

**County Of San Mateo
PURCHASING DIVISION**

455 County Center, 5th Floor Redwood City, 94063 1663

Vendor Agreement Award

DATE: November 1, 2003

AWARD: The County of San Mateo hereby awards Gen Probe, Inc. Agreement No. B404009 in accordance with Reagents/Equipment Use Program per Vendor Contract #3024400019703 dated August 19, 2003, which is incorporated herein by reference.

CATEGORY: Laboratory Supplies & Services
COMMODITY: Reagents/Equipment Use Program

TERM: November 1, 2003 thru October 31, 2006

AUTHORIZED USERS: EPSBuyer
HLT-Public Health Services

VENDOR'S NAME GEN PROBE, INC.
CODE & ADDRESS 10210 GENETIC CENTER DR
SAN DIEGO CA 92121-4362

VENDOR CONTACT(S): Customer Service Phone:(800) 523-5001 x
FAX:(800) 288-3141 x

ORDERING: Fax or phone

PRICES: See attached Vendor Agreement Order Release form

PAYMENT TERMS: Net 30 Days

FREIGHT TERMS: F.O.B. Destination, freight prepaid and added.

DELIVERY TIME: 4 days A.R.O.

NOTES: This agreement is for a Not to Exceed Amount of \$600,000.00 for all County purchases.
This agreement shall only authorize the procurement of the supplies specifically indicated in the agreement.
This agreement shall not be used to purchase fixed assets. (Equipment total cost including tax, freight, handling, etc., per line item \$5,000.00 or more.)

This agreement does not include nonprofits and public agencies.

If you have any questions, call the Purchasing Division

REMARKS: Authorized User: Public Health Lab Only.

Reagents/Equipment Use Program dated 8/19/03 is an integral part of this agreement (attached).

Equipment provided:
1 ea. 5105 Direct Tube Sampling (DTS) 400 System
1 ea. 3200 | LEADER 450 | Luminometer
1 ea. 2900 AccuLEADER, PAL

1 ea. 3078 Bottle Top Dispenser, 5 mL
2 ea. 1714 Bottle Top Dispenser, 2 mL
1 ea. 2113 Eppendorf Repeat Pipettor
1 ea. 1639 Magnetic Separation Unit

Waiver for Equal Benefits has been given.

Non-Discrimination :

No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Contract on the basis of their race, color, religion, origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under the Contract.

Violation of the non-discrimination provisions of this Contract shall be considered a breach of this Contract and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to: i) termination of this Agreement; ii) disqualification of the Contractor from bidding on or being awarded a County Contract for a period of up to 3 years; iii) liquidated damages of \$2,500 per violation; iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to: i) examine Contractor's employment records with respect to compliance with this paragraph; ii) set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of its response to the Complaint when filed.

**COUNTY OF SAN MATEO
VENDOR AGREEMENT
ORDER RELEASE FORM**

VENDOR: **GEN PROBE, INC.**

AGREEMENT NO: **B404009**

DATE OF RELEASE:

PHONE: **(800) 523-5001 x**

ACCOUNT NO:

FAX: **(800) 288-3141 x**

ORDER PLACED WITH: **Customer Service**

SHIP TO:

BILL TO:

Item	Quantity	Unit	Description	Unit Price
1.		Each	#2800 Identification Reagent	\$75.00
2.		Each	#2845 Mycobacterium Avium Complex	\$266.00
3.		Each	#2850 Mycobacterium Gordonae	\$266.00
4.		Each	#2855 Mycobacterium Kansasii	\$266.00
5.		Each	#2860 Mycobacterium Tuberculosis	\$266.00
6.		Each	#1791 Detection Reagent	\$27.00
7.		Kit	#1001 MTD Kit (50 Tests)	\$1,060.00
8.		Each	#1032 Aptima Combo2 Assay (100 tests)	\$1,075.00
9.		Each	#1040 Aptima Combo2 Urine Collection	\$62.50
10.		Each	#1041 Aptima Combo2 Swab Collection	\$62.50
11.		Each	#1048 Aptima Combo2 AutoDetect	\$45.00

BELOW THIS LINE FOR COUNTY USE ONLY				
G.L. ORG	G.L. OBJ	J.L. ORG	J.L. OBJ	

Order Placed by: Purchasing

Phone No.: _____

Fax: _____

Notes: _____

**GEN-PROBE**

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

REAGENT SALES AND EQUIPMENT RENTAL AGREEMENT**DTS 400**

Sales Representative: Charles Jubb
 Territory: 710 / ext: 5318
 Customer #: 30244000
 Contract #: 3024400019703

Purchase Order #: _____

The INSTRUMENTATION/EQUIPMENT described in this AGREEMENT shall be located at the address indicated below, and shall not be removed or relocated without GEN-PROBE's prior written consent.

Date: August 19, 2003

Billing Address

San Mateo County
 ATTN: Public Health Div.-Accounts Payable

 225 W. 37th Avenue
 San Mateo, CA 94403
 415-573-2332

Shipping Address

San Mateo County Public Health Lab
 ATTN: Receiving
 Room 113
 225 W. 37th Avenue
 San Mateo, CA 94403
 415-573-2332

CONTRACT PERIOD: November 1, 2003 through October 31, 2006.

REAGENT PURCHASE SCHEDULE:

Product Number	Description	Price/Kit	Monthly Qty	Extended Price	3-Month (Quarterly) Quantity	12-Month (Yearly) Quantity
2800	Identification Reagent	\$ 75.00	0.3	\$ 22.50	0.9	3.6
2845	Mycobacterium Avium Complex	\$ 266.00	0.7	\$ 186.20	2.1	8.4
2850	Mycobacterium Gordonae	\$ 266.00	1.3	\$ 345.80	3.9	15.6
2855	Mycobacterium Kansasii	\$ 266.00	1.3	\$ 345.80	3.9	15.6
2860	Mycobacterium Tuberculosis	\$ 266.00	1.0	\$ 266.00	3.0	12.0
1791	Detection Reagent	\$ 27.00	2.0	\$ 54.00	6.0	24.0
1001	MTD Kit (50 Tests)	\$ 1,060.00	0.6	\$ 636.00	1.8	7.2
1032	Aptima Combo2 Assay (100 test)	\$ 1,075.00	10.0	\$ 10,750.00	30.0	120.0
1040	Aptima Combo2 Urine Collection	\$ 62.50	7.0	\$ 437.50	21.0	84.0
1041	Aptima Combo2 Swab Collection	\$ 62.50	13.0	\$ 812.50	39.0	156.0
1048	Aptima Combo2 AutoDetect	\$ 45.00	3.5	\$ 157.50	10.5	42.0
MONTHLY TOTAL:				\$ 14,013.80		

INSTRUMENTATION:

(Note: Instrumentation may include reconditioned or refilled systems)

Quantity & Instrumentation	Description
1 x 5105	Direct Tube Sampling (DTS) 400 System
1 x 3200I	LEADER 450I Luminometer
1 x 2900	AccuLEADER, PAL
1 x 3078	Bottle Top Dispenser, 5mL
2 x 1714	Top Dispenser, 2mL
1 x 2113	Eppendorf Repeat Pipettor
1 x 1639	Magnetic Separation Unit

 SPECIAL CONDITIONS:

Freight Terms: FCA Destination Freight Pre-paid; payment terms appear on the reverse.



This Agreement, including the Terms and Conditions on the reverse side, contains the entire agreement between the parties. This Agreement cannot be changed except with the written consent of GEN-PROBE. If not signed by Customer within 45 days of date listed above, Gen-Probe retains the right to renegotiate the price(s) on this Contract.

*Please return original (signed) agreement to Gen-Probe

Authorized Signature: _____
 Typed Name: _____
 Title: _____
 Date: _____

Accepted By Gen-Probe:

Authorized Signature: *Lynja Merrill*
 Lynja Merrill
 Vice President of Sales
 Date: *10/20/03*

*B10363

Continued on Reverse

REAGENT SALE AND EQUIPMENT RENTAL
TERMS AND CONDITIONS

- EQUIPMENT RENTAL.** During the Contract Period, Customer agrees to rent from Gen-Probe the equipment listed on attached Purchase Order ("Equipment"), subject to the terms and conditions of this Agreement. Customer will return the Equipment to Gen-Probe upon expiration of the Contract Period.
- REAGENT PURCHASE.** During the Contract Period, Customer agrees to purchase from Gen-Probe, and Gen-Probe agrees to sell to Customer the reagents listed on the attached Purchase Order ("Reagents"), subject to the terms and conditions of this Agreement. Although monthly quantities may vary, Customer's average purchases per month over any three- (3) month period must conform to or exceed the order quantity specified in the Reagent Purchase Schedule listed on the attached Purchase Order.
- REAGENT PRICE ADJUSTMENTS.** If during the Contract Period, Customer's Reagent purchases fail to average or exceed the agreed upon volume as indicated in the Reagent Purchase Schedule on the attached Purchase Order ("Reagent Schedule"), Gen-Probe may adjust the prices of the Gen-Probe volume discount pricing level for the purchase volume actually ordered during the Contract Period. If the Contract Period is modified (i.e. extended or abbreviated) volume discount pricing will be adjusted to meet the new Reagent volume purchased. In the event of early termination of this Agreement, the appropriate volume discount pricing adjustment will be made based on the Reagent Schedule shortfall.
- PRICING AND SHIPPING.** Reagent prices are negotiated yearly based on volume requirements and include the cost of Equipment rental. All prices for Reagents are FCA Destination, freight prepaid and added to the invoice as a separate item. Customer assumes all shipping liability. If volume purchases of Reagents are consistent with applicable volume commitment on the Reagent Schedule, then annual price increases will be based on the CPI not to exceed five percent (5%).
- PURCHASE ORDERS.** In the event of a conflict between the terms of this Agreement, any purchase order, or additional terms and conditions supplied by Customer (if any), the terms of this Agreement shall control and prevail.
- PAYMENT TERMS.** Customer shall make all payments due under this Agreement net thirty (30) days from the date of invoice. Late payment fees of 2% of the minimum monthly payment may be assessed for payments received after they are due and may result in Gen-Probe placing future Customer orders on hold. At the end of the Contract Period, or in the event of termination of this Agreement, Customer will be billed monthly until all Equipment has been returned to Gen-Probe.
- TAXES.** Customer shall pay all taxes and assessments including interest and penalties, which may be levied against the Equipment and/or Reagents during the Contract Period or any extension thereof.
- UNAUTHORIZED USE.** Customer agrees to use the Equipment solely in conjunction with Reagents or other supplies expressly authorized by Gen-Probe.
- TITLE.** Gen-Probe shall hold exclusive title to the Equipment and may assign, transfer, pledge or sell Gen-Probe's interest in the Equipment without notice or approval from Customer. Gen-Probe is Gen-Probe Sales & Service, Inc., a wholly-owned distribution subsidiary of Gen-Probe Incorporated. Customer shall not remove any markings from the Equipment, which identify Gen-Probe as the owner. Customer shall keep the Equipment free from any and all liens, claims and encumbrances and shall not lease, sublease, transfer, sell, or assign the Equipment. Customer does hereby make, constitute and appoint Gen-Probe as Customer's true and lawful Attorney-in-Fact for the sole purpose of executing and filing, in the name of Customer, a UCC-1 statement in favor of Gen-Probe covering the Equipment.
- WARRANTY AND SERVICE.** Gen-Probe warrants that the Reagents shall meet the required performance specifications to perform the desired tests as described in the User Manuals. The extent of Gen-Probe's liability under this warranty is limited to replacing any defective Reagent. Gen-Probe does not manufacture the Equipment. The Equipment is fully warranted through manufacturers as described in the Equipment Operator's Manual provided to Customer and such warranties extend to Gen-Probe's customers. Gen-Probe warrants that Gen-Probe may, at its option, repair or replace any defective Equipment. The foregoing warranty shall not apply in the event that: (a) Customer has not used and maintained the Equipment in accordance with the guidelines set forth in the Equipment Operator's Manual provided to Customer; (b) if Customer has used the Equipment with reagents and supplies not expressly authorized by Gen-Probe; (c) if the Equipment is repaired or altered by a party other than Gen-Probe without Gen-Probe's prior written approval; or (d) if the Equipment has been subject to misuse, negligence, or accident. **THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.**
- MAINTENANCE AND REPAIR.** Customer agrees to maintain the Equipment in good operating condition and assumes all risks of loss and damage to the Equipment, except as covered in Section 10. (Warranty and Service). In the event of loss or damage, Customer will pay Gen-Probe the list price of the lost or damaged item of Equipment.
- TERMINATION.** This Agreement will terminate at the end of the Contract Period, or earlier, as provided in Section 3 (Reagent Price Adjustments) and Section 15 (Default).
- INDEMNITY.** Customer shall indemnify and hold harmless Gen-Probe, its agents, officers, employees, directors, shareholders, successors and assigns, against all loss, costs, liability, damage or expense, including reasonable attorney's fees and costs arising or claimed to arise by reason of any act or omission by Customer or any of its employees or agents pursuant to this Agreement including without limitation

any claim arising out of the use of the Reagents and/or Equipment, except any such claims arising from the gross negligence of Gen-Probe.

- LIMITATION OF LIABILITY. EXCEPT FOR PAYMENTS MADE PURSUANT TO SECTIONS 4 AND 6, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR COSTS INCURRED BY THE OTHER PARTY IN CONNECTION WITH THE USE OF THE EQUIPMENT OR REAGENTS BY CUSTOMER OR ANY OTHER PERSON UTILIZING EQUIPMENT NOR SHALL GEN-PROBE BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE REAGENTS OR EQUIPMENT.**
- DEFAULT.** The occurrence of any of the following events shall constitute a default ("Default") by Customer: (a) non-payment when due of any amount payable by Customer in accordance with this Agreement; (b) Customer's failure to perform any covenant or condition of this Agreement; (c) Customer becomes insolvent or unable to pay debts as they mature; (d) Customer files for protection under any bankruptcy or similar laws or if any proceeding in bankruptcy, receivership or insolvency shall be commenced by or against Customer or its property; (e) Customer makes an assignment for the benefit of its creditors; or (f) if any substantial attachment or execution be levied on any of Customer's property. In the event of a Default hereunder, all indebtedness of Customer hereunder may, at the option of Gen-Probe and without demand or notice of any kind be declared and thereupon immediately become due and payable, and in addition to all other remedies, all of which are cumulative, Gen-Probe may (i) require Customer to return the Equipment and make the Equipment available to Gen-Probe at a place designated by Gen-Probe, and/or (ii) immediately terminate this Agreement. Gen-Probe shall be entitled to recover from Customer any and all expenses and damages which Gen-Probe sustains by reason of said Default including but not limited to reasonable attorneys' fees and all expenses of repossession, removal, storing, and disposition of the Equipment. The remedies and rights specified herein shall not be exclusive and shall be cumulative. The exercise or the non-exercise of any right or remedy shall not limit or prejudice Gen-Probe as to that right or remedy or as to any other rights or remedies provided by applicable law.
- GOVERNING LAW.** This Agreement shall be governed and construed in accordance with the laws of the state of California, United States. With regard to sales outside of the United States, this Agreement shall not be governed by or subject to the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. All obligations of the parties under this Agreement are subject in all respects to any applicable United States export laws and regulations.
- CONFIDENTIALITY.** Each party shall hold in confidence all materials or information disclosed to it hereunder ("Confidential Information") which are marked confidential or proprietary, or if disclosed orally, reduced to writing and marked confidential within thirty (30) days after the date of disclosure. Each party agrees to take precautions to prevent the unauthorized disclosure or use of Confidential Information consistent with precautions used to protect such party's own confidential information, but in no event less than reasonable care. The obligations of the parties hereunder shall not apply to materials or information which (2) is now, or hereafter becomes, through no act or failure to act on the part of the receiving party, generally known or available; (b) is known by the receiving party at the time of receiving such information as evidenced by its records; (c) is hereafter furnished to the receiving party by a third party, as a matter of right and without restriction on disclosure; (d) is independently developed by the receiving party without any breach of this Agreement; or (e) is the subject of a written permission to disclose provided by the disclosing party. Notwithstanding any other provision of this Agreement, disclosure of Confidential Information shall not be precluded if such disclosure: (i) is in response to a valid order of a court or other governmental body or is otherwise required by law; *provided, however,* that the responding party shall first have given notice to the other party and shall have made a reasonable effort to obtain confidential treatment of such Confidential Information; (ii) is otherwise necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.
- MISCELLANEOUS.** Headings and captions in this Agreement are for convenience only, do not form a part of this Agreement, and shall in no way affect its interpretation. Any notification required shall be deemed reasonable and properly given if mailed to Customer five (5) days prior to such disposition. This Agreement (including the documents specifically referred to herein) contains the entire agreement between the parties. Customer acknowledges that there are no warranties or representations which have been made by Gen-Probe or any of its agents other than those expressly contained in this Agreement. If any action in law or equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which the party may be entitled.
- This Agreement contains the entire Agreement between the parties. This Agreement cannot be changed except with the written consent of GEN-PROBE. Any additional terms and conditions accompanying subsequent Customer Purchase Order or other documentation must be mutually agreed upon by the parties in order to be valid.

COUNTY OF SAN MATEO

Equal Benefits Compliance Declaration Form

I Vendor Identification

Name of Contractor: Gen-Probe Incorporated
 Contact Person: Nicolle Moody
 Address: 10210 Genetic Center Drive
San Diego, CA 92121
 Phone Number: 858-410-8000 Fax Number: 858-410-8637

II Employees

Does the Contractor have any employees? X Yes ___ No
 Does the Contractor provide benefits to spouses of employees? X Yes ___ No

If the answer to one or both of the above is no, please skip to Section IV.

III Equal Benefits Compliance (Check one)

- Yes, the Contractor complies by offering equal benefits, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.
- Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- No, the Contractor does not comply.
- The Contractor is under a collective bargaining agreement which began on _____ (date) and expires on _____ (date).

IV Declaration

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this 5th day of March, 2003 at San Diego, California
 (City) (State)

R. Vedova
 Signature
VP, Administration
 Title



Robin L. Vedova
 Name (Please Print)
33-0044608
 Contractor Tax Identification Number

Waiver Request Memo

Date: 10/09/03
To: John L. Maltbie, County Manager
From: Margaret Taylor, Director of Health Services
Subject: Waiver Request

We are requesting a waiver of the Equal Benefits Ordinance to enter into or amend a contract with Gen-Probe, Inc. for Public Health Laboratory test supplies in the amount of \$600,000.

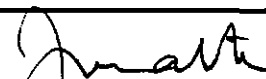
This waiver is necessary and in the best interest of the County for the following reason(s):

- Necessary in order to respond to an emergency
- Sole Source
- No compliant contractors are capable of providing the goods/service
- Inconsistent with a grant, subvention or agreement with a public agency
- Is part of a Cooperative or Joint Purchasing Agreement
- Other

Attached is a detailed explanation of the reason(s) checked above.

- Approved
- Not Approved

The Vendor is the only one with an acceptable accuracy rate for the specific Public Health tests which will be performed with the equipment and reagents acquired under this agreement.



Signing Authority

10-10-03

Date