



MISSISSIPPI STATE DEPARTMENT OF HEALTH

SOLICITATION: Invitation for Bid (IFB)
Commodities and Equipment

SOLICITATION NUMBER: RFX #3160006302

DESCRIPTION: Reagent Rental Agreement for Mycobacteria species
from clinical specimens

ISSUE DATE:

BID CLOSING LOCATION: Mississippi State Department of Health
570 E. Woodrow Wilson
Jackson, Mississippi 39216

BID COORDINATOR: Jennifer Dotson
Telephone: 601.576.7627
Email: Jennifer.dotson@msdh.ms.gov

OPENING DATE AND TIME: December 12, 2023, 10:30 AM CST

SECTION 1
GENERAL INSTRUCTIONS

1.1 Bid Acceptance Period

The original and two (2) copies of the bid form, three (3) copies total, shall be signed and submitted in a sealed envelope or package to 570 East Woodrow Wilson Dr, Jackson, MS 39216, no later than the time and date specified for receipt of bids. Timely submission of the bid form is the responsibility of the bidder. Bids received after the specified time shall be rejected and returned to the bidder unopened. The envelope or package shall be marked with the bid opening date and time, and the number of the invitation for bid. The time and date of receipt shall be indicated on the envelope or package by the Mississippi Department of Health (MSDH). Each page of the **BID FORM (Attachment B)** and all attachments shall be identified with the name of the bidder. Failure to submit a bid on the bid form provided shall be considered just cause for rejection of the bid. Modifications or additions to any portion of the procurement document may be cause for rejection of the bid. The MSDH reserves the right to decide, on a case-by-case basis, whether to reject a bid with modifications or additions as non-responsive. As a precondition to bid acceptance, the MSDH may request the bidder to withdraw or modify those portions of the bid deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.

No facsimile (Faxed) bids will be accepted. The cover letter must be signed by a person with the authority to bind the bidder and must accompany your bid. Failure to comply with this provision, any other provision of this Invitation to Bid, or any provision of state or federal law or regulation regarding the submission of bids will cause the bid to be rejected.

In addition, it is requested that bidders also submit a bid online in the State of Mississippi electronic procurement system, MAGIC, however, it is not mandatory. To submit bids, bidders must be registered in MAGIC system and have an I.D. number and password assigned at the time of registration. Technical assistance may be found at <http://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/>

Sealed bids will be considered if they are delivered electronically through the MAGIC system by the time and date set for receipt of bids. If a bidder submits both a paper bid and an online (electronic) bid, the paper bid will take precedence if there is a discrepancy between the two.

1.1.1 Timeline

Invitation for Bid (IFB) Issue Date:	Monday November 20, 2023
Second Ad:	Monday November 27, 2023
Questions to MSDH:	Tuesday, November 28, 2023, by 10:00 AM CST
Anticipated Posting of Written Answers to Questions	Thursday, November 30, 2023
Bid Package Submission Deadline:	December 12, 2023, 10 AM CST
Opening:	10:30 AM CST
Anticipated Notice of Intent to Award	December 18, 2023
PPRB Submission	January 3, 2024

1.1.2 Communications Questions

Any questions and/or communication regarding this Request should be submitted to Jennifer Dotson, Chief Procurement Officer, at Jennifer.Dotson@msdh.ms.gov. Please include a reference to Reagents Rental IFB RFx#3160006302 in the subject line when submitting communications regarding this solicitation.

Any questions regarding this IFB must be submitted by email to:

Jennifer.Dotson@msdh.ms.gov by , November 28, 2023 by 10:00 AM CST.

Written responses, any amendments or communications for all vendors will be posted on the MSDH website. It is the vendor's responsibility to periodically check the website for any amendments, responses, updates, or communications.

1.1.3 Late Submissions

A bid received at the place designated in the solicitation for receipt of bids after the exact time specified for receipt will not be considered unless it is the only bid received, or it is received before award is made and was sent by registered or certified mail not later than the fifth (5th) calendar day before the date specified for receipt of bids. It must be determined by the MSDH that the late receipt was due solely to mishandling by the MSDH after receipt at the specified address.

The only acceptable evidence to establish the date of mailing of a late bid is the U. S. Postal Service postmark on the wrapper or on the original receipt from the U. S. Postal Service. If the postmark does not show a legible date, the contents of the envelope or package shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression, exclusive of a postage meter impression, that is readily identifiable without further action as having been supplied and affixed by the U.S. Postal Service on the date of mailing. Bidders should request postal clerks to place a hand cancellation postmark (often called a bull's eye) on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the office identified for bid opening is the time and date stamp of that office on the bid wrapper or other documentary evidence of receipt used by that office.

1.2 Pre-Bid Conference (Optional) There will not be a Pre-Bid Conference**1.3 Expenses Incurred in Preparing Bid**

MSDH accepts no responsibility for any expense incurred by the bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the bidder.

1.4 Bid Form

All pricing must be submitted on the bid form (**Attachment B**). Failure to complete and/or sign

the bid form may result in the bidder being determined nonresponsive.

1.4.1 Bidder Certification

The bidder agrees that submission of a signed bid form is certification that the bidder will accept an award made to it as a result of the submission.

1.5 Registration with Mississippi Secretary of State

By submitting a bid, the bidder certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being offered an award. Sole proprietors are not required to register with the Mississippi Secretary of State.

1.6 Debarment

By submitting a bid, the bidder certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi or Federal government and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi.

1.7 Additional Information

Questions about the contract portions of the procurement document must be submitted in writing to Jennifer Dotson at Jennifer.Dotson@msdh.ms.gov. Questions concerning the technical portions of the procurement document should be directed to Jennifer Dotson at Jennifer.Dotson@msdh.ms.gov. Bidders are cautioned that any statements made by contact persons that cause a material change to any portion of the bid document shall not be relied upon unless subsequently ratified by a formal written amendment to the bid document.

1.8 Type of Contract

Compensation for services will be in the form of a firm fixed-price agreement.

1.9 Written Bids

All bids shall be in writing.

SECTION 2

PURPOSE

2.1 Purpose

The Mississippi State Public Health Laboratory (MPHL) proposes to purchase reagents and kits to perform automated, liquid culture system for the recovery of Mycobacteria and the susceptibility testing of Mycobacterium tuberculosis complex.

It is understood that any award/contract resulting from this solicitation may require approval by the Public Procurement Review Board. If any award/contract resulting from this solicitation is not approved by the Public Procurement Review Board, it is void and no payment shall be made.

2.2 Bid Specifications

The Contractor shall deliver products/ render the services listed in the Bid Specifications found in **Attachment A**.

2.3 Term

The term of the contract shall be for a period of five (5) years. **PRICES SHALL REMAIN THE SAME throughout the term except in accordance with the General Conditions attached hereto. Anticipated start date is February 7, 2024.**

SECTION 3

INSURANCE

3.1 Insurance

Contractor represents that it will maintain workers' compensation insurance which shall inure to the benefit of all Contractor's personnel provided hereunder, comprehensive general liability or professional liability insurance, with minimum limits of \$1,000,000 per occurrence and fidelity bond insurance with minimum limits of twice the amount of the yearly contract. All general liability, professional liability, and fidelity bond insurance will provide coverage to the MSDH as an additional insured.

SECTION 4

BID SUBMISSION REQUIREMENTS

4.1 Bid Evaluation

Bids will be evaluated based on the requirements set forth in RFX, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable where possible. This Invitation for Bids sets forth the evaluation criteria to be used. No criteria will be used in an evaluation that is not set forth in this Invitation for Bids. Only bidders who are found responsive and responsible will have their bids considered.

4.1.1 Responsive Bidder

Bidder must submit bid which conforms in all material respects to this Invitation for Bids, as determined by MSDH.

4.1.2 Minimum Qualifications to be Deemed Responsive

The bidder must meet the requirements and criteria set forth in the Invitation for Bids and Specifications to be deemed responsive.

4.1.3 Nonconforming Terms and Conditions

A bid response that includes terms and conditions that do not conform to the terms and conditions in the bid document is subject to rejection as non-responsive. The MSDH reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid response prior to a determination by the MSDH of non-responsiveness based on the submission of nonconforming terms and conditions.

4.1.4 Conditioning Bid Upon Other Awards

Any bid which is conditioned upon receiving award of both the particular contract being solicited and another Mississippi contract shall be deemed non-responsive and not acceptable.

4.1.5 Bid Submission Format

The bid package must be sealed and must contain the following:

- Bid Specifications Response (**Attachment A**)
- Bid Cover Sheet (**Attachment B**)
- Bid Form (**Attachment C**)

4.1.6 Responsible Bidder

Bidder must have capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance, as determined by MSDH.

4.1.7 Minor Informalities

The Agency reserves the right to waive minor informalities which are matters of form rather than substance, insignificant mistakes and to allow the bidder to correct them if other bidders are not prejudiced.

4.2 Bid Opening

Bids will be opened, December 12, 2023, at 10:30 AM in Support Services room U-134. Participation can be done by Zoom. The link to the meeting will be posted on the MSDH webpage under the listing of the Calendar of Events. Please check the Calendar of Events by November 2 2023 to confirm access to the link. Contact Jennifer Dotson, Bid Coordinator at Jennifer.Dotson@msdh.ms.gov or 601-576-7627, if you cannot locate the link. The bid opening will be public and will include opening, reading, and listing the name of each bidder and bid price for each bid only. No discussion will be entered into with any bidder as to the quality or provisions of the specifications and no award will be made either stated or implied the bid opening.

Prior to the IFB due date and time, bids may be Hand Delivered to the agency between the hours of 8:00 a.m. and 5:00 p.m. CST. Entry may be obtained at the Visitor's entrance of the Mississippi State Department of Health, Osborne Building, 570 E. Woodrow Wilson, Jackson, MS 39216. A receptionist will be on duty to receive the bids/responses and forward to the addressee on the envelope/package.

4.3 Award

The contract will be awarded by written notice to the lowest responsible and responsive bidder whose bid best meets the requirements and criteria set forth in this Invitation for Bids as determined by the Agency

4.3.1 Notification

All participating vendors will be notified of the MSDH's intent to award a contract. In

addition, the MSDH will identify the selected vendor. Notice of award is also made available to the public.

SECTION 5 ADDITIONAL INFORMATION

5.1 Post-Award Vendor Debriefing

A bidder, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission. The written request must be received by the Director of the MSDH within three (3) business days of notification of the contract award. A post-award debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing typically occurs within five (5) business days of receipt of the request. If a bidder prefers to have legal representation present, the bidder must notify the Director of the MSDH in writing and identify its attorney by name, address, and telephone number. The MSDH will schedule and/or suspend and reschedule the meeting at a time when a Representative of the Office of the Mississippi Attorney General can be present.

For additional information regarding Post-Award Debriefing, as well as the information that may be provided and excluded, please see Section 6.210, Debriefings, of the *Mississippi Procurement Manual*.

5.2 Protest Information

Any actual or prospective bidder or contractor who is aggrieved in connection with this solicitation or the outcome of the Invitation for Bids may file a protest with the Bid Coordinator, Jennifer Dotson. The protest shall be submitted in writing within 7 days after such aggrieved person or entity knows or should have known of the facts (including Contract Award) giving rise thereto. All protests must be in writing, dated, signed by the bidder or an individual authorized to sign contracts on behalf of the protesting bidder, and contain a statement of the reason(s) for protest, citing the law(s), rule(s), or regulation(s), and/or procedure(s) on which the protest is based. The written protest letter shall contain an explanation of the specific basis for the protest. The protesting bidder must provide facts and evidence to support the protest. A protest is considered filed when received by the Bid Coordinator, Jennifer Dotson, via either U.S. mail, postage prepaid, or personal delivery. Protests filed after 5:00 p.m., on the seventh day will not be considered.

5.3 Mississippi Contract/Procurement Opportunity Search Portal

This Invitation for Bids are posted on the Contract/Procurement Opportunity Search Portal.

5.4 Attachments

The attachments to this Invitation for Bids are made a part of this Invitation for Bids as if copied herein in words and figures.

SECTION 6 CONTRACT TERMS AND CONDITIONS

6.1 Acknowledgment of Amendments. Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid, by identifying the amendment

number and date in the space provided for this purpose on the bid form, or by letter. The acknowledgment must be received by the MSDH by the time and at the place specified for receipt of bids.

- 6.2 Certification of Independent Price Determination.** The bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid.
- 6.3 Failure to Deliver.** In the event of failure of Contractor to deliver products/services in accordance with the contract terms and conditions, the Agency, after due oral or written notice, may procure the products/services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Agency may have.
- 6.4 Modification or Renegotiation.** This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary.
- 6.5 Notices.** All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.
- 6.6 Procurement Regulations.** The contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board Office of Purchasing, Travel and Fleet Management, Mississippi Procurement Manual*, a copy of which is available at 501 North West Street, Suite 701A, Jackson, MS 39201 for inspection, or downloadable at <http://www.dfa.ms.gov>.
- 6.7** These terms are in addition to the MSDH Purchasing General Terms and Conditions attached hereto as Attachment D.

ATTACHMENT A
SPECIFICATIONS

**ATTACHEMENT B
BID COVER SHEET**

**Bids are to be submitted online in MAGIC or by paper submission, on or before:
December 12, 2023, 10:00 AM CST.**

PLEASE MARK YOUR ENVELOPE:

**RFX #316000302
FOR Automated, Liquid culture system for the recovery of Mycobacteria
Opening Date: December 12, 2023 , 10:30 AM CST
Mississippi Department of Health
ATTN: Jennifer Dotson, Support Services
570 E Woodrow Wilson Dr
Jackson, MS 39216**

SEALED BID – DO NOT OPEN

Company Name: _____

Quoted by: _____

Signature: _____

Address: _____
(Street/P.O. Box)

(City)

(State)

(Zip Code)

Company Representative: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____

FEL/FIN # (if company, corporation, or partnership):	
SS# (if individual):	

Minimum Bid Specifications for a Reagent Rental Agreement for an automated, liquid culture system for the recovery of Mycobacteria

The purpose of this bid is for the rental of an automated liquid culture system and the purchase of consumable commodities to grow cultures of Mycobacteria from sterile body fluids and digested-decontaminated clinical specimens.

The Mississippi State Public Health Laboratory (MPHL) proposes to rent a fully automated walkaway liquid culture system for Mycobacteria species from clinical specimens through the purchase of consumable commodities (reagents, kits, controls, and ancillaries) via a 5-year reagent rental agreement. The quoted price shall include the test platform, a service plan for the test platform and all consumable commodities at the agreed upon prices for the full 5-year term. The platform offered in the response shall be for the most recent model currently in use and shall remain supported for the specified term. Components of the unit cannot be refurbished or have been used for demonstration. A list of equipment, reagents, controls, and consumables shall be included as stated in the package insert that is approved by the FDA for proper test performance.

To ensure complete and accurate evaluation of your bid submission, please respond to, and provide information for each specification, numbering your response and/or labeling supporting documentation accordingly. Failure to do so may result in your submission being rejected as nonresponsive with no further opportunity for review or consideration.

A. Test Platform Specifications

1. The test platform shall be one system that is fully automated, computer-controlled, and FDA-approved for the liquid-based culture to support the growth of Mycobacteria species in a variety of specimens obtained from human patients.
2. Documentation shall be provided to support FDA-approval for mycobacterial culture using liquid media, including all specimen collection, handling, storage, and transport statements. The vendor shall provide all specimen transport requirements, including the following: specimen collection processes, including any tube handling requirements such as centrifugation; specimen storage condition and storage time between collection and test performance; specimen storage condition and storage time after test completion; number of times specimen can undergo freeze-thaw conditions.
3. The test platform shall be able to support the growth of mycobacteria species in liquid media that are associated with humans, including the following organisms, *M. tuberculosis* complex, *M. avium* complex, *M. gordonae*, *M. kansasii*, *M. chelonae abscessus* complex, *M. fortuitum-smegmatis*, *M. nonchromogenicum*, *M. xenopi*, *M. mucogenicum*, *M. malmoense*, *M. szulgai*, *M. simiae*, *M. terrae*, *M. asiaticum*, *M. marinum*, *M. lentiflavum*, *M. vaccae*, *M. gastri*, *M. phlei*, *M. intracellulare*, *M. interjectum*, *M. flavescens* and *M. haemophilum*. **A list of the FDA-approved mycobacteria species shall be included.**
4. The test platform shall have continuous monitoring of mycobacterial cultures.
5. The test platform shall be able to report *Mycobacteria tuberculosis* complex culture positive results within 21 days of the specimen being placed into the automated liquid culture system.

6. All tests, procedures, and equipment shall perform at manufacturer specifications; deviations from the performance specifications shall be corrected by the vendor.
7. The test platform shall automatically interpret culture growth as positive or negative and provide a report.
8. The test-platform shall not produce aerosols when testing is performed in accordance with FDA-approved procedure.
9. The test platform shall have auto detection and continuous monitoring of on-board reagents and specimens.
10. The test platform shall record each specimen/reagent location, generate patient reports, assign locations and specimen/reagent entry or removal.
11. The vendor shall define the calibration requirements for the test platform.
12. The test platform shall have autocalibration/maintenance-required alerts.
13. The vendor shall define all instrument maintenance requirements not included in the service plan, including all daily, weekly, or monthly maintenance, the staff hands-on time to complete, and an estimate of the maintenance supply costs.
14. The vendor shall define the quality control features and requirements of the test platform.
15. The vendor shall provide the data on accuracy, precision, and linearity of all requested tests.
16. The test platform shall have a bar code reader for specimen loading and unloading. The specifications for labels shall be included.
17. Stored results and QC data shall be retrievable from the test platform for up to one month. The vendor shall state whether the instrument has the capability to send data to a LIMS via an interface.
18. An itemized list for all consumables, including quantity per unit of measure and individual product prices. The list shall reflect the vendor's requirements for how the products will be ordered and invoiced.
19. The vendor shall provide a list of at least 5 current clients that use the offered instrument. Client estimated testing volume and test menu shall be included.
20. **The price for reagents included in the proposed reagent rental agreement should be based on an annual volume of 5800 liquid cultures.**
21. The test platform offered shall be able to accommodate a minimum of 700 specimens on board per day.
22. Vendors shall provide pricing for the proposed reagent rental agreement that will remain firm for a five (5) year period.

B. Facility Specifications

1. A UPS battery back-up, voltage stabilizer and surge protector shall be included.
2. If instrument monitoring is required by the vendor, the method, specifications, and requirements for monitoring shall be clearly stated.
3. The vendor will include the facility service specifications required for instrument installation (water, drain, venting, room size, requirements for waste disposal, etc.).
4. The vendor shall provide information regarding features of the instrument that are not specified herein and any upgrades to the instrument that may expand its capacity.

C. Software Specifications and accessories

1. Instrument software shall be the latest version and updates shall be provided as part of the agreement.
2. A computer, keyboard, mouse, and printer shall be provided with the test platform to support the platform functionality.

D. Training Requirements

1. The vendor shall provide on-site training for instrument and software at no extra cost. Proposed training shall be outlined in detail and shall include documentation.
3. All expenses for training shall be included as part of the quotation and paid directly by the vendor.
4. The vendor shall provide certification for lab testing personnel that attend on-site training as required by the manufacturer.
5. The vendor shall provide training modules for specimen collection, handling, and interpretation for clinical staff.
6. The expenses for the training that are covered by the vendor shall be itemized in the bid response.

E. Installation Requirements

1. The vendor shall provide technical assistance and on-site installation for the initial setup as part of the agreement.
2. Instrument shall be received by four (4) weeks and installed and ready for use by the customer within six (6) weeks of receipt of a purchase order.
3. The vendor shall schedule the installation date with the customer to avoid disruption of testing. The customer will have the discretion to schedule installation after six (6) weeks.
4. Instrument shall use 220/240 volts.

F. Service Requirements

1. Shall provide a toll-free telephone number for technical assistance that is accessible Monday through Friday from 8:00 a.m. - 5:00 p.m. CST/CDT.
2. The company shall be able to provide expedited service when there is an instrument malfunction. Vendor shall provide response time in documents that are submitted.
3. Shall provide the base location of the nearest service representative.
4. Shall provide on-site service calls to perform preventive maintenance as required by the manufacturer.
5. The cost of the service agreement for preventative maintenance and repairs shall be included as part of the reagent rental agreement for the full 5-year term.
6. All parts required for repairs or preventative maintenance shall be provided through the service agreement.
7. After preventative maintenance or repairs, the vendor shall submit a detailed work report to the laboratory at no additional cost.
8. Vendor shall remove all parts, equipment or materials replaced, or upgraded by the vendor due to and not limited to repairs, replacements, recall, and upgrades without any cost.

ATTACHMENT C BID FORM

Company	Company Representative	Telephone

The pricing must include ALL associated costs with no additional or hidden fees. The pricing quoted must include test kits, test platform/maintenance and be all inclusive of, but not limited to the following:

- All required equipment and materials
- All required insurance
- All required overhead
- All required profit
- All required transportation
- All required labor
- All required business and professional licenses, permits, fees, etc. (if any)
- Any and all other costs associated with providing products/performing the services requested.

Reagent based on annual volume of 7000 liquid cultures _____

MTBC Drug susceptibility tests 100 annual volume _____

By signing below, the Company Representative certifies that he/she has authority to bind the company, and further acknowledges on behalf of the company:

1. That he/she has thoroughly read and understands this Invitation for Bids, RFX #3160006302, and the attachments herein.
2. That the company meets all requirements and acknowledges all certifications contained in this Invitation for Bids, RFX #3160006302, and the attachments herein.
3. That the company agrees to all provisions of this Invitation for Bids, RFX #3160006302 and the attachments herein.
4. That the company will deliver/perform, without delay, the products/services required at the prices quoted in this **Attachment C**; and
5. That, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date.
6. That the company has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Invitation for Bids.
7. Company represents that it **has not** retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid.

8. The Company represents that it **has not** violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 9.105 (Gratuities) of the Mississippi Procurement Manual.
9. The Company certifies that the prices submitted in response to the solicitation **have** been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate price.
10. The Company represents as a part of such Company's bid that such Company **has not** retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

Company Name: _____

Printed Name: _____

Signature/Date: _____

ATTACHMENT D

MSDH PURCHASING GENERAL TERMS AND CONDITIONS

ALL BIDS SUBMITTED SHALL BE IN COMPLIANCE WITH ALL CONDITIONS SET FORTH HEREIN. THE BID PROCEDURES FOLLOWED BY THIS OFFICE AND ANY SUBSEQUENT AWARD WILL BE IN ACCORDANCE WITH THESE CONDITIONS. THEREFORE, ALL BIDDERS ARE URGED TO READ AND UNDERSTAND THESE CONDITIONS PRIOR TO SUBMITTING A BID.

1. PREPARATION OF BIDS

- 1.1 Bids shall be submitted through the Office of Purchasing, Travel and Fleet Management's State of Mississippi's e-procurement system or in accordance with the solicitation package. The Mississippi State Department of Health reserves the right to waive the use of the electronic bid method when deemed necessary. If waived and paper bids are allowed, all prices and notations must be printed in ink or typewritten. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed, in ink, by the person signing bid.
- 1.2 Procurement Regulations. The solicitation and any resulting contract shall be governed by the applicable provisions of the Mississippi Public Procurement Review Board Office of Purchasing, Travel and Fleet Management, Mississippi Procurement Manual, a copy of which is available at 501 North West Street, Suite 701A, Jackson, MS 39201 for inspection, or downloadable at <http://www.dfa.ms.gov>.
- 1.3 Failure to examine any drawings, specifications, and instructions will be at bidder's risk.
- 1.4 Unless instructed in the solicitation package, price each item separately. Unit prices shall be shown. Bid prices must be net.
- 1.5 Specification. It is understood that reference to available specifications shall be sufficient to make the terms of such specifications binding on the bidder.
- 1.6 Information and Descriptive Literature. Bidders must furnish all information requested in the bid specifications. Further, when required, each bidder must submit for bid evaluation cuts, sketches, descriptive literature, and technical specifications covering the product offered. Reference to literature submitted with a previous bid or on file with the Mississippi State Department of Health will not satisfy this provision.
- 1.7 Samples. Samples of items, when requested, must be furnished free of expense, and if not destroyed in testing will, upon request, be returned at the bidder's expense. Request for the return of samples must be made within ten (10) days following opening bids. Each individual sample must be labeled with bidder's name, manufacturer's brand name and number, State of Mississippi commodity number, bid number and item reference.
- 1.8 Time of performance. The number of calendar days in which delivery will be made after receipt of order shall be indicated in the bid specifications or solicitation package.

2. SUBMISSION OF BIDS

- 2.1 When submitting a bid electronically, the authorized signature may be typed or be an electronic signature.
- 2.2 Bids and modifications or corrections received after the closing time specified will not be considered.
- 2.3 Bidders submitting paper responses should submit response by the response deadline.

3. ACCEPTANCE OF BIDS

- 3.1 The MSDH reserves the right to reject any and all bids, to waive any informality in bids and unless otherwise specified by the bidders, to accept any items on the bid. The State reserves the right to modify or cancel in whole or in part its Invitation for Bids or other form of solicitation package.
- 3.2 If a bidder fails to state the time within which a bid must be accepted, it is understood and agreed that the Mississippi State Department of Health shall have 60 days to accept.

4. **ERROR IN BID**

- 4.1 In case of error in the extension of prices in the bid, the unit price will govern. No bid shall be altered or amended after the specified time for opening bids.

5. **DISCOUNT PERIOD**

- 5.1 Time in connection with a discount offered will be computed from date of delivery at destination or from the date correct invoices are received if the latter date is later than the date of delivery. Cash discounts will not be considered in the award process.

6. **AWARD**

- 6.1 Contracts and purchases will be made or entered into with the lowest responsible bidder meeting specifications, except as otherwise specified in the bid specifications. Where more than one item is specified in the specifications, the State reserves the right to determine the low bidder either on the basis of the individual item(s) or on the basis of all items included in its Invitation for Bids, or as expressly provided in the State's Invitation for Bids.
- 6.2 Unless the bidder specified otherwise in the bid, the State may accept any item or group of items of any kind.
- 6.3 A written purchase order or contract award furnished to the successful bidder within the time of acceptance specified in the Invitation for Bid results in a binding contract without further action by either party. The contract shall consist solely of the Invitation for Bid, these General Conditions, the Instructions and Special Conditions, the successful bidder's bid, and the written purchase order or contract award. The contract shall not be assignable in whole or in part without the written consent of the State.
- 6.4 Severability. If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.
- 6.5 Applicable Law. The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor/Seller shall comply with applicable federal, state, and local laws and regulations.
- 6.6 Approval Clause. It is understood that if this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration and this contract is not approved by the PPRB, it is void and no payment shall be made hereunder.
- 6.7 Compliance with Laws. Contractor/Seller understands that the MSDH is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and Contractor/Seller agrees during the term of the agreement that Contractor/Seller will strictly adhere to this policy in its employment practices and provision

of services. Contractor/Seller shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

- 6.8 E-Payment. Contractor/Seller agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-305 et seq.
- 6.9 E-Verification. If applicable, Contractor/Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 et seq. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor/Seller agrees to provide a copy of each such verification. Contractor/Seller further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor/Seller to the following: (a) termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public; (b) the loss of any license, permit, certification or other document granted to Contractor/Seller by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or, (c) both. In the event of such cancellations/termination, Contractor/Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit to do business in the State.
- 6.10 Independent Contractor Status. Contractor/Seller shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Contractor/Seller, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer, and employee, or any similar such relationship between the State and Contractor/Seller. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor/Seller hereunder creates or shall be deemed to create a relationship other than the independent relationship of the State and Contractor/Seller. Contractor/Seller's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor/Seller nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Agency, and the Agency shall be at no time legally responsible for any negligence or other wrongdoing by Contractor/Seller, its servants, agents, or employees. The Agency shall not withhold from the contract payments to Contractor/Seller any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor/Seller. Further, the Agency shall not provide to Contractor/Seller any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

7. INSPECTION

- 7.1 Final inspection and acceptance or rejection may be made at delivery destination, but all materials and workmanship shall be subject to inspection and test at all times and places, and when practicable. During manufacture, the right is reserved to reject articles which contain defective material and workmanship. Rejected material shall be removed by and at the expense of the Contractor/Seller promptly after notification or rejection. Final inspection and

acceptance or rejection of the materials or supplies shall be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the State of Mississippi or any subdivision thereof for such materials or supplies as are not in accordance with the specification. In the event necessity requires the use of materials or supplies not conforming to the specification, payment therefore may be made at a proper reduction in price.

8. TAXES AND PAYMENT

- 8.1 The State is exempt from federal excise taxes and state and local sales or use taxes and bidders must quote prices which do not include such taxes. Exemption certificates will be furnished upon request. Contractor/Sellers making improvements to, additions to or repair work on real property on behalf of the State are liable for any applicable sales or use tax on purchase of tangible personal property for use in connection with the contracts. Contractor/Sellers are likewise liable for any applicable use tax on tangible personal property furnished to them by the State for use in connection with their contracts.
- 8.2 Payment Terms Mississippi Code Annotated Section 31-7-305(3) allows a state entity to pay invoices within 45 days without penalty.

9. GIFTS, REBATE, GRATUITIES

- 9.1 Acceptance of gifts from bidders is prohibited. No officer or employee of the Mississippi State Department of Health, nor any head of any state department, institution or agency, nor any employee of any state department, institution or agency charged with responsibility of initiating requisitions, shall accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract for the purchase of materials, supplies, or equipment for the State of Mississippi may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future rewards or compensation.
- 9.2 Bidding by state employees is prohibited. It is unlawful for any state official or employee to bid on, or sell, or offer for sale, any merchandise equipment or material, or similar commodity to the State of Mississippi during the tenure of his or her office or employment, or for the period prescribed by law thereafter, or to have any interest in the selling of the same to the State.
- 9.3 Prospective Contractor/Seller's Representation Regarding Contingent Fees. The prospective Contractor/Seller represents as a part of such Contractor/Seller's bid or proposal that such Contractor/Seller has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.
- 9.4 Representation Regarding Contingent Fees. Contractor/Seller represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor/Seller's bid or proposal.
- 9.5 Representation Regarding Contingent Fees. Contractor/Seller represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor/Seller's bid or proposal.

10. BID INFORMATION

- 10.1 Bid information and documents may be examined pursuant to the Mississippi Public Records Act of 1983, MS Code 25-61-1 et seq.
- 10.2 Transparency. This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless

exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor/Seller as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

- 10.3 Trade Secrets, Commercial and Financial Information. It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

11. DEFINITIONS

- 11.1 The use of the word agency in any Bid Invitation solicitation or specification shall be intended to mean state agencies only. The words "governing authority" when used in any of the above documents shall be intended as meaning county or local entities.

12. PRECEDENCE

- 12.1 Bids shall be made, and the contract shall be entered into in accordance with the General Conditions as hereinafter amended and modified. Should a conflict exist between the General Conditions and the Instructions and Special Conditions, the Instructions and Special Conditions shall take precedence.

13. COMPETITION

- 13.1 There are no federal or state laws that prohibit bidders from submitting a bid lower than a price or bid given to the U.S. Government. Bidders may bid lower than U.S. Government contract price without any liability as the State is exempt from the provisions of the Robinson-Patman Act and other related laws. In addition, the U.S. Government has no provisions in any of its purchasing arrangements with bidders whereby a lower price to the State must automatically be given to the U.S. Government.

14. WAIVER

- 14.1 The Mississippi State Department of Health reserves the right to waive any General Condition, Special Condition, or minor specification deviation when considered to be in the best interest of the State.

15. CANCELLATION

- 15.1 Any contract or item award may be canceled with or without cause by the State with the giving of 30 days written notice of intent to cancel. Cause for the State to cancel may include, but is not limited to, cost exceeding current market prices for comparable purchases; request for increase in prices during the period of the contract; or failure to perform to contract conditions. The Contractor/Seller will be required to honor all purchase orders that were prepared and dated prior to the date of expiration or cancellation if received by the Contractor/Seller within a period of 30 days following the date of expiration or cancellation. Cancellation by the State does not relieve the Contractor/Seller of any liability arising out of a default or nonperformance. If a contract is canceled by the State due to a Contractor/Seller's request for increase in prices or failure to perform, that Contractor/Seller will be disqualified from bidding for a period of 24 months. The Contractor/Seller may cancel a contract for cause with the giving of 30 days written notice of intent to cancel. Cause for the Contractor/Seller to cancel may include but is not limited to the item(s) being discontinued and/or unavailable from the manufacturer.

16. SUBSTITUTIONS DURING CONTRACT

- 16.1 During the term of a contract, if adequate documentation is provided that supports the claim that the contract item(s) are not available, items which meet the minimum specifications may be substituted if approved by the Mississippi State Department of Health and the substitutions

are deemed to be in the best interest of the State.

17. APPLICATION

- 17.1 It is understood and agreed by the Bidder that any contract entered into as a result of this Invitation for Bids is solely for the convenience of the state agencies and all purchases made by these agencies for products included under the provisions of the contract shall be purchased from the bidder receiving the award unless exempt by special authorization from the Mississippi State Department of Health.

Under the provisions of Section 31-7-7 Mississippi Code of 1972, Annotated, the prices offered herein shall be extended to the governing authorities. However, the governing authorities, by provisions of Section 31-7-12 Mississippi Code, may purchase products covered by state contracts from any source offering an identical product at a price that does not exceed the state contract price.

Employees of the Mississippi State Department of Health have acted exclusively as agents of the State for the award, consummation, and administration of the contract and are not liable for any performance or nonperformance by the state agencies that utilize the contract.

18. ADDENDA

- 18.1 Addenda modifying plans and/or specifications may be issued if time permits. No addendum will be issued within a period of two (2) working days prior to the time and date set for the bid opening. Should it become necessary to issue an addendum within the two (2) day period prior to the bid opening, the bid date will be reset to a date not less than five (5) working days after the date of the addendum, giving bidders ample time to comply with the addendum. When replying to a bid request on which an addendum has been issued, and the specifications require acknowledgement, the bid shall indicate that provisions of the addendum have been noted and that the bid is being offered in compliance therewith. Failure to make this statement may result in the bid being rejected as not being in accordance with the revised specifications or plans.

19. NONRESPONSIVE BIDS

- 19.1 Nonresponsive bids will not be considered. A non-responsive bid is considered to be a bid that does not comply with the minimum provisions of the specification. Any bidder found to repeatedly offer alternate products that are not compliant with specifications in an attempt to obtain a contract on the basis of pricing only will be disqualified from bidding for a period of 24 months.

20. SPECIFICATION CLARIFICATION

- 20.1 It shall be incumbent upon all bidders to understand the provisions of the specifications and to obtain clarification prior to the time and date set for the bid opening. Such clarification will be answered only in response to a written request.

21. BID OPENINGS

- 21.1 Bid openings will be open to the public in accordance with the solicitation package. The bid opening will serve only to open and read the bid price on each bid. No discussion will be entered into with any bidder as to the quality or provisions of the specifications and no award will be made either stated or implied at the bid opening.
- 21.2 If the agency is closed for any reason, including but not limited to: acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"), which closure prevents the opening of bids at the advertised date and time, all bids received shall be publicly opened and read aloud on the next business day that the agency shall be open and at the previously advertised time. The new date and time of the bid opening, as determined in accordance with this paragraph, shall not be advertised, and all bidders, upon submission of a bid proposal, shall be deemed to have knowledge of and shall have agreed to the provisions of this paragraph. Bids shall be received by the agency until the new date and time of the bid opening as set forth herein. The agency shall not be held responsible for the receipt of any bids for which the delivery was attempted and failed due to the closure of the agency as a result of a Force Majeure Event. Each bidder shall be required to ensure the delivery and receipt of its bid by the agency prior to the new date and time of the bid opening.

22. STATEWIDE BIDDING

- 22.1 It is requested that bids be submitted on the basis of statewide distribution. Contractor/Sellers must maintain adequate distribution capabilities and adequate stock of all items to insure prompt delivery.

23. FIRM BID PRICE

- 23.1 Prices quoted shall be firm for the term of the contract except that the State shall receive the benefit of any price decrease in excess of five (5) percent. The Contractor/Seller must provide written price reduction information within ten (10) days of its effective date.
- 23.2 Paymode. Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor/Seller's choice. The State may, at its sole discretion, require Contractor/Seller to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor/Seller understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

24. CONTRACT EXTENSION

- 24.1 Automatic contract renewals or extensions are not allowed. Contracts must be extended or renewed with the proper documents signed or approved by the Mississippi State Department of Health.
- 24.2 The Mississippi State Department of Health reserves the right to extend the term of a contract, when necessary, to continue a source of supply whenever new or replacement contracts are not completed prior to the expiration date. Such extensions are dependent upon the agreement of the Contractor/Seller and shall not exceed three (3) months.

25. SUSPENSION AND DEBARMENT

- 25.1 By submitting a bid, the bidder is certifying that neither the bidder nor any potential subcontractors are debarred or suspended or are otherwise excluded from or ineligible for participation in federal assistance programs.

26. ASSIGNMENT

- 26.1 The Contractor/Seller shall not assign or subcontract in whole or in part, its right or obligations under this agreement without prior written consent of the Mississippi State Department of Health.

27. INDEMINIFICATION

To the fullest extent allowed by law, Contractor/Seller shall indemnify, defend, save and hold harmless, protect, and exonerate the State of Mississippi, the Mississippi State Department of Health, its Commissioners, Board Members, officers, employees, agents, and representatives from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by Contractor/Seller's and/or its partners, principals, agents, employees, and/or subcontractors in the performance of or failure to perform this Agreement. In the State's sole discretion, Contractor/Seller may be allowed to control the defense of any such claim, suit, etc. In the event Contractor/Seller defends said claim, suit, etc., Contractor/Seller shall use legal counsel acceptable to the State; Contractor/Seller shall be solely liable for all reasonable costs and/or expenses associated with such defense and the State shall be entitled to participate in said defense. Contractor/Seller shall not settle any claim, suit, etc., without the State's concurrence, which the State shall not unreasonably withhold.

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