Equipment solely in conjunction with Reagents or other supplies expressly authorized by Gen-Probe.

2 **Title.** Gen-Probe shall hold exclusive title to the Equipment and may assign, transfer, pledge or sell Gen-Probe's interest in the Equipment without notice to or approval from Customer. Gen-Probe is Gen-Probe Sales & Service, Inc., a wholly-owned distribution subsidiary of Gen-Probe Incorporated. Customer shall not remove any markings from the Equipment, which identify Gen-Probe as the owner. Customer shall keep the Equipment free from any and all liens, claims and encumbrances and shall not lease, sublease, transfer, sell, or assign the Equipment. Customer does hereby make, constitute and appoint Gen-Probe as Customer's true and lawful Attorney-in-Fact for the sole purpose of executing and filing, in the name of Customer, a UCC-1 statement in favor of Gen-Probe covering the Equipment.

3 **Warranty and Service.** Gen-Probe warrants that the Reagents shall meet the required performance specifications to perform the desired tests as described in the User Manuals. The extent of Gen-Probe's liability under this warranty is limited to replacing any defective Reagent. Gen-Probe does not manufacture the Equipment. The Equipment is fully warranted through manufacturers as described in the Equipment Operator's Manual provided to Customer and such warranties extend to Gen-Probe's customers. Gen-Probe warrants that Gen-Probe may, at its option, repair or replace any defective Equipment. The foregoing warranty shall not apply in the event that: (a) Customer has not used and maintained the Equipment in accordance with the guidelines set forth in the Equipment Operator's Manual provided to Customer; (b) if Customer has used the Equipment with reagents and supplies not expressly authorized by Gen-Probe; (c) if the Equipment is repaired or altered by a party other than Gen-Probe without Gen-Probe's prior written approval; or (d) if the Equipment has been subject to misuse, negligence, or accident.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

4 **Maintenance and Repair.** Customer agrees to maintain the Equipment in good operating condition and assumes all risks of loss and damage to

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the Equipment, except as covered in Warranty and Service, above. In the event of loss or damage, Customer will pay Gen-Probe the depreciated price of the lost or damaged item of Equipment.

5 **Limitation of Liability.** EXCEPT FOR PAYMENTS DUE PURSUANT TO PAYMENT AND SHIPPING TERMS (ABOVE), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR COSTS INCURRED BY THE OTHER PARTY IN CONNECTION WITH THE USE OF THE EQUIPMENT OR REAGENTS BY CUSTOMER OR ANY OTHER PERSON UTILIZING EQUIPMENT NOR SHALL GEN-PROBE BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE REAGENTS OR EQUIPMENT. Such limitation is intended to apply without regard to whether such damages are claimed, asserted or brought in an action or claim sounding in tort or contract, or on the warranty, or under any other law or form of action.

6 **Default.** The occurrence of any of the following events shall constitute a default ("Default") by Customer: (a) non-payment when due of any amount payable by Customer in accordance with this Agreement; (b) Customer's failure to perform any covenant or condition of this Agreement; Gen-Probe shall be entitled to recover from Customer any and all expenses and damages which Gen-Probe sustains by reason of said Default including but not limited to reasonable attorneys' fees and all expenses of repossession, removal, storing, and disposition of the Equipment. The remedies and rights specified herein shall not be exclusive and shall be cumulative. The exercise or the non-exercise of any right or remedy shall not limit or prejudice Gen-Probe as to that right or remedy or as to any other rights or remedies provided by applicable law.

7 **CONFIDENTIALITY.** Customer acknowledges the existence of the trademarks, copyrights, patents, and other intellectual property rights relating to the use or subsisting in or in connection with the System including software, hardware, and other parts thereof in which Gen-Probe or a third party has an interest are, and shall remain, the sole property of Gen-Probe or the respective third party. Customer shall not at any time dispute Gen-Probe's ownership thereof. Customer shall hold in confidence all materials or information disclosed to it by Gen-Probe hereunder ("Confidential Information"). In addition to the foregoing, Gen-Probe Confidential Information includes the operator's manual, the System price and payment terms. Customer agrees to take precautions to prevent the unauthorized disclosure or use of Confidential Information consistent with precautions used to protect its own confidential information, but in no event less than reasonable care.

The obligations of Customer hereunder shall not apply to materials or information which (a) is now, or hereafter becomes, through no act or failure to act on the party of Customer, generally known or available; (b) is known by Customer at the time of receiving such information as evidenced by its records; (c) is hereafter furnished to Customer by a third party, as a matter of right and without restriction on disclosure; (d) is independently developed by Customer without any breach of this Agreement; or (e) is the subject of a written permission to disclose provided by Gen-Probe. Notwithstanding any other provision of this Agreement, disclosure of Confidential Information shall not be precluded if such disclosure: (i) is in response to a valid order of a court or other governmental body or is otherwise required by law; provided, however, that Customer shall first have given notice to Gen-Probe and shall have made a reasonable effort to obtain confidential treatment of such Confidential Information, (ii) is otherwise necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.

8 Any additional terms and conditions accompanying subsequent Customer Purchase Order or other documentation must be agreed upon, in writing, and signed by both parties in order to be valid.

Should you have any questions, please call your local Sales Representative at 800-523-5001.

Gen-Probe:

R William Bowen
VP & General Counsel

August 1, 2006
Date

Customer:

Signature and Title

8/9/06
Date

KMR 8/10/06
ENTERED
E5160158

GEN-PROBE
10210 Genetic Center Drive
San Diego, CA 92121-4362
(858) 410-8000
(800) 523-5001 FAX: (800) 288-3141
(800) 342-7441 (in Canada)

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Sales Representative: Ted Whitford
Territory: 550 / ext: 5329
Customer #: 1100000262
Apply to Contract #: LOI dated 8/1/2006

Date: August 21, 2006

Billing Address

Virginia Department of Health
ATTN: Accounts Payable
Division of Disease Prevention
109 Governor Street
Richmond, VA 23218-2448
804-864-8030

Shipping Address

Lynchburg City Health Department
ATTN: Yvonne Walker, Lab Manager

1900 Thomson Drive
Lynchburg, VA 24501
434-947-6803

Instrumentation/equipment required for the Aptima assay at Lynchburg City Health Department, located in Lynchburg, VA will include the following:
(Note: Instrumentation may include reconditioned or refielded systems)

Quantity & Instrumentation	Description
1 x 900832	Leader HC Computer w/Windows XP
1 x 5107	Barcode Scanner
1 x 901019	Aptima Assay Worklist Editor

This pricing will be entered into your current agreement with Gen-Probe and will be valid through July 31, 2011

If you should need further assistance do not hesitate to call me personally at (800) 523-5001, extension 5329.

Ted Whitford 8/21/06
Sales Representative: Ted Whitford

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