

CONTRACT TERMS

ABANDONMENT OR DEFAULT

If the contractor defaults on the contract, the Texas Animal Health Commission reserves the right to cancel the contract without notice and either re-solicit or re-award the contract to the next best responsive and responsible respondent. The defaulting contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the agency based on the seriousness of the default.

AMENDMENTS

This Contract may be amended only upon written agreement between the Texas Animal Health Commission and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio.

ANTITRUST

Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

APPLICABLE LAW; VENUE

This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas.

APPLICABLE LAW AND CONFORMING AMENDMENTS

Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. The Texas Animal Health Commission reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for the Texas Animal Health Commission or Contractor's compliance with all applicable State and federal laws, and regulations.

ASSIGNMENTS

Without the prior written consent of the Texas Animal Health Commission Contractor may not assign this Contract, in whole or in part, and may not assign any right or duty required under it.

AWARD OF CONTRACT

A response to this Bid is an offer to contract based upon the terms, conditions and specifications contained herein. Bids do not become contracts until they are accepted through a purchase order. The contract shall be governed, construed and interpreted under the laws of the State of Texas. The factors

listed in Texas Government Code, Title 10, Subtitle D, Section 2155.074, 2155.144, 2156.007, and 2157.003 shall also be considered in making an award when specified.

BID REQUIREMENTS

Bidders must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form. Bids should be submitted on this form. Bidders must price per unit shown. Unit prices shall govern in the event of extension errors. If a price quotation is submitted as part of the bid, the quotation must be referenced on the bid document and signed by the Bidder to establish formal linkage to the bid. Bids must be time stamped at the Texas Animal Health Commission on or before the hour and date specified for the bid due date. Late and/or unsigned bids will not be considered under any circumstances. Person signing bid must have the authority to bind the firm in a contract. Bidder must quote "F.O.B. destination, freight prepaid and allowed" unless otherwise stated within the specifications. Bid prices are requested to be firm for the Texas Animal Health Commission acceptance for 30 days from bid opening date. "Discount from list" bids are not acceptable unless requested. Cash discounts are not considered in determining an award. Cash discounts offered will be taken if earned. Bidders should enter Texas Identification Number System (TINS) number, full firm name and address of bidder on the face of this form. Enter in the space provided, if not shown. Additionally, firm name should appear on each continuation page of a bid, in the block provided on the top of the page. Bid cannot be altered or amended after opening time. Alterations made before opening time should be initialed by bidder or their authorized agent. No bid can be withdrawn after opening time without approval by the Texas Animal Health Commission based on an acceptable written reason. Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Excise Tax Exemption Certificates are available upon request. AWARD NOTICE - The State reserves the right to make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interest of the State and to reject any and all bid items at the sole discretion of the State. The State also reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid to best serve the interests of the State. Any contract may also be extended up to three months at the sole discretion of the State. Consistent and continued tie bids could cause rejection of bids by the Texas Animal Health Commission and/or investigation for antitrust violations. The State shall not be responsible for failure of electronic equipment or operator error. Late, illegible, incomplete, or otherwise non-responsive bids will not be considered. Inquiries pertaining to bid must include the bid number, class/item codes, and due date. Advertising - Contractor is prohibited from using contract award information, sales values/volumes and/or State of Texas customers in sales brochures or other promotions, including press releases, prior written approval is obtained from the Manager, Procurements and Contracts, and the Texas Animal Health Commission.

BUY TEXAS

In accordance with Texas Government Code, Section 2155.4441, the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state.

CERTIFICATION CONCERNING HURRICANE RELIEF

Sections 2155.006 and Section 2261.053, Texas Government Code, prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane

Katrina, or any other disaster, as defined by Section 418.004 Texas Government Code, occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, the Respondent certifies that the individual or business entity named in its Proposal is no ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certifications inaccurate.

CONFIDENTIALITY AND PUBLIC INFORMATION ACT

Notwithstanding any provisions of this Contract to the contrary, Contractor understands that the Texas Animal Health Commission will comply with the Texas Public Information Act, Texas Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. The Texas Animal Health Commission agrees to notify Contractor in writing within a reasonable time from receipt of a request for information related to Contractor's work under this contract. Contractor will cooperate with the Texas Animal Health Commission in the production of documents responsive to the request. The Texas Animal Health Commission will make a determination whether to submit a Public Information Act request to the Attorney General. Contractor will notify the Texas Animal Health Commission General Counsel within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing the Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. The Comptroller of Public Accounts recommends that pursuant to SB 1368, state governmental entities include the following language in their contracts: **"Contractor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state."** In addition to this recommended language, the Comptroller also advises that in order to ***comply with the new statutory requirements***, each state governmental entity should supplement this provision with the additional terms agreed upon by the parties regarding the specific format by which the vendor is required to make the information accessible by the public.

CONFLICT OF INTEREST

Under Section 2155.003 of the Texas Government Code, a Texas Animal Health Commission employee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the State; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual which outlines the ethical standards required of public purchasers, employees, and vendors who interact with public purchasers in the conduct of State business, and with any opinions of or rules adopted by the Texas Ethics Commission. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of the Texas Animal Health Commission or purchasers of other State agencies.

DEBTS OR DELINQUENCIES TO STATE

The Comptroller is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the state. Contractor agrees that, to the extent Contractor

owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Contractor is otherwise owed under this Contract shall be applied toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full. Contractor agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

DEFAULT

If Contractor is found to be in default under any provision of this Contract, the Texas Animal Health Commission may cancel the Contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. In the event of abandonment or default, Contractor will be responsible for paying damages to the Texas Animal Health Commission including but not limited to re-procurement costs, and any consequential damages to the State of Texas or the Texas Animal Health Commission resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.

DELIVERY

Show number of days required to place material in Texas Animal Health Commission designated location under normal conditions. Delivery days mean calendar days, unless otherwise specified. Failure to state delivery time obligates bidder to deliver in 14 calendar days. Unrealistic delivery promises may cause bid to be disregarded. If delay is foreseen, vendor shall give written notice to the Texas Animal Health Commission. Vendor must keep the Texas Animal Health Commission advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the Texas Animal Health Commission to purchase the goods or services of this bid elsewhere and charge any increased costs for the goods or services, including the cost of re-soliciting, to the Bidder. No substitutions permitted without written approval of the Texas Animal Health Commission. Delivery shall be made during normal working hours only, unless prior approval has been obtained from the Texas Animal Health Commission.

DISPUTE RESOLUTION

The dispute resolution process provided for in Texas Government Code, Chapter 2260 shall be used by the Texas Animal Health Commission and Contractor to resolve any dispute arising under the Contract. The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach of contract asserted by the Respondent under the Contract. If the Respondent's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Respondent shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. The notice shall also be given to the individual identified in the

Contract for receipt of notices. Compliance by the Respondent with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260. The contested case process provided in Chapter 2260 is the Respondent's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the Texas Animal Health Commission if the Parties are unable to resolve their disputes as described above. Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by the Texas Animal Health Commission nor any other conduct of any representative of the Texas Animal Health Commission relating to the Contract shall be considered a waiver of sovereign immunity to suit. For all other specific breach of contract claims or disputes under the Contract, the Texas Animal Health Commission and the Respondent shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the Texas Animal Health Commission and the Respondent within fifteen (15) days after written notice by one them demanding mediation under this Section. The Respondent shall pay all costs of the medication unless the Texas Animal Health Commission in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, the Texas Animal Health Commission and the Respondent may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that the Texas Animal Health Commission and the Respondent shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The Texas Animal Health Commission participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the Texas Animal Health Commission of (1) any rights, privileges, defenses, remedies or immunities available to the Texas Animal Health Commission as an agency of the State of Texas or otherwise available to the Texas Animal Health Commission; (2) the Texas Animal Health Commission termination rights; or (3) other termination provisions or expiration dates of the Contract. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the Texas Animal Health Commission the Respondent shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, the Respondent may suspend performance during the pendency of such claim or dispute if the Respondent has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

DRUG FREE WORK PLACE

Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§ 8101-8106.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget (2 C.F.R. Part 182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY 1 TAC CHAPTER 213 (APPLICABLE TO STATE AGENCY AND INSTITUTION OF HIGHER EDUCATION PURCHASES ONLY)

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. 2)

Contractor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

ELIGIBILITY

Under Texas Government Code, Section 2155.004 (relating to certain taxes), Contractor represents and warrants that Contractor is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this representation and warranty is inaccurate. Contractor represents and warrants that it is not delinquent in the payment of any franchise taxes owed the State of Texas. Also, Texas Government Code, Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.

EQUAL OPPORTUNITY

Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

FAMILY CODE

Under Texas Family Code, Title 5, Subtitle D, Section 231.006(d), regarding child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to Section 231.006 must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award.

FALSE STATEMENTS; BREACH OF REPRESENTATIONS

By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signed its Proposal with a false statement or signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract and the Texas Animal Health Commission may terminate or void this Contract for cause and pursue other remedies available to the Texas Animal Health Commission under this Contract and applicable law.

FEDERAL, STATE, AND LOCAL REQUIREMENTS

Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its

employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section. **FELONY CRIMINAL CONVICTIONS** Contractor represents and warrants that Contractor has not and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised the Texas Animal Health Commission as to the facts and circumstances surrounding the conviction.

FINANCIAL INTERESTS; GIFTS

Contractor represents and warrants that neither Contractor nor any person or entity that will participate financially in this Contract has received compensation from the Texas Animal Health Commission or any agency of the State of Texas for participation in preparation of specifications for this Contract. Contractor represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this Contract.

FORCE MAJEURE

Neither Contractor nor the Texas Animal Health Commission shall be liable to the other for any delay in, or failure of performance, of any requirement included in any PO resulting from this RFP caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

HUBS

Contractor represents and warrants that it shall comply with the Historically Underutilized Business requirements pursuant to Texas Government Code, Chapter 2261. A HUB Subcontracting Plan form must be filled out and returned with the Proposal to be considered responsive. If the Proposal does not include a HUB Subcontracting Plan, it shall be rejected as a material failure to comply with advertised specifications.

IMMIGRATION

The Contractor represents and warrant that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verifications forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996. **INDEMNIFICATION**

Acts or Omissions Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of

subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. Infringements a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement. c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity 1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. 2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

INDEPENDENT CONTRACTOR

Contractor or Contractor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any PO resulting from this RFP. Contractor or Contractor's employees, representatives, agents and any subcontractors shall not be employees of the Texas Animal Health Commission. Should Contractor subcontract any of the services required in this RFP, Contractor expressly understands and acknowledges that in entering into such subcontract(s), the Texas Animal Health Commission is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve bidder of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this RFP.

INSURANCE AND OTHER SECURITY

Contractor represents and warrants that it will, within five (5) business days of executing this agreement, provide the Texas Animal Health Commission with current certificates of insurance or other proof acceptable to the Texas Animal Health Commission of the following insurance coverage: Standard Workers Compensation Insurance covering all personnel who will provide services under this Contract; Commercial General Liability Insurance, personal injury and advertising injury with, at a minimum, the following limits: \$500,000 minimum each occurrence; \$1,000,000 per general aggregate. Contractor represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with "A" rating from Best, and authorized to provide the corresponding coverage. Contractor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to the Texas Animal Health Commission. Contractor represents and warrants that it shall maintain the above insurance coverage during the term of this Contract, and shall provide the Texas Animal Health Commission with an executed copy of the policies immediately upon request.

LIABILITY FOR TAXES

Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. The Texas Animal Health Commission shall not be liable for any taxes resulting from this Contract.

LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS

Contractor shall have no authority to act for or on behalf of the Texas Animal Health Commission or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or the Texas Animal Health Commission.

MERGER

This Contract contains the entire agreement between Contractor and the Texas Animal Health Commission and supersedes any prior understandings or oral or written agreements between the Texas Animal Health Commission and Contractor on the matters contained herein. No modification, alteration, or waiver of any term, covenant, or condition of this Contract and any attachments shall be valid unless in writing and executed by the Texas Animal Health Commission and Contractor.

NO CONFLICTS

Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that Contractor's provision of services under this Contract would not reasonably create an appearance of impropriety.

NO LIABILITY UPON TERMINATION

If this Contract is terminated for any reason, the Texas Animal Health Commission and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Texas Government Code, Chapter 2260.

NO WAIVER

Nothing in this Contract shall be construed as a waiver of the state's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. The Texas Animal Health Commission does not waive any privileges, rights, defenses, or immunities available to the Texas Animal Health Commission by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

NOTE TO RESPONDENT

Any terms and conditions attached to the response will not be considered unless specifically referred to on this Request for Proposal and may result in disqualification of the response.

NOTICES

Any written notices required under this Contract will be by either hand delivery to Contractor's office address specified on this Contract or by U.S. Mail, certified, return receipt requested, to Texas Animal Health Commission, P.O. Box 12966, Austin, TX, 78711-2966. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.

PARTIALLY COMPLETED WORK

No later than the first calendar day after the termination of this Contract, or at the Texas Animal Health Commission request, Contractor shall deliver to the Texas Animal Health Commission all completed, or partially completed, work and any and all documentation or other products and results of these services. Failure to timely deliver such work or any and all documentation or other products and results of the services shall be considered a material breach of this Contract. Contractor shall not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of the Texas Animal Health Commission.

PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS

Contractor shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's or Contractor's use of or acquisition of any services or other items provided to the State of

Texas by Contractor or otherwise to which the State of Texas has access as a result of Contractor's performance under this Contract, provided that the State shall notify Contractor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify the Texas Animal Health Commission of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without the Texas Animal Health Commission prior written approval. Contractor shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

PAYMENTS

Prior to authorizing payment to Contractor, the Texas Animal Health Commission shall evaluate Contractor's performance using the performance standards set forth in all documents constituting this Contract. Contractor shall provide invoices to the Texas Animal Health Commission for Commodities/Services provided/performed. Invoices must be submitted not later than the 15th day of the month after the Services are completed. No payment whatsoever shall be made under this contract without the prior submission of detailed, correct invoices. Subject to the foregoing, the Texas Animal Health Commission must make all payments in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251. Payments under this Contract are subject to the availability of appropriated funds. Contractor acknowledges and agrees that payments for services provided under this Contract are contingent upon the Texas Animal Health Commission receipt of funds appropriated by the Texas Legislature.

PROHIBITED USE OF APPROPRIATED OR OTHER FUNDS UNDER CONTROL OF STATE AGENCY; LOBBYING

The Contractor represents and warrants that ordering entities' payments to the Contractor and Contractor's receipt of appropriated or other funds under any of this or any resulting agreement are not prohibited by Texas Government Code, Section 556.005 or Section 556.008.

SEVERABILITY CLAUSE

In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

SIGNATORIES

The undersigned signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective parties.

SPECIFICATIONS

Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids on brands of like nature and quality will be considered unless advertised under Texas Government Code, Title 10, Subtitle D, Section 2155.067. If bidding on other than references, bid should show manufacturer, brand or trade name, and other description of product offered. If other than

brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the bid. Failure to take exception to specifications or reference data will require Bidder to furnish specified brand name, numbers, etc. Unless otherwise specified, items shall be new and unused and of current production. All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA. Samples, when requested, must be furnished free of expense to the State. If not destroyed in examination, they will be returned to the Bidder, on request, at Bidder's expense. Each sample should be marked with Bidder's name and address, and bid number. Do not enclose in or attach bid to sample. The State will not be bound by any oral statement or representation contrary to the written specifications of this Bid. Manufacturer's standard warranty shall apply unless otherwise stated in the Bid.

STRICT COMPLIANCE

Time is of the essence in the performance of this Contract. Contractor shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this Contract.

SUBSTITUTIONS

Substitutions are not permitted without written approval of the Texas Animal Health Commission.

SUPPORTING DOCUMENTS, RETENTION; RIGHT TO AUDIT; INDEPENDENT AUDITS

Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the "Work" as defined in this Contract. Contractor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by the Texas Animal Health Commission and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor. Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Contractor's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize the Texas Animal Health Commission and the State of Texas to immediately assess appropriate damages for such failure. Pursuant to Texas Government Code, Section 2262.154, the acceptance of funds by Contractor or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract, shall constitute acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds. Contractor acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

SURVIVAL OF TERMS

Termination of the Contract for any reason shall not release the Respondent from liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification.

TERM AND TERMINATION

This Contract shall become effective on the date signed by the appropriate official of the Texas Animal Health Commission and shall expire on _____ unless otherwise sooner terminated as provided in this Contract. Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of this Contract. The Texas Animal Health Commission may, in its sole discretion, terminate this Contract upon thirty (30) days' written notice to Contractor. Such notice may be provided by facsimile or certified mail; return receipt requested and is effective upon Contractor's receipt. (a) Convenience The Texas Animal Health Commission may, in its sole discretion, terminate this Contract upon thirty (30) days' written notice to Contractor. Such notice may be provided by facsimile or certified mail return receipt requested and is effective upon Contractor's receipt. In the event of such termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Customers shall be liable only for payments for any goods or services ordered from the Respondent before the termination date. (b) Cause/Default If the Respondent fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any terms or conditions of the Contract. The Texas Animal Health Commission may, upon written notice of default to the Respondent, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under the Contract. The Texas Animal Health Commission may exercise any other right, remedy, or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless the Texas Animal Health Commission notifies the Respondent in writing prior to the exercise of such remedy. The Respondent shall be liable for all costs and expenses, including court costs, incurred by the Texas Animal Health Commission with respect to the enforcement of any of the remedies listed herein. (c) Rights upon Termination or Expiration In the event that the Contract is terminated for any reason, or upon its expiration, the Texas Animal Health Commission and Customers shall retain ownership of all associated work products and documentation obtained from the Respondent under the Contract.

TESTING AND INSPECTION

The Texas Animal Health Commission may test and inspect goods and services purchased under the Contract to ensure compliance with the specifications of this RFP and the Contract. The Texas Animal Health Commission may also test and inspect goods and services before they are purchased under the Contract. Authorized the Texas Animal Health Commission personnel shall have access to the Respondent's place of business for the purpose of inspecting the goods. To the extent practical, the Texas Animal Health Commission inspections will not disrupt the Respondent's daily operations. Tests shall be performed on samples submitted with the Proposal or on samples taken from regular shipments. All costs of testing and inspection shall be borne by the Respondent. In the event the goods

tested fail to meet or exceed all conditions and requirements of the RFP and Contract, the goods will be rejected in whole or in part, at the State's option, and returned to the Respondent or held for disposition at the Respondent's expense. Latent defects may result in cancellation of the Contract at no expense to the state. If material fails to meet specifications, the Respondent will be notified by fax/mail or e-mail. The Respondent will have ten (10) working days after receipt of the notification to remove the rejected material from state property. Material will be removed at the Respondent's expense. Material not removed in the allotted time period will be disposed by the Customer. The Respondent will be charged for all disposable expenses conducted by the Customers.

TIE BIDS

Awards will be made in accordance with 34 TAC Rules 20.36(b) (3) and 20.38 (Preferences).

WORK MADE FOR HIRE

For the purposes of this Contract, the term "Work" is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research, materials, intellectual property or other property developed, produced, or generated in connection with this Contract. All work performed pursuant to this Contract is made the exclusive property of the Texas Animal Health Commission. All right, title and interest in and to said property shall vest in the Texas Animal Health Commission upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such work may not, by operation of law, vest in the Texas Animal Health Commission, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to the Texas Animal Health Commission. The Texas Animal Health Commission shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give the Texas Animal Health Commission and/or the State of Texas, as well as any person designated by the Texas Animal Health Commission and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for the services rendered under this Contract.

U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM

By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1. All persons employed to perform duties within Texas, during the term of the Contract; and
2. All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.