

AN ORDINANCE 2009-10-15-0820

ACCEPTING THE OFFERS FROM APPLIED BIOSYSTEMS, LLC AND ROCHE DIAGNOSTICS CORPORATION FOR THE PURCHASE OF LABORATORY EQUIPMENT FOR THE METROPOLITAN HEALTH DISTRICT FOR A COST OF \$204,956.00, FUNDED BY THE PUBLIC HEALTH EMERGENCY RESPONSE GRANT FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES.

* * * * *

WHEREAS, on April 26, 2009, the Acting Secretary of Health and Human Services declared a public health emergency as a result of the detection of known cases of individuals infected by swine-origin influenza A virus, now known as novel influenza A (H1N1), in the United States; and

WHEREAS, on June 11, 2009, the World Health Organization declared the first pandemic in over 40 years in recognition of widespread and sustained human-to-human transmission of the virus in multiple regions around the globe; and

WHEREAS, the Centers for Disease Control and Prevention (CDC) designed a test platform for influenza surveillance to be used by qualified public health laboratories that includes: proprietary CDC produced polymerase chain reaction primers and probes, Roche Diagnostics MagNA pure nucleic acid extraction instruments, Master Mix PCR reagents and the Applied Biosystems 7500 Fast DX Real-Time PCR instrument; and

WHEREAS, offers were submitted by Applied Biosystems LLC to provide the City of San Antonio, by and through the San Antonio Metropolitan Health District (SAMHD) with the purchase of two (2) 7500 Fast Dx Real-Time PCR Instruments, and by Roche Diagnostics Corporation for the purchase of one (1) MagNA Pure LC 2.0 system for a total cost of \$204,956.00; and

WHEREAS, these purchases will be funded utilizing previously accepted funds from the Public Health Emergency Response (PHER) Lab Grant; and

WHEREAS, this equipment and supplies will increase the public health testing capabilities to adequately mount a response to the upcoming novel H1N1 and seasonal influenza season; and

WHEREAS, the Texas Local Government Code indicates that competitive bidding is not required under section 252.022(a)(2) which provides for a procurement necessary to protect the public health or safety; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The offers submitted by Applied Biosystems LLC for the purchase of two (2) 7500 Fast Dx Real-Time PCR Instruments, and by Roche Diagnostics Corporation for the purchase of one (1) MagNA Pure LC 2.0 system for use by the San Antonio Metropolitan Health District for a total cost of \$204,956.00 are hereby accepted. subject to and contingent upon the deposit of all required bonds, performance deposits, insurance certificates, and endorsements. A copy of the bid tabulation and contracts are attached hereto and incorporated herein for all purposes as **Exhibit I.**

SECTION 2. Fund 2601636045 entitled "Public Hlth Emerg Response - Focus Area2" and Internal Order 136000000450, are hereby designated for use in the accounting for the fiscal transaction in the acceptance of this bid.

SECTION 3. The sum of \$204,956.00 was previously appropriated in the above designated fund and will be disbursed from GL 5501055 "Capital Outlay Mach & Equip Other". Payment is authorized to Applied Biosystems and Roche Diagnostics Corporation upon issuance of a Purchase Order and receipt of goods.


SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance shall become effective immediately upon passage by eight (8) affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED AND APPROVED this 15th day of October 2009.

ATTEST: 
City Clerk


M A Y O R
JULIÁN CASTRO

APPROVED AS TO FORM: 
for City Attorney

CITY OF SAN ANTONIO PURCHASING & GENERAL SERVICES DEPT.

Issued By:CC
CITY CONTRACT NO. 10-010

Date Issued: September 29, 2009
Page 1 of 12

**REQUEST FOR OFFER
TERMS & CONDITIONS FOR CONTRACT FOR
LAB EQUIPMENT**

**PLEASE REVIEW THE TERMS AND CONDITIONS FOR THIS REQUEST AND
PROVIDE YOUR OFFER NO LATER THAN 12:00 PM, OCTOBER 1, 2009**

Contract Documents: The terms and conditions for performance and payment of compensation for this contract are set forth in the following contract documents, true and correct copies of which are attached hereto and fully incorporated herein for all purposes:

- a. This Terms and Conditions Document;

Should a conflict arise among the provisions of the contract documents, this Terms and Conditions Document shall govern over Exhibit I, unless otherwise specifically provided herein.

This Terms & Conditions Document includes the following: General Terms and Conditions, Product Specifications and Description of Services, Price Schedule, any Attachments identified herein.

The City's Purchasing and General Services Department is willing to assist any vendor(s) in the interpretation of this Terms and Conditions Document. Assistance may be received by visiting the Purchasing Office at 111 Soledad, 11th Floor, San Antonio, Texas 78205, or by calling (210) 207-7260.

It is the policy of the City of San Antonio to involve qualified Small, Minority, Woman-owned, and local business in construction, procurement, professional services, and leases and concessions contracting. The City of San Antonio has established the following minority business enterprise (MBE), woman business enterprise (WBE), African-American business enterprise (AABE), and small business enterprise (SBE) utilization goals: MBE Goal: 15%; WBE Goal: 10%; AABE Goal: 3%; SBE Goal: 50%.

The undersigned, by his/her signature, represents that he/she is authorized to bind the Vendor to fully comply with the contract for the amount(s) shown on the accompanying Price Schedule. A signature below indicates that the Vendor has read the entire document, which is incorporated herein, and agreed to the terms therein.

Signer's Name: [Signature] Firm Name: Applied Biosystems, LLC
(Please Print or Type)
Address: 850 Lincoln Centre Drive
Signature of Person Authorized to Sign Offer: Tracy Buie City, State, Zip Code: Foster City, CA 94404
Email Address: bids@appliedbiosystems.com Telephone No.: 800.327.3002
Fax No.: 650.638.5143

Please complete the following:

Prompt Payment Discount: N/A % N/A days. (If no discount is offered, Net 30 will apply.)
Please check the following blanks which apply to your company:

FOR CITY USE ONLY

AWARD

Items Accepted: _____ Ordinance No: _____ Date: _____ Amount: _____

Approved: _____

CITY OF SAN ANTONIO

Ownership of firm (51% or more):

Non-minority Hispanic African-American Other Minority (specify) _____
 Female Owned Handicapped Owned Small Business (less than \$1 million annual receipts or 100 employees)

Indicate Status: Partnership Corporation Sole Proprietorship Other (specify) _____

Tax Identification Number: 06-1534213

The remainder of this page is intentionally left blank.

I. GENERAL TERMS AND CONDITIONS

1. The terms "bidder", "contractor", and "vendor" all mean the party providing goods or services to the City pursuant to this contract.
2. **Rejection of Disclaimers of Warranties & Limitations of Liability.** Any term or condition in Exhibit I, or any document furnished by Vendor, disclaiming the implied warranty of merchantability or of fitness for a particular purpose, or attempting to limit Vendor's liability shall be of no force or effect, and shall be stricken from the contract documents as if never contained therein.
3. **Acceptance of Offer.** By signing and submitting this document, Vendor is making an offer to City. A written award of acceptance (manifested by a City Ordinance) and appropriation or purchase order mailed or otherwise furnished to the Vendor results in a binding contract without further action by either party.
4. Vendors shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of material and equipment as required by the contract documents. No plea of ignorance by the vendor of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the vendor to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the City or the compensation to the vendor.
5. **Taxes.** Vendor shall not include federal taxes nor State of Texas limited sales excise and use taxes in prices, since the City of San Antonio is exempt from payment of such taxes. An exemption certificate will be signed by City where applicable upon request by Vendor.
6. **Point of Destination.** All goods, materials and equipment shall be delivered FOB Destination, City of San Antonio's designated facility, or to the "ship to" address indicated on the purchase order, inside delivery. Regardless of shipping terms used, title and risk of loss shall pass to City only upon receipt at City's "ship to" address.
7. **Delivery Times.** Proposed delivery time must be shown and shall include weekends and holidays, unless specified otherwise herein.
8. **Failure to Meet Delivery Schedule.** When delivery is not met as provided for in the contract, the Purchasing and General Services Department reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the vendor, in addition to any other damages, direct, indirect, consequential, or incidental incurred by the City as a result thereof.
9. **Acceptance By City.** The City shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by Vendor. The City at its option may reject all or any portion of such goods or services which do not, in City's sole discretion, comply in every respect with all terms and conditions of the contract. The City may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If the City elects to accept nonconforming goods and services, the City, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate the City for the nonconformity. Any acceptance by the City, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services.
10. **Contract Termination**

TERMINATION-BREACH:

- (a) ~~Should Vendor fail to fulfill in a timely and proper manner, as determined solely by the Director of Purchasing and General Services, its obligations under this contract, or violate any of the material terms of this contract, the City shall have the right to immediately terminate the contract. Notice of termination shall~~

be provided in writing to the contractor, effective upon the date set forth in the notice. Such termination shall not relieve the vendor of any liability to the City for damages sustained by virtue of any breach by the vendor.

TERMINATION-NOTICE:

- (b) The City may cancel this contract for convenience upon ten (10) days prior written notice.

TERMINATION-FUNDING:

- (c) City retains the right to terminate this contract at the expiration of each of City's budget periods. This contract is conditioned on a best efforts attempt by City to obtain and appropriate funds for payment of any debt due by City herein.

11. INDEMNIFICATION

VENDOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to VENDOR'S activities under this Agreement, including any acts or omissions of VENDOR, any agent, officer, director, representative, employee, consultant or subcontractor of VENDOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. VENDOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or VENDOR known to VENDOR related to or arising out of VENDOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at VENDOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving VENDOR of any of its obligations under this paragraph.

12. Assignment and Subcontracting

- (a) Vendor shall not sell, assign, pledge, transfer or convey any interest in this contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the Director of City's Purchasing and General Services Department. As a condition of such consent, if such consent is granted, Vendor shall remain liable for completion of the services outlined in this contract in the event of default by the successor vendor, assignee, transferee or subcontractor.
- (b) Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Contract. Compliance by subcontractors with this contract shall be the responsibility of Vendor. City shall in no event be obligated to any third party, including any subcontractor of Vendor, for performance of services or payment of fees.

- (c) Any attempt to transfer, pledge or otherwise assign this contract without said written approval, shall be void ab initio, and shall confer no rights upon any third person. Should Vendor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this contract, City may, at its option, cancel this contract and all rights, titles and interest of Vendor shall thereupon cease and terminate, notwithstanding any other remedy available to City. The violation of this provision by Vendor shall in no event release Vendor from any obligation under the terms of this contract, nor shall it relieve or release Vendor from the payment of any damages to City, which City sustains as a result of such violation.

13. Independent Contractor. Vendor covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City. City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the vendor under this contract and that the vendor has no authority to bind the City.

14. Patents/Copyrights. The Vendor agrees to indemnify and hold the City harmless from any claim involving patent infringement or copyrights on goods supplied.

15. Public Information Act. Vendor is advised that all City contracts are subject to all legal requirements provided for in the City Charter and/or applicable City Ordinances, state and federal statutes. All contracts are subject to the Public Information Act, Texas Government Code Chapter 552; therefore Vendor must clearly indicate any portion of the contract documents that Vendor claims is not subject to public inspection under the Public Information Act.

16. Conflict of Interest. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall benefit financially, directly or indirectly, in the sale to the City of any materials, supplies or services, except on behalf of the City as an officer or employee. This prohibition extends to the City Public Service Board, San Antonio Water System, and all City boards and commissions other than those which are purely advisory. In this instance a City employee is defined as any employee of the City who is required to file a financial involvement report pursuant to the City's ethics ordinance.

17. Severability. If any clause or provision of this contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this contract that is invalid, illegal, or unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

18. Nonwaiver of Performance. Unless otherwise specifically provided for in this contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option.

19. Non-discrimination Policy. It is the City's policy that Small and/or Minority Business Enterprises shall have the maximum practicable opportunity to participate in the performance of public contracts. Vendor agrees that if this offer is accepted, he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation.

20. Compliance with Law. Vendor shall provide and perform all services required under this contract in compliance with all applicable federal, state and local laws, rules and regulations.

21. **Venue.** Venue of any court action brought directly or indirectly by reason of this contract shall be in Bexar County, Texas. This contract is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.

22. **Entire Agreement.** This contract, together with its authorizing ordinance and its attachments, purchase orders, and exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with the Change Order provision herein.

23. **Invoicing and Payment.** Vendor shall submit invoices to City itemizing the services provided to City. Invoices shall be addressed to:

City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy addressed to:

Mark Wade, San Antonio Metropolitan Health District, 332 West Commerce St., #201, San Antonio, Texas 78205.

Contractor shall include City's purchase order number on invoices. Invoices shall be in a form and content approved by City.

In accordance with the Texas Prompt Payment Act, City shall pay Vendor the amounts shown on the Price Schedule within 30 days of receipt of a properly addressed, correct invoice, or installation of the equipment described herein, whichever shall occur later.

24. **Insurance.**

- (a) Prior to the commencement of any work under this Agreement, Vendor shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Purchasing & General Services Department, which shall be clearly labeled "Lab Equipment" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Purchasing & General Services Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- (b) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.
- (c) A Vendor's financial integrity is of interest to the City; therefore, subject to Vendor's right to maintain reasonable deductibles in such amounts as are approved by the City, Vendor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Vendor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 <u>General Aggregate</u> , or its equivalent in <u>Umbrella</u> or <u>Excess Liability Coverage</u>
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

(d) The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Vendor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Vendor shall pay any costs incurred resulting from said changes.

City of San Antonio
 Attn: Purchasing & General Services Department
 P.O. Box 839966
 San Antonio, Texas 78283-3966

(e) Vendor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

(f) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Vendor shall provide

a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Vendor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

- (g) In addition to any other remedies the City may have upon Vendor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Vendor to stop work hereunder, and/or withhold any payment(s) which become due to Vendor hereunder until Vendor demonstrates compliance with the requirements hereof.
- (h) Nothing herein contained shall be construed as limiting in any way the extent to which Vendor may be held responsible for payments of damages to persons or property resulting from Vendor's or its subcontractors' performance of the work covered under this Agreement.
- (i) It is agreed that Vendor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- (j) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.
- (k) Vendor and any Subcontractors are responsible for all damage to their own equipment and/or property.

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II. PRODUCT SPECIFICATIONS & DESCRIPTION OF SERVICES

1. Period of Contract. Contract shall be for the period beginning upon issuance by City of a purchase order and terminating upon acceptance by City after installation by Vendor.

2. Product Specifications. Model 7500 Fast Dx Instrument Tower. The 7500 Fast Dx Real-Time PCR Instrument with the SDS v1.4 Security, Auditing and E-Signature software is a real-time nucleic acid amplification and detection system that measures nucleic acid signals from reverse transcribed RNA and converts them to comparative quantitative readouts using fluorescent detection of dual-labeled hydrolysis probes. Includes:

- 7500Fast Dx Real-Time PCR Instrument and Software kit
- Tower Computer
- Precision plate holder for tubes/strips
- User Manuals
- Installation by certified service engineer
- One year warranty for parts, labor, travel and one service engineer visit at 6-month after installation

Catalogue #4406985

3. Installation Services. Vendor will be required to install equipment and ensure functionality to manufacturer's specifications.

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III. PRICE SCHEDULE

Item	Qty	Description	Price Each	Extended Price
1	2 ea	Model 7500 Fast Dx Instrument Tower. Catalogue #4406985	40,628.00	121,256.00

Price includes all freight / shipping charges and installation.

Delivery and installation shall be made within 2 weeks ARO. Subject to availability calendar days after receipt of City's purchase order.

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Statement:

"Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date that the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at www.ethics.state.tx.us/forms/CIQ.pdf. Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk. If mailing a completed conflict of interest questionnaire, mail to: Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205."

The remainder of this page is intentionally left blank.

IMPORTANT MAILING INSTRUCTIONS:

MAIL TO: CITY OF SAN ANTONIO
PURCHASING & GENERAL SERVICES
ATTN: CHRISTINA CARDENAS
P.O. BOX 839966
SAN ANTONIO, TX 78283-3966

PHYSICAL ADDRESS: PURCHASING & GENERAL SERVICES
ATTN: CHRISTINA CARDENAS
111 SOLEDAD, 11TH FLOOR
SAN ANTONIO, TEXAS 78205

REMARKS:

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850 Lincoln Centre Drive
Foster City, CA 94404 U.S.A.
T 650 570.6667 F 650.572.2743
www.appliedbiosystems.com

Via email: Christina.M.Cardenas@sanantonio.gov

September 29, 2009

Ms. Christina M. Cardenas
City of San Antonio
Purchasing and General Services Department
111 Soledad, 11th floor
San Antonio, TX 78205

RE: City Contract No. 10-010; Due October 1, 2009 by 12:00 PM

Dear Ms. Cardenas:

Thank you for the opportunity to respond to the above-referenced City Contract No. 10-010, Request for Offer, Terms & Conditions for Contractor for Lab Equipment. Please accept Applied Biosystems' ("AB") response package, which includes our Quotation No. 20600591, completed bid forms, and technical brochures for the instruments referenced. Please note that our Quotation is valid through October 17, 2009.

To the maximum extent allowable under the laws of Texas, the Applied Biosystems Standard Terms and Conditions of Sale attached to our Quotation will govern any resulting purchase order, with the additional express conditions, notwithstanding anything to the contrary in any such contract and/or purchase order, that: (1) Texas rather than California law will govern any resulting contract and/or purchase order; and (2) **that if the products listed within our Quote No. 20600591 are intended for use under circumstances described in the Declaration of Public Health Emergency issued by the U.S. Secretary of the Department of Health and Human Services dated April 26, 2009, then the terms and conditions of paragraphs 1 through 6 set forth on pages 2 and 3 of Quote No. 20600591 shall apply.**

Exceptions to the City's General Terms and Conditions:

Item No. 2: Rejection of Disclaimers of Warranties & Limitations of Liabilities

Strike this section in its entirety.

Item No. 4: Plant and Facilities

Strike this section in its entirety and replace with, "The City shall be responsible for ensuring that the site for the instruments is clean, cleared of debris, and ready for installation. AB shall supply an instrument installation guide outlining specific requirements that must be met prior to delivery and installation."

Item No. 7: Delivery Times

Please note that Vendor does not make deliveries on Saturdays, Sundays, and holidays.

Item No. 8: Failure to Meet Delivery Schedule

Amend this section to read, "When delivery is not met as provided for in the contract, the Purchasing and General Services Department reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the vendor. Vendor shall not be liable for any delay or failure of performance, including without limitation failure to deliver or failure to install, where such delay or failure arises or results from any cause beyond vendor's reasonable control, including, but not limited to, flood, fire, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, weather, earthquake or other act of God, power loss or reduction, strike, lock-out, boycott or other labor disputes of any kind materials. ~~In the event of such delay or failure of performance, vendor shall have such additional time within which to perform its obligations hereunder as may be reasonably necessary under the circumstances; and vendor shall also have the right, to the extent necessary in vendor's reasonable~~

judgment, to apportion Product then available for delivery fairly among its various customers in such manner as vendor may consider equitable."

Item No. 9: Acceptance by City

Amend section no. 9 to read, "Acceptance shall be deemed to have taken place upon delivery and completion of item 3 ('Installation Services') contained in Appendix II ('Product Specifications & Description of Services'). The City shall have up to 30 days after receipt to inspect the goods and services tendered by Vendor. The City at its option may reject all or any portion of such goods or services which do not meet the manufacturer's published specifications. The City may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. Any acceptance by the City, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services."

Item No. 11: Indemnification

Insert "negligent" before the word "acts" in line 7 of section no. 11. Additionally, add the following sentence at the end of this paragraph: "Notwithstanding anything to contrary herein, and to the maximum extent allowable under the state of Texas law, in no event shall either party be responsible for secondary, indirect, or consequential damages."

Item No. 14: Patents/Copyrights

Amend to read, "The Vendor agrees to indemnify and hold the City harmless against any claim made by a third party that the manufacture and/or sale of the goods supplied violates or infringes upon the patent or copyright of any third party."

Item No. 24: Insurance, (pages 6-8)

- AB's insurance broker does not provide original certificates of insurance. However, AB will warrant that veracity of the certificate in writing if required. We request that our insurance broker work directly with the City's Risk Manager and/or designee to come to a mutual agreement regarding insurance documentation.
- AB services all our own equipment with highly-trained and certified Field Service representatives. Therefore, we do not carry independent contractor's insurance coverage.
- Contractual liability insurance is provided to the extent defined in the policy and defined as "insured contract."
- AB does not provide business automobile liability as the City of San Antonio has neither insurable interest in the autos being driven by AB employees, nor any need and/or requirement to drive AB vehicles.
- AB will provide additional insured status on General Liability and Products only.
- AB has a blanket Additional Insured endorsement on our General Liability policy, which means if we agree to within a contract that the customer is to be an additional insured for General Liability (Only) then they are automatically and AI, even though a certificate has not been insured.
- AB's General Liability policy contains blanket endorsement including Primary and Non-Contributory language.
- 30 Days notification for cancellation or non-renewal is AB company policy (as well as the insurance industry standard).
- Insurance policies, declaration pages or endorsements are considered to be confidential information to Applied Biosystems and is not released to third parties unless nondisclosure agreements are on file with the Applied Biosystems Legal Department.
- Applied Biosystems has a separate Products Liability policy which can evidence \$1 million Products/Completed Operations coverage and 2 million aggregate as required on page 7 Section 3c for property damage and bodily injury.

Should you have any questions regarding our products and/or pricing, please contact Genetic Systems Sales Representative Clark Eason at 800-248-0281 ext. 7349 or via email at clark.eason@lifetech.com. For any contractual issues, please contact me as provided below.

Thank you in advance for your time and consideration.

Sincerely,



Tracy Buie
Applied Biosystems
Contracts Specialist
Toll Free 800-327-3002
Phone 650-638-5126
Fax 650-638-5143
Email: tracy.buie@lifetech.com

Attachments

City of San Antonio Bid Tabulation

Opened: September 24, 2009			
For: Lab Equipment for Metropolitan Health District			
10-011		CC	Roche Diagnostics Corporation
			9115 Hague Road
			Indianapolis, IN, 46256
			(800) 428-5076
Item	Description	Estimated Quantity	
1	MagNA Pure LC 2.0 Instrument	1 each	
	Price Each		\$74,500.00
	Price Total		\$74,500.00
2	Freight Charges	1 each	
	Price Each		\$750.00
	Price Total		\$750.00
3	MagNa Pure Silver Service (RAS), 1 year period	1 each	
	Price Each		\$8,450.00
	Price Total		\$8,450.00
	Estimated Total		\$83,700.00
Estimated Total Award			\$83,700.00

CITY OF SAN ANTONIO PURCHASING & GENERAL SERVICES DEPT.

Issued By:CC
CITY CONTRACT NO. 10-011

Date Issued: September 29, 2009
Page 1 of 12

REQUEST FOR OFFER
TERMS & CONDITIONS FOR CONTRACT FOR
LAB EQUIPMENT

PLEASE REVIEW THE TERMS AND CONDITIONS FOR THIS REQUEST AND
PROVIDE YOUR OFFER NO LATER THAN 12:00 PM, OCTOBER 1, 2009

Contract Documents: The terms and conditions for performance and payment of compensation for this contract are set forth in the following contract documents, true and correct copies of which are attached hereto and fully incorporated herein for all purposes:

- a. This Terms and Conditions Document;

Should a conflict arise among the provisions of the contract documents, this Terms and Conditions Document shall govern over Exhibit I, unless otherwise specifically provided herein.

This Terms & Conditions Document includes the following: General Terms and Conditions, Product Specifications and Description of Services, Price Schedule, any Attachments identified herein.

The City's Purchasing and General Services Department is willing to assist any vendor(s) in the interpretation of this Terms and Conditions Document. Assistance may be received by visiting the Purchasing Office at 111 Soledad, 11th Floor, San Antonio, Texas 78205, or by calling (210) 207-7260.

It is the policy of the City of San Antonio to involve qualified Small, Minority, Woman-owned, and local business in construction, procurement, professional services, and leases and concessions contracting. The City of San Antonio has established the following minority business enterprise (MBE), woman business enterprise (WBE), African-American business enterprise (AABE), and small business enterprise (SBE) utilization goals: MBE Goal: 15%; WBE Goal: 10%; AABE Goal: 3%, SBE Goal: 50%.

The undersigned, by his/her signature, represents that he/she is authorized to bind the Vendor to fully comply with the contract for the amount(s) shown on the accompanying Price Schedule. A signature below indicates that the Vendor has read the entire document, which is incorporated herein, and agreed to the terms therein.

Signer's Name: JOHN DIMAS Firm Name: Roche Diagnostics Corporation
(Please Print or Type)

110 [Signature] 10-1-2009 Address: 9115 Hague Road
Signature of Person Authorized to Sign Offer City, State, Zip Code: Indianapolis, IN 46256

Email Address: _____ Telephone No.: 1-800-428-5076
Fax No.: 1-800-428-2883

Please complete the following:

Prompt Payment Discount: N/A % N/A days. (If no discount is offered, Net 30 will apply.)

Please check the following blanks which apply to your company:

FOR CITY USE ONLY

AWARD

Items Accepted: _____ Ordinance No: _____ Date: _____ Amount: _____

Approved: _____

CITY OF SAN ANTONIO

Ownership of firm (51% or more):

Non-minority Hispanic African-American Other Minority (specify) _____

Female Owned Handicapped Owned Small Business (less than \$1 million annual receipts or 100 employees)

Indicate Status: Partnership Corporation Sole Proprietorship Other (specify) _____

Tax Identification Number: 132511923

The remainder of this page is intentionally left blank.

I. GENERAL TERMS AND CONDITIONS

1. The terms "bidder", "contractor", and "vendor" all mean the party providing goods or services to the City pursuant to this contract.
2. ~~Rejection of Disclaimers of Warranties & Limitations of Liability. Any term or condition in Exhibit I, or any document furnished by Vendor, disclaiming the implied warranty of merchantability or of fitness for a particular purpose, or attempting to limit Vendor's liability shall be of no force or effect, and shall be stricken from the contract documents as if never contained therein.~~ 10/10/2009
3. Acceptance of Offer. By signing and submitting this document, Vendor is making an offer to City. A written award of acceptance (manifested by a City Ordinance) and appropriation or purchase order mailed or otherwise furnished to the Vendor results in a binding contract without further action by either party.
4. Vendors shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of material and equipment as required by the contract documents. No plea of ignorance by the vendor of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the vendor to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the City or the compensation to the vendor.
5. Taxes. Vendor shall not include federal taxes nor State of Texas limited sales excise and use taxes in prices, since the City of San Antonio is exempt from payment of such taxes. An exemption certificate will be signed by City where applicable upon request by Vendor.
6. Point of Destination. All goods, materials and equipment shall be delivered FOB Destination, City of San Antonio's designated facility, or to the "ship to" address indicated on the purchase order, inside delivery. Regardless of shipping terms used, title and risk of loss shall pass to City only upon receipt at City's "ship to" address.
7. Delivery Times. Proposed delivery time must be shown and shall include weekends and holidays, unless specified otherwise herein.
8. Failure to Meet Delivery Schedule. When delivery is not met as provided for in the contract, the Purchasing and General Services Department reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the vendor, in addition to any other damages, direct, indirect, consequential, or incidental incurred by the City as a result thereof.
9. Acceptance By City. The City shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by Vendor. The City at its option may reject all or any portion of such goods or services which do not, in City's sole discretion, comply in every respect with all terms and conditions of the contract. The City may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If the City elects to accept nonconforming goods and services, the City, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate the City for the nonconformity. Any acceptance by the City, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services.
10. Contract Termination

TERMINATION-BREACH:

- (a) Should Vendor fail to fulfill in a timely and proper manner, as determined solely by the Director of Purchasing and General Services, its obligations under this contract, or violate any of the material terms of this contract, the City shall have the right to immediately terminate the contract. Notice of termination shall

be provided in writing to the contractor, effective upon the date set forth in the notice. Such termination shall not relieve the vendor of any liability to the City for damages sustained by virtue of any breach by the vendor.

TERMINATION-NOTICE:

- (b) The City may cancel this contract for convenience upon ten (10) days prior written notice.

TERMINATION-FUNDING:

- (c) City retains the right to terminate this contract at the expiration of each of City's budget periods. This contract is conditioned on a best efforts attempt by City to obtain and appropriate funds for payment of any debt due by City herein.

11. INDEMNIFICATION

VENDOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to VENDOR'S activities under this Agreement, including any acts or omissions of VENDOR, any agent, officer, director, representative, employee, consultant or subcontractor of VENDOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. VENDOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or VENDOR known to VENDOR related to or arising out of VENDOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at VENDOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving VENDOR of any of its obligations under this paragraph.

12. Assignment and Subcontracting

- (a) Vendor shall not sell, assign, pledge, transfer or convey any interest in this contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the Director of City's Purchasing and General Services Department. As a condition of such consent, if such consent is granted, Vendor shall remain liable for completion of the services outlined in this contract in the event of default by the successor vendor, assignee, transferee or subcontractor.
- (b) Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Contract. Compliance by subcontractors with this contract shall be the responsibility of Vendor. City shall in no event be obligated to any third party, including any subcontractor of Vendor, for performance of services or payment of fees.

- (c) Any attempt to transfer, pledge or otherwise assign this contract without said written approval, shall be void ab initio, and shall confer no rights upon any third person. Should Vendor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this contract, City may, at its option, cancel this contract and all rights, titles and interest of Vendor shall thereupon cease and terminate, notwithstanding any other remedy available to City. The violation of this provision by Vendor shall in no event release Vendor from any obligation under the terms of this contract, nor shall it relieve or release Vendor from the payment of any damages to City, which City sustains as a result of such violation.

13. Independent Contractor. Vendor covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City. City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the vendor under this contract and that the vendor has no authority to bind the City.

14. Patents/Copyrights. The Vendor agrees to indemnify and hold the City harmless from any claim involving patent infringement or copyrights on goods supplied.

15. Public Information Act. Vendor is advised that all City contracts are subject to all legal requirements provided for in the City Charter and/or applicable City Ordinances, state and federal statutes. All contracts are subject to the Public Information Act, Texas Government Code Chapter 552; therefore Vendor must clearly indicate any portion of the contract documents that Vendor claims is not subject to public inspection under the Public Information Act.

16. Conflict of Interest. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall benefit financially, directly or indirectly, in the sale to the City of any materials, supplies or services, except on behalf of the City as an officer or employee. This prohibition extends to the City Public Service Board, San Antonio Water System, and all City boards and commissions other than those which are purely advisory. In this instance a City employee is defined as any employee of the City who is required to file a financial involvement report pursuant to the City's ethics ordinance.

17. Severability. If any clause or provision of this contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this contract that is invalid, illegal, or unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

18. Nonwaiver of Performance. Unless otherwise specifically provided for in this contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option.

19. Non-discrimination Policy. It is the City's policy that Small and/or Minority Business Enterprises shall have the maximum practicable opportunity to participate in the performance of public contracts. Vendor agrees that if this offer is accepted, he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation.

20. Compliance with Law. Vendor shall provide and perform all services required under this contract in compliance with all applicable federal, state and local laws, rules and regulations.

21. **Venue.** Venue of any court action brought directly or indirectly by reason of this contract shall be in Bexar County, Texas. This contract is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.

22. **Entire Agreement.** This contract, together with its authorizing ordinance and its attachments, purchase orders, and exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with the Change Order provision herein.

23. **Invoicing and Payment.** Vendor shall submit invoices to City itemizing the services provided to City. Invoices shall be addressed to:

City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy addressed to:

Mark Wade, San Antonio Metropolitan Health District, 332 West Commerce St., #201, San Antonio, Texas 78205.

Contractor shall include City's purchase order number on invoices. Invoices shall be in a form and content approved by City.

In accordance with the Texas Prompt Payment Act, City shall pay Vendor the amounts shown on the Price Schedule within 30 days of receipt of a properly addressed, correct invoice, or installation of the equipment described herein, whichever shall occur later.

~~24. **Insurance.** Strike entire insurance section**~~

- ~~(a) Prior to the commencement of any work under this Agreement, Vendor shall furnish copies of all required endorsements and an original, completed Certificate(s) of Insurance to the City's Purchasing & General Services Department, which shall be clearly labeled "Lab Equipment" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Purchasing & General Services Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.~~
- ~~(b) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.~~
- ~~(c) A Vendor's financial integrity is of interest to the City; therefore, subject to Vendor's right to maintain reasonable deductibles in such amounts as are approved by the City, Vendor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Vendor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:~~

~~10 10.1.2009~~

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following:	For Bodily Injury and Property Damage of \$1,000,000 per occurrence;
a. Premises operations	\$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
b. Independent Contractors	
c. Products/completed operations	
d. Personal Injury	
e. Contractual Liability	
4. Business Automobile Liability	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
a. Owned/leased vehicles	
b. Non-owned vehicles	
c. Hired Vehicles	

(d) ~~The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Vendor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Vendor shall pay any costs incurred resulting from said changes.~~

City of San Antonio
 Attn: Purchasing & General Services Department
 P.O. Box 839966
 San Antonio, Texas 78283-3966

(e) ~~Vendor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:~~

- ~~• Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;~~
- ~~• Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;~~
- ~~• Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.~~
- ~~• Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.~~

(f) ~~Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Vendor shall provide~~

~~JCS~~
 10-1-2007

~~a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Vendor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.~~

- ~~(g) In addition to any other remedies the City may have upon Vendor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Vendor to stop work hereunder, and/or withhold any payment(s) which become due to Vendor hereunder until Vendor demonstrates compliance with the requirements hereof.~~
- ~~(h) Nothing herein contained shall be construed as limiting in any way the extent to which Vendor may be held responsible for payments of damages to persons or property resulting from Vendor's or its subcontractors' performance of the work covered under this Agreement.~~
- ~~(i) It is agreed that Vendor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.~~
- ~~(j) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.~~
- ~~(k) Vendor and any Subcontractors are responsible for all damage to their own equipment and/or property. JK
10-1-2009~~

The remainder of this page is intentionally left blank.

**Roche Diagnostics and its wholly owned subsidiaries have made a business decision to self insure its exposure to product liability and completed operation risks up to CHF 50,000,000. Roche Diagnostics therefore agrees to maintain a self-insurance coverage equivalent to the City's required amounts of insurance coverage. Roche Diagnostics will not add additional insured.

II. PRODUCT SPECIFICATIONS & DESCRIPTION OF SERVICES

1. Period of Contract. Contract shall be for the period beginning upon issuance by City of a purchase order and terminating upon acceptance by City after installation by Vendor.

2. Product Specifications.

a. Model: MagNA Pure LC 2.0 Instrument used to purify DNA and RNA, Optimized magnetic bead separation, no cross contamination detectable, stand alone bench-top instrument, process 1 to 32 samples per batch, 8 nozzle, X, Y, Z robotic arm, precise, piston driven pipetting, 170 kilograms, no vacuum or tubing on stage, no sample contact with machine surfaces, closed housing with UV decontamination capability, Power – standard plug AC90 to 240v. Price Includes:

- MagNA Pure LC 2.0 Software
 - MagNA Pure LC Cooling Blocks
 - On-site installation (labor/supplies)
 - On-site training (labor/supplies)
 - Instrument Warranty: Complete coverage of parts and labor for one year.
- Catalogue #05197686001

b. MagNA Pure Silver Service (RAS), 1 year period
Catalogue #03734862001

3. Installation Services. Vendor will be required to install equipment and ensure functionality to manufacturer's specifications.

The remainder of this page is intentionally left blank.

III. PRICE SCHEDULE

Item	Qty	Description	Price Each	Extended Price
A	1 ea	Model: MagNA Pure LC 2.0 Instrument. Catalogue #05197686001 Freight Charges	\$84,500.00	\$74,500.00 \$ 750.00
B	1 ea	MagNA Pure Silver Service (RAS), 1 year period Catalogue #03734862001	\$8,450.00	\$8,450.00

Price includes all freight / shipping charges and installation.

Delivery and installation shall be made within 90 calendar days after receipt of City's purchase order.

The remainder of this page is intentionally left blank.

Statement:

"Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date that the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at www.ethics.state.tx.us/forms/CIQ.pdf. Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk. If mailing a completed conflict of interest questionnaire, mail to: Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205."

The remainder of this page is intentionally left blank.

IMPORTANT MAILING INSTRUCTIONS:

MAIL TO: CITY OF SAN ANTONIO
PURCHASING & GENERAL SERVICES
ATTN: CHRISTINA CARDENAS
P.O. BOX 839966
SAN ANTONIO, TX 78283-3966

PHYSICAL ADDRESS: PURCHASING & GENERAL SERVICES
ATTN: CHRISTINA CARDENAS
111 SOLEDAD, 11TH FLOOR
SAN ANTONIO, TEXAS 78205

REMARKS:

The remainder of this page is intentionally left blank.

**CITY OF SAN ANTONIO
PURCHASING DEPARTMENT
CERTIFICATE OF EXEMPTION FROM
COMPETITIVE BID OR PROPOSAL REQUIREMENTS**

Date 09/18/09

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals, before entering into a contract requiring expenditure in excess of \$50,000 except as specified below:

(Please check which exemption you are certifying)

- | | | | |
|-------------------------------------|--|--------------------------|--|
| <input type="checkbox"/> | a procurement made because of a public calamity that requires funds to relieve the needs of the residents or to preserve city property | <input type="checkbox"/> | paving, drainage, street widening and other public improvements or related matter where at least one-third of the costs are paid by special assessments |
| <input checked="" type="checkbox"/> | a procurement to preserve or protect the public health or safety of the city's residents | <input type="checkbox"/> | a public improvement project which has been authorized but for which there is deficiency of funds to complete in accordance with the plans as authorized |
| <input type="checkbox"/> | a procurement necessary because of unforeseen damage to machinery, equipment or other property | <input type="checkbox"/> | a payment under a contract by which a developer participates in the construction of a public improvement as provided by subchap. c, ch 212. |
| <input type="checkbox"/> | a procurement for personal, professional or planning services | <input type="checkbox"/> | personal property sold |
| <input type="checkbox"/> | a procurement for work that is performed and paid for by the day as the work progresses | <input type="checkbox"/> | services performed by blind or severely disabled persons |
| <input type="checkbox"/> | a purchase of land or right-of-way | <input type="checkbox"/> | goods purchased by a municipality for subsequent retail sale by the municipality |
| <input type="checkbox"/> | a procurement of items available from only one source | <input type="checkbox"/> | electricity |
| <input type="checkbox"/> | a purchase of rare books, papers and other materials for a public library | | |

This Certificate of Exemption is executed and filed with the Purchasing Department as follows:

1. The undersigned is authorized to approve an exemption.
2. An exemption according to Section 252.022 of the Local Government Code exists. More specifically, the following event has occurred: The Texas Department of State Health Services has specifically authorized the purchase and provided funding for two Applied Biosystem 7500 Fast DX Real-Time Polymerase Chain reaction instruments for use in the San Antonio Metropolitan Health District Laboratory H1N1 Flu emergency response.
3. Because the exemption stated above exists, the City of San Antonio intends to contract with Applied Biosystems which will cost approximately \$121,256.00.

Mark Wade, Laboratory Services Division Manager
Originator

Dr. Fernando Guerra, SAMHD Director
Department Director Approval

City Manager or designee (signature for approval required only for ratification by City Council)

CITY OF SAN ANTONIO
PURCHASING DEPARTMENT
CERTIFICATE OF EXEMPTION FROM
COMPETITIVE BID OR PROPOSAL REQUIREMENTS

Date 09/18/09

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals, before entering into a contract requiring expenditure in excess of \$50,000 except as specified below:

(Please check which exemption you are certifying)

- | | |
|---|---|
| <input type="checkbox"/> a procurement made because of a public calamity that requires funds to relieve the needs of the residents or to preserve city property | <input type="checkbox"/> paving, drainage, street widening and other public improvements or related matter where at least one-third of the costs are paid by special assessments |
| <input checked="" type="checkbox"/> a procurement to preserve or protect the public health or safety of the city's residents | <input type="checkbox"/> a public improvement project which has been authorized but for which there is deficiency of funds to complete in accordance with the plans as authorized |
| <input type="checkbox"/> a procurement necessary because of unforeseen damage to machinery, equipment or other property | <input type="checkbox"/> a payment under a contract by which a developer participates in the construction of a public improvement as provided by subchap. c, ch 212. |
| <input type="checkbox"/> a procurement for personal, professional or planning services | <input type="checkbox"/> personal property sold |
| <input type="checkbox"/> a procurement for work that is performed and paid for by the day as the work progresses | <input type="checkbox"/> services performed by blind or severely disabled persons |
| <input type="checkbox"/> a purchase of land or right-of-way | <input type="checkbox"/> goods purchased by a municipality for subsequent retail sale by the municipality |
| <input type="checkbox"/> a procurement of items available from only one source | <input type="checkbox"/> electricity |
| <input type="checkbox"/> a purchase of rare books, papers and other materials for a public library | |

This Certificate of Exemption is executed and filed with the Purchasing Department as follows:

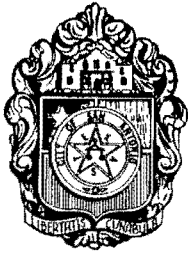
1. The undersigned is authorized to approve an exemption.
2. An exemption according to Section 252.022 of the Local Government Code exists. More specifically, the following event has occurred: The Texas Department of State Health Services has specifically authorized the purchase and provided funding for one one Roche MagNA Pure LC 2.0 Instrument P/N 05197686001 for use in the San Antonio Metropolitan Health District Laboratory H1N1 Flu emergency response.
3. Because the exemption stated above exists, the City of San Antonio intends to contract with Roche Diagnostics which will cost approximately \$83,700.00.

Mark Wade, Laboratory Services Division Manager Mark Wade
Originator

Dr. Fernando Guerra, SAMHD Director Fernando Guerra
Department Director Approval

City Manager or designee (signature for approval required only for ratification by City Council)

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CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 7

Council Meeting Date: 10/15/2009

RFCA Tracking No: R-5598

DEPARTMENT: Purchasing and General Services

DEPARTMENT HEAD: Janie Cantu

COUNCIL DISTRICT(S) IMPACTED:
City Wide

SUBJECT:
Laboratory Equipment for Metropolitan Health District

SUMMARY:

This ordinance authorizes contracts with Applied Biosystems LLC for the purchase of two (2) 7500 Fast Dx Real-Time PCR Instruments and Roche Diagnostics Corporation for the purchase of one (1) MagNA Pure LC 2.0 system for the San Antonio Metropolitan Health District (Metro Health) for a total cost of \$204,956.00.

In order to analyze for H1N1 and seasonal influenza specimens, ribonucleic acid (RNA) has to be extracted from patient specimens. Once extracted, minute amounts of RNA must then go through a polymerase chain reaction (PCR) process that amplifies millions of copies of influenza specific RNA targets contained in the specimen (if present) to an amount that can be detected and read by an instrument. The MagNa Pure LC 2.0 is an instrument that automatically extracts the RNA from 32 specimens at a time and the 7500 Fast DX instrument performs the PCR amplification and then detects the presence of influenza specific RNA if present. This information is then translated to a patient report to indicate Positive or Negative for Influenza A, Novel H1N1 Influenza, or Influenza B.

BACKGROUND INFORMATION:

Submitted for City Council consideration and action are the offers submitted by Applied Biosystems LLC for the purchase of two (2) 7500 Fast Dx Real-Time PCR Instruments and Roche Diagnostics Corporation for the purchase one (1) MagNA Pure LC 2.0 system for use by Metro Health for a total cost of \$204,956.00. These purchases will be funded utilizing the Public Health Emergency Response (PHER) Lab Grant.

On April 26, 2009, the Acting Secretary of Health and Human Services declared a public health emergency as a result of the detection of known cases of individuals infected by swine-origin influenza A virus, now known as novel influenza A (H1N1), in the United States. On June 11, 2009, the World Health Organization declared the first pandemic in over 40 years in recognition of widespread and sustained human-to-human transmission of the virus in multiple regions around

the globe.

The Centers for Disease Control and Prevention (CDC) designed a test platform for influenza surveillance to be used by qualified public health laboratories that includes: proprietary CDC produced polymerase chain reaction primers and probes, Roche Diagnostics MagNA pure nucleic acid extraction instruments, Master Mix PCR reagents and the Applied Biosystems 7500 Fast DX Real-Time PCR instrument. This equipment and supplies will increase the public health testing capabilities to adequately mount a response to the upcoming novel H1N1 and seasonal influenza season.

ISSUE:

This influenza testing platform was approved by the Food and Drug Administration (FDA) under an emergency-use authorization (EAU) which fast-tracked the platform through the approval process to meet regulatory requirements for human testing. The approved EAU testing platform consists of specific equipment which includes the Roche Diagnostics MagNA pure nucleic acid extraction instruments and the Applied Biosystems 7500 Fast DX Real-Time PCR instrument. This equipment, coupled with specific testing reagents, is the only authorized means to test for H1N1 and seasonal influenza.

This procurement is exempt from competitive bidding pursuant to Texas Local Government Code Section 252.022, which provides for the procurement of items necessary to preserve or protect the health or safety of the City's residents.

ALTERNATIVES:

Should these contracts not be approved, Metro Health will have to rely on their current testing capacity and capability which is limited to approximately 30 samples per day. This would drastically limit the test volumes and epidemiological information necessary for pandemic surveillance for Bexar County and Public Health Region 8. This could hamper the ability to adequately mount a timely public health response to the H1N1 influenza pandemic and seasonal influenza season. In addition, this specific equipment is part of the FDA/CDC approved influenza testing platform.

FISCAL IMPACT:

The total cost of this purchase is \$204,956.00. This purchase will be funded utilizing the Public Health Emergency Response (PHER) Lab Grant.

RECOMMENDATION:

Staff recommends the approval of a contract with Applied Biosystems LLC for the purchase of two (2) 7500 Fast Dx Real-Time PCR Instruments and a contract with Roche Diagnostics Corp. for the purchase of one (1) MagNA Pure LC 2.0 system for the San Antonio Metropolitan Health District for a total cost of \$204,956.00.

These contracts are procured on the basis of a public health and safety exemption from competitive bidding and a Discretionary Contracts Disclosure form is not required.

File Description	File Name
<u>Bid Tab - Applied Biosystems, LLC</u>	Bid Tab - Applied Biosystems, LLC.pdf
<u>Contract - Applied Biosystems, LLC</u>	Contract - Applied Biosystems, LLC.pdf
<u>Bid Tab - Roche Diagnostics Corporation</u>	Bid Tab - Roche Diagnostics Corporation.pdf
<u>Contract - Roche Diagnostics Corporation</u>	Contract - Roche Diagnostics Corporation.pdf
<u>Certificates of Exemption</u>	Certificates of Exemption.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Janie B. Cantu Director Purchasing and General Services

APPROVED FOR COUNCIL CONSIDERATION:

Sharon De La Garza Assistant City Manager

City of San Antonio Bid Tabulation

Opened: September 24, 2009			
For: Lab Equipment for Metropolitan Health District			
10-010		CC	Applied Biosystems, LLC 850 Lincoln Centre Dr. Foster City, CA 94404 (210) 380-9534
Item	Description	Estimated Quantity	
1	7500 Fast Dx Instrument, Tower	2 each	
	Price Each		\$60,628.00
	Price Total		\$121,256.00
	Estimated Total		\$121,256.00
	Estimated Total Award		\$121,256.00

Agenda Item:	7 (in consent vote: 5, 6, 7, 9, 12, 15, 16, 18, 19, 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 21)						
Date:	10/15/2009						
Time:	10:27:59 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance accepting the offers from Applied Biosystems and Roche Diagnostics Corp. for the purchase of laboratory equipment for the Metropolitan Health District for a cost of \$204,956.00, funded by the Public Health Emergency Response Grant from the Texas Department of State Health Services. [Sharon De La Garza, Assistant City Manager; Janie Cantu , Director, Purchasing & General Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x			x	